Title: Wilson P. Gamboa vs. Finance Secretary Margarito B. Teves, et al.

Facts:
Wilson P. Gamboa, a shareholder of the Philippine Long Distance Telephone Company (PLDT), filed a petition challenging the sale of shares of the Philippine Telecommunications Investment Corporation (PTIC) by the Republic of the Philippines to Metro Pacific Assets Holdings, Inc. (MPAH), an affiliate of First Pacific Company Limited (First Pacific). The case traces its roots to 1967 when PTIC was incorporated and subsequently held 26% of PLDT's equity. Various changes in PTIC's ownership structure ultimately led to its sequestration by the Presidential Commission on Good Government (PCGG) in 1986. In 1999, First Pacific gained control of PTIC by acquiring 54% of its outstanding capital stock.

In November 2006, the Philippine Government, through the Privatization Council, announced its intent to sell its 111,415 PTIC shares, amounting to 46.125% of PTIC's outstanding capital stock. Parallax Venture Fund XXVII won the bid for the shares, which was then matched by First Pacific after being granted the right of first refusal by the Privatization Council. Consequently, MPAH acquired the shares, resulting in First Pacific's increase in common shares in PLDT from 30.7% to 37%, thereby raising the issue of potential violation of the Philippine Constitution's restriction on foreign ownership in public utilities.

Gamboa alleged that the increase in First Pacific's common shareholdings in PLDT violated Section 11, Article XII of the 1987 Philippine Constitution, which limits foreign ownership of the capital of a public utility to not more than 40 percent. Gamboa's assertion was based on the contention that First Pacific, with a combined interest with Japanese NTT DoCoMo, would collectively own 51.56 percent of PLDT's common equity.

Gamboa raised several issues: (1) the violation of the constitutional limit on foreign ownership following the sale of PTIC shares to First Pacific, (2) grave abuse of discretion by public respondents in allowing the sale, and (3) the sale of common shares to foreigners exceeding 40 percent of the entire subscribed common capital stock contravening the constitutional limit on foreign ownership in a public utility.

Procedurally, the sale of PTIC shares was completed on February 28, 2007, and Gamboa timely filed the petition on the same day. The complexity of the issues led various government agencies, as well as officers of relevant corporations including First Pacific and PLDT, to adopt different stances. The Philippine government contended that existing interpretation practices included both common and preferred shares in assessing compliance with the 40% constitutional limitation.

Issues:

1. Whether the term “capital” in Section 11, Article XII of the 1987 Philippine Constitution refers only to common shares or includes the total outstanding capital stock of PLDT, a public utility.
2. If the term “capital” refers only to common shares, whether the sale of PTIC shares to First Pacific resulting in foreign ownership of common shares exceeding 40% violates the constitutional limitation on foreign ownership of public utilities.

Court’s Decision:

The Philippine Supreme Court partly granted the petition and ruled that the term “capital” in Section 11, Article XII of the 1987 Constitution refers only to shares of stock entitled to vote in the election of directors, or to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares). The Court directed the Chairperson of the Securities and Exchange Commission (SEC) to apply this definition of the term “capital” when determining the extent of allowable foreign ownership in PLDT. The Court also held that if there was a violation of Section 11, Article XII of the Constitution, appropriate sanctions under the law should be imposed.

Doctrine:

The term “capital” in Section 11, Article XII of the 1987 Constitution refers only to shares of stock that can vote in the election of directors, and thus in the present case only to common shares, and not to the total outstanding capital stock (common and non-voting preferred shares).

Class Notes:

– Public utilities in the Philippines must comply with the minimum nationality requirement set by the Constitution: at least 60% Filipino ownership, which refers to shares with voting rights.
– The term “capital” for the purpose of nationality requirement in relation to public utilities pertains to common shares, which are the voting stocks in a corporation.
– The SEC is the agency responsible for enforcing compliance with the nationality requirement for public utilities prescribed by the Constitution.

Historical Background:

This case reflects the application of nationalistic provisions in the Philippine Constitution aimed at maintaining Filipino control over public utilities. These restrictions date back to the 1935 Constitution and have been reiterated in subsequent constitutions, reflecting a consistent policy of reserving certain areas of the economy to Filipinos. This policy underscores the protectionist stance that aims to preserve certain economic activities, such as public utilities, for national development and public interest.