



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 9, 2020** which reads as follows:*

“G.R. No. 221961 (*Philippine Long Distance Telephone Company v. Globe Telecom, Inc. and Bayan Telecommunications, Inc.*). – This Petition for Review on *Certiorari*¹ under Rule 45 of the Rules of Court assails the Decision² dated March 26, 2015 and the Resolution³ dated December 18, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 136211, which denied the *certiorari* petition⁴ filed by Philippine Long Distance Telephone Company (PLDT) against the National Telecommunications Commission (NTC), Globe Telecom, Inc. (Globe), and Bayan Telecommunications, Inc. (Bayantel).

Facts of the Case

Bayantel underwent rehabilitation proceedings before the Regional Trial Court of Pasig City, Branch 158 (rehabilitation court). At the start of the rehabilitation program, Bayantel had outstanding obligations amounting to US\$600,000,000.00, which was later reduced to around US\$496,000,000.00. The latter amount was split into two tranches. Tranche A, worth around US\$325,000,000.00, was supposed to be amortized for 19 years while Tranche B, worth around US\$171,000,000.00, was non-interest bearing but convertible up to 2023 into 40% of the authorized capital stock of Bayantel.⁵

In the course of rehabilitation proceedings, the rehabilitation court approved the Amended Rehabilitation Plan (ARP) and the

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¹ *Rollo*, pp. 13-59.

² Penned by Associate Justice Manuel M. Barrios, with the concurrence of Associate Justices Leoncia R. Dimagiba and Myra V. Garcia-Fernandez; *id.* at 73-81.

³ *Id.* at 171-173.

⁴ *Id.* at 479-523.

⁵ *Id.* at 75.

Master Restructuring Agreement (MRA) submitted by Bayantel. Under the ARP, the conversion to equity of the Tranche B debt would be accelerated and thereafter, a portion of Tranche A would be converted into a new Tranche B debt. The goal was to bring down Tranche A to about US\$131,000,000.00 to be paid until 2023. In the process, Globe acquired a significant portion of Bayantel's indebtedness at discounted rates from various creditors reaching about 97% of both tranches. Globe obtained around 38% of Tranche B credit convertible to equity. In addition thereto, since ARP and MRA allowed a portion of Tranche A to be converted to Tranche B debt convertible to equity, Globe ended up acquiring 56.6% equity in Bayantel.⁶

Commonwealth Act No. 146, otherwise known as the "Public Service Act" requires that before a transfer of more than 40% of a transferor's subscribed capital stock can be effected, the transferor and transferee should first acquire the approval of the NTC. Hence, on October 11, 2013, Globe and Bayantel filed the Joint Application for the NTC's approval of the transfer of 56.6% equity of Bayantel in favor of Globe.⁷

On October 31, 2013, PLDT filed its Verified Opposition⁸ to the Joint Application and argued that the debt-to-equity transfer under the ARP and MRA is in reality a transfer of Bayantel's franchise to Globe which necessitates congressional approval pursuant to the provisions of Republic Act No. 7925, otherwise known as the "Public Telecommunications Policy Act of the Philippines." Hence, PLDT insists that the Joint Application should be suspended pending approval by Congress. PLDT, likewise, moved for the submission by Globe and Bayantel of the ARP and MRA and objected to certain technical deficiencies relating to the notarization and verification of the Joint Application.⁹

On November 27, 2013, the NTC rendered the first Order¹⁰ ruling that the issues raised by PLDT with respect to the defects in the verification and notarization of the Joint Application are not fatal which warrant the outright dismissal of the Joint Application.¹¹ Subsequently, the NTC issued a second Order¹² dated December 13, 2013 denying the reliefs sought in PLDT's Supplemental Verified

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⁶ Id. at 75-76.

⁷ Id. at 76.

⁸ Id. at 203.

⁹ Id. at 76.

¹⁰ Id. at 83-88.

¹¹ Id. at 86-87.

¹² Id. at 137-140.

Opposition and set another hearing. During said hearing, PLDT questioned the judicial affidavit of a Globe's witness for the alleged noncompliance with the Judicial Affidavit Rule. PLDT filed an Omnibus Motion praying for a reconsideration of the first and second NTC Orders as well as to expunge the judicial affidavit of Globe's witness.¹³ However, in the third NTC Order dated July 3, 2014, the NTC denied the Omnibus Motion.¹⁴

On July 11, 2014, PLDT filed its Petition for *Certiorari* (With Application for the Ex Parte Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction) to the CA challenging the validity of the three NTC Orders.¹⁵

On October 9, 2014, the CA issued a Resolution¹⁶ granting PLDT's application for the issuance of a TRO and ordered the NTC to refrain from further proceeding with the Joint Application for a period of 60 days.¹⁷

On March 26, 2015, the CA rendered its Decision¹⁸ denying the *Certiorari* petition filed by PLDT. According to the CA, NTC's admission of the Joint Application notwithstanding defects in the verification and notarization and the acceptance of the judicial affidavit of the Globe's witness cannot be considered grave abuse of discretion amounting to lack or excess of jurisdiction.¹⁹ With respect to PLDT's argument that Globe needs congressional approval because the debt-to-equity transfer was in fact transfer of franchise, the CA held that this contention must be proved first before the NTC as an affirmative defense because this necessarily needs evidentiary support. Hence, the CA ruled that NTC correctly deferred ruling on this issue pending reception of evidence.²⁰

PLDT moved for reconsideration, which was denied in a Resolution dated December 18, 2015.²¹

Aggrieved, PLDT filed its Petition for Review on *Certiorari*²² dated February 18, 2016 to the Court. PLDT reiterates its position that

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¹³ Id. at 24-25.
¹⁴ Id. at 27.
¹⁵ Id. at 479-523.
¹⁶ Id. at 686-691.
¹⁷ Id. at 690.
¹⁸ Supra note 2.
¹⁹ *Rollo*, p. 78.
²⁰ Id. at 79.
²¹ Supra note 3.
²² *Rollo*, pp. 13-62.

the CA erred in allowing the NTC to take cognizance of the Joint Application filed by Globe and Bayantel without congressional approval of the transfer of Bayantel's franchise in favor of Globe disguised as debt-to-equity transfer.²³ PLDT, likewise, maintains that the NTC improperly admitted the Joint Application even though there were defects in the verification thereof and there were violations of the notarial rules.²⁴

In the meantime, on July 2, 2015, the NTC approved the Joint Application filed by Globe and Bayantel. On July 24, 2015, PLDT filed a motion for reconsideration of the said NTC decision.

In their Joint Comment,²⁵ Globe and Bayantel sought the denial of the petition filed by PLDT mainly on the fact that it has become moot and academic because of the issuance of the NTC decision dated July 2, 2015 approving the Joint Application. According to Globe and Bayantel, PLDT already has plain, speedy, and adequate remedy which is its motion for reconsideration before the NTC questioning the approval of the Joint Application.²⁶

The NTC also filed its Comment²⁷ agreeing with the CA that the NTC did not commit grave abuse of discretion because it merely deferred ruling on whether a congressional approval is necessary until after evidence is presented as it was evidentiary in nature.²⁸

In its Consolidated Reply,²⁹ PLDT counters that the petition has not been mooted by the approval of the Joint Application considering that such decision is not yet final and executory. PLDT also insists that this case is an exception to the rule on mootness.³⁰

Ruling of the Court

After a perusal of the records of the case, this Court resolves to deny the Petition for Review on *Certiorari*.

Upon the approval by the NTC of the Joint Application filed by Globe and Bayantel, this case has become moot and academic. In

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²³ Id. at 32.

²⁴ Id. at 43.

²⁵ Id. at 803-894.

²⁶ Id. at 804.

²⁷ Id. at 1063-1079.

²⁸ Id. at 1072.

²⁹ Id. at 1110-1135.

³⁰ Id. at 1111-1112.

Osmeña, III v. SSS,³¹ the Court defined a moot and academic case, to wit:

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness -- save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review.³² (citations omitted)

The case of *David v. Macapagal-Arroyo*³³ earlier gave the two other exceptions to the moot and academic principle: (a) if there is grave violation of the Constitution; and (b) the exceptional character of the situation and the paramount public interest is involved.

In this case, while the *certiorari* petition filed by PLDT questioning the interlocutory orders issued by the NTC was pending, the NTC rendered a decision on the Joint Application. In fact, PLDT moved for reconsideration of the NTC decision on the Joint Application. Given this development, any action on the *certiorari* petition on mere incidental matters of the Joint Application would not accord any practical relief to PLDT. Hence, this case has become moot and academic. PLDT's remedy is to file an appeal questioning the decision of the NTC in the Joint Application and not to insist on the *certiorari* petition involving interlocutory orders earlier issued by the NTC as an incident to the Joint Application.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED** for being moot and academic.

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³¹ 559 Phil. 723 (2007).

³² Id. at 735.

³³ 522 Phil. 705, 754 (2006).

SO ORDERED.”

By authority of the Court:



LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
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