REPUBLIC OF THE PHILIPPINES, REPRESENTED BY NATIONAL TELECOMMUNICATIONS COMMISSION (NTC), PETITIONER, VS. INTERNATIONAL COMMUNICATIONS CORPORATION (ICC), RESPONDENT.

G.R. NO. 141667. July 17, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner Republic, through the National Telecommunications Commission (NTC), seeks the annulment and setting aside of the Amended Decision[1] dated September 30, 1999 of the Court of Appeals (CA), setting aside the orders dated June 4, 1996 and June 25, 1997 of the NTC insofar as said orders required respondent International Communications Corporation (ICC) to pay the amount of P1,190,750.50 by way of permit fee as a condition for the grant of a provisional authority to operate an international telecommunications leased circuit service, and the Resolution[2] dated January 24, 2000, denying NTC's motion for reconsideration.

There is no dispute as to the facts:

On April 4, 1995, respondent ICC, holder of a legislative franchise under Republic Act (RA) No. 7633 to operate domestic telecommunications, filed with the NTC an application for a Certificate of Public Convenience and Necessity to install, operate, and maintain an international telecommunications leased circuit service between the Philippines and other countries, and to charge rates therefor, with provisional authority for the purpose.

In an Order[3] dated June 4, 1996, the NTC approved the application for a provisional authority subject, among others, to the condition:

> 2. That applicant [ICC] shall pay a permit fee in the amount of P1,190,750.00, in accordance with section 40(g) of the Public Service Act,[4] as amended;

Respondent ICC filed a motion for partial reconsideration of the Order insofar as the same required the payment of a permit fee. In a subsequent Order dated June 25, 1997, the NTC denied the motion.

Therefrom, ICC went to the CA on a petition for certiorari with prayer for a temporary restraining order and/or writ of preliminary injunction, questioning the NTC's imposition against it of a permit fee of P1,190,750.50 as a condition for the grant of the provisional authority applied for.

In its original decision[5] dated January 29, 1999, the CA ruled in favor of the NTC whose challenged orders were sustained, and accordingly denied ICC's certiorari petition, thus:

> WHEREFORE, the instant petition is hereby DENIED. In view thereof, the assailed orders dated 4 June 1996 and 25 June 1997, requiring the payment of permit fees in the amount of One Million One Hundred Ninety Thousand Seven Hundred Fifty and 50/100 Pesos (P1,190,750.50) as a condition for the grant of a Provisional

> Authority to operate an International Circuit service, are hereby AFFIRMED. ACCORDINGLY, the International Communications Corporation is hereby ordered to pay the amount of One Million One Hundred Ninety Thousand Seven Hundred Fifty and 50/100 Pesos (P1,190,750.50) to the National Telecommunications Commission.
>
> SO ORDERED.

In time, ICC moved for a reconsideration. This time, the CA, in its Amended Decision dated September 30, 1999, reversed itself, to wit:

> WHEREFORE, the instant Motion for Reconsideration is hereby GRANTED. Accordingly, the Decision dated 29 January 1999 including the imposition by the public respondent of permit fees with respect to [ICC's] international leased circuit service is hereby REVERSED. Judgment is hereby rendered, setting aside the questioned orders dated 04 June 1996 and 25 June 1997, insofar as they impose upon petitioner ICC the payment of the amount of One Million One Hundred Ninety Thousand Seven Hundred Fifty and Fifty Centavos (P1,190,750.50) by way of permit fees as a condition for the grant of a provisional authority to operate an International Leased Circuit Service. No costs.
>
> SO ORDERED. (Word in bracket added).

Petitioner NTC filed a motion for reconsideration, but its motion was denied by the CA in its equally challenged Resolution dated January 24, 2000. Hence, NTC's present recourse claiming that the CA erred in ruling that:

1. NTC has arrogated upon itself the power to tax an entity;

2. Section 40(g) of the Public Service Act has been amended by Section 5(g) of R.A. 7925;[6]

3. The imposition of permit fees is no longer authorized by R.A. 7925; and

4. The imposed permit fee in the amount of P1,190,750.50 for respondent's provisional authority is exorbitant.

Before addressing the issues raised, we shall first dwell on the procedural matter raised by respondent ICC, namely, that the present petition should be dismissed outright for having been filed out of time. It is respondent's posture that petitioner's motion for reconsideration filed with the CA vis-a-vis the latter's Amended Decision is a pro forma motion and, therefore, did not toll the running of the reglementary period to come to this Court via this petition for review.

Under Section 2 of Rule 45 of the Rules of Court, a recourse to this Court by way of a petition for review must be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. While a motion for reconsideration ordinarily tolls the period for appeal, one that fails to point out the findings or conclusions which were supposedly contrary to law or the evidence does not have such

an effect on the reglementary period as it is merely a pro forma motion.[7]

In arguing for the outright dismissal of this petition, respondent ICC claims that the motion for reconsideration filed by petitioner NTC in connection with the CA's Amended Decision failed to point out specifically the findings or conclusions of the CA which were supposedly contrary to law. Respondent contends that the issues raised by the petitioner in its motion for reconsideration were mere reiterations of the same issues which had already been considered and passed upon by the CA when it promulgated its Amended Decision. On this premise, respondent maintains that petitioner's aforementioned motion for reconsideration is a mere pro forma motion that did not toll the period for filing the present petition.

Under established jurisprudence, the mere fact that a motion for reconsideration reiterates issues already passed

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upon by the court does not, by itself, make it a pro forma motion.[8] Among the ends to which a motion for reconsideration is addressed is precisely to convince the court that its ruling is erroneous and improper, contrary to the law or evidence; and in so doing, the movant has to dwell of necessity on issues already passed upon. If a motion for reconsideration may not discuss those issues, the consequence would be that after a decision is rendered, the losing party would be confined to filing only motions for reopening and new trial.[9]

Where there is no apparent intent to employ dilatory tactics, courts should be slow in declaring outright a motion for reconsideration as pro forma. The doctrine relating to pro forma motions has a direct bearing upon the movant's valuable right to appeal. Hence, if petitioner's motion for reconsideration was indeed pro forma, it would still be in the interest of justice to review the Amended Decision a quo on the merits, rather than to abort the appeal due to a technicality, especially where, as here, the industry involved (telecommunications) is vested with public interest. All the more so given that the instant petition raises some arguments that are well-worth resolving for future reference.

This brings us to the substantive merits of the petition.

In its Amended Decision, the CA ruled that petitioner NTC had arrogated upon itself the power to tax an entity, which it is not authorized to do. Petitioner disagreed, contending the fee in question is not in the nature of a tax, but is merely a regulatory measure.

Section 40(g) of the Public Service Act provides:

> Sec. 40. The Commission is authorized and ordered to charge and collect from any public service or applicant, as the case may be, the following fees as reimbursement of its expenses in the authorization, supervision and/or regulation of the public services:
>
> xxx xxx xxx
>
> g) For each permit, authorizing the increase in equipment, the installation of new units or authorizing the increase of capacity, or the extension of means or general extensions in the services, twenty centavos for each one hundred pesos or fraction of the additional capital necessary to carry out the permit. (Emphasis supplied)

Clearly, Section 40(g) of the Public Service Act is not a tax measure but a simple regulatory provision for the collection of fees imposed pursuant to the exercise of the State's police power. A tax is imposed under the taxing power of government principally for the purpose of raising revenues. The law in question, however, merely authorizes and requires the collection of fees for the reimbursement of the Commission's expenses in the authorization, supervision and/or regulation of public services. There can be no doubt then that petitioner NTC is authorized to collect such fees. However, the amount thereof must be reasonably related to the cost of such supervision and/or regulation.[10]

Petitioner NTC also assails the CA's ruling that Section 40(g) of the Public Service Act had been amended by Section 5(g) of R.A. No. 7925, which reads:

> Sec. 5. Responsibilities of the National Telecommunications Commission. - The National Telecommunications Commission (Commission) shall be the principal administrator of this Act and as such shall take the necessary measures to implement the policies and objectives set forth in this Act. Accordingly, in addition to its existing functions, the Commission shall be responsible for the following:
>
> xxx xxx xxx
>
> g) In the exercise of its regulatory powers, continue to impose such fees and charges as may be necessary to cover reasonable costs and expenses for the regulation and supervision of the operations of telecommunications entities. (Emphasis supplied)

The CA ratiocinated that while Section 40(g) of the Public Service Act (CA 146, as amended), supra, allowed NTC to impose fees as reimbursement of its expenses related to, among other things, the "authorization" of public services, Section 5(g), above, of R.A. No. 7921 no longer speaks of "authorization" but only of "regulation" and "supervision." To the CA, the omission by Section 5(g) of R.A. No. 7921 of the word "authorization" found in Section 40(g) of the Public Service Act, as amended, meant that the fees which NTC may impose are only for reimbursement of its expenses for regulation and supervision but no longer for authorization purposes.

We find, however, that NTC is correct in saying that there is no showing of legislative intent to repeal, even impliedly, Section 40(g), supra, of the Public Service Act, as amended. An implied repeal is predicated on a substantial conflict between the new and prior laws. In the absence of an express repeal, a subsequent law cannot be construed as repealing a prior one unless an irreconcilable inconsistency and repugnancy exist in the terms of the new and old laws.[11] The two laws must be absolutely incompatible such that they cannot be made to stand together.[12]

Courts of justice, when confronted with apparently conflicting statutes or provisions, should endeavor to reconcile the same instead of declaring outright the validity of one as against the other. Such alacrity should be avoided. The wise policy is for the judge to harmonize such statutes or provisions if this is possible, bearing in mind that they are equally the handiwork of the same legislature, and so give effect to both while at the same time also according due respect to a coordinate department of the government. It is this

policy the Court will apply in arriving at the interpretation of the laws and the conclusions that should follow therefrom.[13]

It is a rule of statutory construction that repeals by implication are not favored. An implied repeal will not be allowed unless it is convincingly and unambiguously demonstrated that the two laws are so clearly repugnant and patently inconsistent with each other that they cannot co-exist. This is based on the rationale that the will of the legislature cannot be overturned by the judicial function of construction and interpretation. Courts cannot take the place of Congress in repealing statutes. Their function is to try to harmonize, as much as possible, seeming conflicts in the laws and resolve doubts in favor of their validity and co-existence.[14]

Here, there does not even appear to be a conflict between Section 40(g) of the Public Service Act, as amended, and Section 5(g) of R.A. 7925. In fact, the latter provision directs petitioner NTC to "continue to impose such fees and charges as may be necessary to cover reasonable costs and expenses for the regulation and supervision of telecommunications entities." The absence alone of the word "authorization" in Section 5(g) of R.A. No. 7921 cannot be construed to mean that petitioner NTC had thus been deprived of the power to collect such fees. As pointed out by the petitioner, the words "authorization, supervision and/or regulation" used in Section 40(g) of the Public Service Act are not distinct and completely separable concepts which may be taken singly or piecemeal. Taken in their entirety, they are the quintessence of the Commission's regulatory functions, and must go hand-in-hand with one another. In petitioner's own words, "[t]he Commission authorizes, supervises and regulates telecommunications entities and these functions... cannot be considered singly without destroying the whole concept of the Commission's regulatory functions."[15] Hence, petitioner NTC is correct in asserting that the passage of R.A. 7925 did not bring with it the abolition of permit fees.

However, while petitioner had made some valid points of argument, its position must, of necessity, crumble on the fourth issue raised in its petition. Petitioner itself admits that the fees imposed are precisely regulatory and supervision fees, and not taxes. This necessarily implies, however, that such fees must be commensurate to the costs and expenses involved in discharging its supervisory and regulatory functions. In the words of Section 40(g) of the Public Service Act itself, the fees and charges which petitioner NTC is authorized to collect from any

public service or applicant are limited to the "reimbursement of its expenses in the authorization, supervision and/or regulation of public services." It is difficult to comprehend how the cost of licensing, regulating, and surveillance could amount to P1,190,750.50. The CA was correct in finding the amount imposed as permit fee exorbitant and in complete disregard of the basic limitation that the fee should be at least approximately commensurate to the expense. Petitioner itself admits that it had imposed the maximum amount possible under the Public Service Act, as amended. That is hardly taking into consideration the actual costs of fulfilling its regulatory and supervisory functions.

Independent of the above, there is one basic consideration for the dismissal of this petition, about which petitioner NTC did not bother to comment at all. We refer to the fact that, as respondent ICC aptly observed, the principal ground given by the CA in striking down the imposition of the P1,190,750.50 fee is that respondent ICC is entitled to the benefits of the so-called "parity clause" embodied in Section 23 of R.A. No. 7925, to wit:

> Section 23. Equality of Treatment in the Telecommunications Industry. - Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall ipso facto become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises x x x.

In this connection, it is significant to note that the subsequent congressional franchise granted to the Domestic Satellite Corporation under Presidential Decree No. 947, states:

> Section 6. In consideration of the franchise and rights hereby granted, the grantee shall pay to the Republic of the Philippines during the life of this franchise a tax of one-half percent of gross earnings derived by the grantee from its operation under this franchise and which originate from the Philippines. Such tax shall be due and payable annually within ten days after the audit and approval of the accounts by the Commission on Audit as prescribed in Section 11 hereof and shall be in lieu of all taxes, assessments, charges, fees, or levies of any kind, nature, or description levied, established or collected by any municipal, provincial, or national authority x x x (Emphasis supplied)

The CA was correct in ruling that the above-quoted provision is, by law, considered as ipso facto part of ICC's franchise due to the "parity clause" embodied in Section 23 of R.A. No. 7925. Accordingly, respondent ICC cannot be made subject to the payment of the subject fees because its payment of the franchise tax is "in lieu" of all other taxes and fees.

WHEREFORE, the petition is hereby DENIED and the assailed Amended Decision and Resolution of the CA are AFFIRMED.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

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[1] Penned by former Associate Justice Demetrio G. Demetria, with Associate Justices Ramon A. Barcelona (ret.) and Martin S. Villarama, Jr., concurring; Rollo, pp. 34-53.

[2] Rollo, p. 55.

[3] Rollo, p. 65.

[4] Commonwealth Act No. 146, as amended, "An Act to reorganize the Public Service Commission, prescribe its powers and duties, define and regulate public services, provide and fix the rates and quota of expenses to be paid by the same and for other purposes."

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[5] Rollo, pp. 71-79.

[6] Republic Act No. 7925, "An Act to promote and govern the development of Philippine telecommunications and the delivery of public telecommunications services," otherwise known as the Public Telecommunications Policy Act of the Philippines, March 1, 1995.

[7] Section 2, Rule 37 of The Rules of Court; Luzon Stevedoring Company, Inc. v. Court of Industrial Relations, G.R. No. L-16682, July 26, 1963, 8 SCRA 447.

[8] Cruz v. Villaluz, G.R. No. L-41684, February 21, 1979, 88 SCRA 506; People v. Rodriguez, G.R. No. 32657, September 1, 1992, 213 SCRA 171; Marina Properties Corp. v. CA, G.R. No. 125447, August 14, 1998, 294 SCRA 273.

[9] Guerra Enterprises Co., Inc. v. CFI of Lanao del Sur, G.R. No. L-28310, April 17, 1970, 32 SCRA 314.

[10] PLDT v. Public Service Commission, G.R. No. L-26762, August 29, 1975, 66 SCRA 341, 351.

[11] Iloilo Palay and Corn Planters Association, Inc. v. Feliciano, G.R. No. L-24022, March 3, 1965, 13 SCRA 377.

[12] Compania General de Tabacos v. Collector of Customs, 46 Phil. 8 [1924].

[13] Gordon v. Meridiano, G.R. No. L-55230, November 8, 1988, , 167 SCRA 51, 58-59.

[14] Ty v. Trampe, G.R. No. 117577, December 1, 1995, 250 SCRA 500.

[15] Reply; Rollo, p. 141.

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