

SMART COMMUNICATIONS, INC. (SMART) AND PILIPINO TELEPHONE CORPORATION (PILTEL), PETITIONERS, VS. NATIONAL TELECOMMUNICATIONS COMMISSION (NTC), RESPONDENT.

G.R. No. 151908. August 12, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Pursuant to its rule-making and regulatory powers, the National Telecommunications Commission (NTC) issued on June 16, 2000 Memorandum Circular No. 13-6-2000, promulgating rules and regulations on the billing of telecommunications services. Among its pertinent provisions are the following:

- (1) The billing statements shall be received by the subscriber of the telephone service not later than 30 days from the end of each billing cycle. In case the statement is received beyond this period, the subscriber shall have a specified grace period within which to pay the bill and the public telecommunications entity (PTEs) shall not be allowed to disconnect the service within the grace period.
- (2) There shall be no charge for calls that are diverted to a voice mailbox, voice prompt, recorded message or similar facility excluding the customer's own equipment.
- (3) PTEs shall verify the identification and address of each purchaser of prepaid SIM cards. Prepaid call cards and SIM cards shall be valid for at least 2 years from the date of first use. Holders of prepaid SIM cards shall be given 45 days from the date the prepaid SIM card is fully consumed but not beyond 2 years and 45 days from date of first use to replenish the SIM card, otherwise the SIM card shall be rendered invalid. The validity of an invalid SIM card, however, shall be installed upon request of the customer at no additional charge except the presentation of a valid prepaid call card.
- (4) Subscribers shall be updated of the remaining value of their cards before the start of every call using the cards.
- (5) The unit of billing for the cellular mobile telephone service whether postpaid or prepaid shall be reduced from 1 minute per pulse to 6 seconds per pulse. The authorized rates per minute shall thus be divided by 10.[1]

The Memorandum Circular provided that it shall take effect 15 days after its publication in a newspaper of general circulation and three certified true copies thereof furnished the UP Law Center. It was published in the newspaper, The Philippine Star, on June 22, 2000.[2] Meanwhile, the provisions of the Memorandum Circular pertaining to the sale and use of prepaid cards and the unit of billing for cellular mobile telephone service took effect 90 days from the effectivity of the Memorandum Circular.

On August 30, 2000, the NTC issued a Memorandum to all cellular mobile telephone service (CMTS) operators which contained measures to minimize if not totally eliminate the incidence of stealing of cellular phone units. The Memorandum directed CMTS operators to:

- strictly comply with Section B(1) of MC 13-6-2000 requiring the presentation and verification of the identity

and addresses of prepaid SIM card customers;

- require all your respective prepaid SIM cards dealers to comply with Section B(1) of MC 13-6-2000;
- deny acceptance to your respective networks prepaid and/or postpaid customers using stolen cellphone units or cellphone units registered to somebody other than the applicant when properly informed of all information relative to the stolen cellphone units;
- share all necessary information of stolen cellphone units to all other CMTS operators in order to prevent the use of stolen cellphone units; and
- require all your existing prepaid SIM card customers to register and present valid identification cards.[3]

This was followed by another Memorandum dated October 6, 2000 addressed to all public telecommunications entities, which reads:

This is to remind you that the validity of all prepaid cards sold on 07 October 2000 and beyond shall be valid for at least two (2) years from date of first use pursuant to MC 13-6-2000.

In addition, all CMTS operators are reminded that all SIM packs used by subscribers of prepaid cards sold on 07 October 2000 and beyond shall be valid for at least two (2) years from date of first use. Also, the billing unit shall be on a six (6) seconds pulse effective 07 October 2000.

For strict compliance.[4]

On October 20, 2000, petitioners Isla Communications Co., Inc. and Pilipino Telephone Corporation filed against the National Telecommunications Commission, Commissioner Joseph A. Santiago, Deputy Commissioner Aurelio M. Umali and Deputy Commissioner Nestor C. Dacanay, an action for declaration of nullity of NTC Memorandum Circular No. 13-6-2000 (the Billing Circular) and the NTC Memorandum dated October 6, 2000, with prayer for the issuance of a writ of preliminary injunction and temporary restraining order. The complaint was docketed as Civil Case No. Q-00-42221 at the Regional Trial Court of Quezon City, Branch 77.[5]

Petitioners Islacom and Piltel alleged, inter alia, that the NTC has no jurisdiction to regulate the sale of consumer goods such as the prepaid call cards since such jurisdiction belongs to the Department of Trade and Industry under the Consumer Act of the Philippines; that the Billing Circular is oppressive, confiscatory and violative of the constitutional prohibition against deprivation of property without due process of law; that the Circular will result in the impairment of the viability of the prepaid cellular service by unduly prolonging the validity and expiration of the prepaid SIM and call cards; and that the requirements of identification of prepaid card buyers and call balance announcement are unreasonable. Hence, they prayed that the Billing Circular be declared null and void ab initio.

Soon thereafter, petitioners Globe Telecom, Inc and Smart Communications, Inc. filed a joint Motion for Leave to Intervene and to Admit Complaint-in-Intervention.[6] This was granted by the trial court.

On October 27, 2000, the trial court issued a temporary restraining order enjoining the NTC from implementing Memorandum Circular No. 13-6-2000 and the Memorandum dated October 6, 2000.[7]

In the meantime, respondent NTC and its co-defendants filed a motion to dismiss the case on the ground of petitioners' failure to exhaust administrative remedies.

Subsequently, after hearing petitioners' application for preliminary injunction as well as respondent's motion to dismiss, the trial court issued on November 20, 2000 an Order, the dispositive portion of which reads:

WHEREFORE, premises considered, the defendants' motion to dismiss is hereby denied for lack of merit. The

plaintiffs' application for the issuance of a writ of preliminary injunction is hereby granted. Accordingly, the defendants are hereby enjoined from implementing NTC Memorandum Circular 13-6-2000 and the NTC Memorandum, dated October 6, 2000, pending the issuance and finality of the decision in this case. The plaintiffs and intervenors are, however, required to file a bond in the sum of FIVE HUNDRED THOUSAND PESOS (P500,000.00), Philippine currency.

SO ORDERED.[8]

Defendants filed a motion for reconsideration, which was denied in an Order dated February 1, 2001.[9]

Respondent NTC thus filed a special civil action for certiorari and prohibition with the Court of Appeals, which was docketed as CA-G.R. SP. No. 64274. On October 9, 2001, a decision was rendered, the decretal portion of which reads:

WHEREFORE, premises considered, the instant petition for certiorari and prohibition is GRANTED, in that, the order of the court a quo denying the petitioner's motion to dismiss as well as the order of the court a quo granting the private respondents' prayer for a writ of preliminary injunction, and the writ of preliminary injunction issued thereby, are hereby ANNULLED and SET ASIDE. The private respondents' complaint and complaint-in-intervention below are hereby DISMISSED, without prejudice to the referral of the private respondents' grievances and disputes on the assailed issuances of the NTC with the said agency.

SO ORDERED.[10]

Petitioners' motions for reconsideration were denied in a Resolution dated January 10, 2002 for lack of merit.[11]

Hence, the instant petition for review filed by Smart and Piltel, which was docketed as G.R. No. 151908, anchored on the following grounds:

A.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE NATIONAL TELECOMMUNICATIONS COMMISSION (NTC) AND NOT THE REGULAR COURTS HAS JURISDICTION OVER THE CASE.

B.

THE HONORABLE COURT OF APPEALS ALSO GRAVELY ERRED IN HOLDING THAT THE PRIVATE RESPONDENTS FAILED TO EXHAUST AN AVAILABLE ADMINISTRATIVE REMEDY.

C.

THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE BILLING CIRCULAR ISSUED BY THE RESPONDENT NTC IS UNCONSTITUTIONAL AND CONTRARY TO LAW AND PUBLIC POLICY.

D.

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PRIVATE RESPONDENTS FAILED TO SHOW THEIR CLEAR POSITIVE RIGHT TO WARRANT THE ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION.[12]

Likewise, Globe and Islacom filed a petition for review, docketed as G.R. No. 152063, assigning the following errors:

- THE HONORABLE COURT OF APPEALS SO GRAVELY ERRED BECAUSE THE DOCTRINES OF PRIMARY JURISDICTION AND EXHAUSTION OF ADMINISTRATIVE REMEDIES DO NOT APPLY SINCE THE INSTANT CASE IS FOR LEGAL NULLIFICATION (BECAUSE OF LEGAL INFIRMITIES

AND VIOLATIONS OF LAW) OF A PURELY ADMINISTRATIVE REGULATION PROMULGATED BY AN AGENCY IN THE EXERCISE OF ITS RULE MAKING POWERS AND INVOLVES ONLY QUESTIONS OF LAW.

- THE HONORABLE COURT OF APPEALS SO GRAVELY ERRED BECAUSE THE DOCTRINE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES DOES NOT APPLY WHEN THE QUESTIONS RAISED ARE PURELY LEGAL QUESTIONS.

- THE HONORABLE COURT OF APPEALS SO GRAVELY ERRED BECAUSE THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES DOES NOT APPLY WHERE THE ADMINISTRATIVE ACTION IS COMPLETE AND EFFECTIVE, WHEN THERE IS NO OTHER REMEDY, AND THE PETITIONER STANDS TO SUFFER GRAVE AND IRREPARABLE INJURY.

- THE HONORABLE COURT OF APPEALS SO GRAVELY ERRED BECAUSE PETITIONERS IN FACT EXHAUSTED ALL ADMINISTRATIVE REMEDIES AVAILABLE TO THEM.

- THE HONORABLE COURT OF APPEALS SO GRAVELY ERRED IN ISSUING ITS QUESTIONED RULINGS IN THIS CASE BECAUSE GLOBE AND ISLA HAVE A CLEAR RIGHT TO AN INJUNCTION.[13]

The two petitions were consolidated in a Resolution dated February 17, 2003.[14]

On March 24, 2003, the petitions were given due course and the parties were required to submit their respective memoranda.[15]

We find merit in the petitions.

Administrative agencies possess quasi-legislative or rule-making powers and quasi-judicial or administrative adjudicatory powers. Quasi-legislative or rule-making power is the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers.[16]

The rules and regulations that administrative agencies promulgate, which are the product of a delegated legislative power to create new and additional legal provisions that have the effect of law, should be within the scope of the statutory authority granted by the legislature to the administrative agency. It is required that the regulation be germane to the objects and purposes of the law, and be not in contradiction to, but in conformity with, the standards prescribed by law.[17] They must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid. Constitutional and statutory provisions control with respect to what rules and regulations may be promulgated by an administrative body, as well as with respect to what fields are subject to regulation by it. It may not make rules and regulations which are inconsistent with the provisions of the Constitution or a statute, particularly the statute it is administering or which created it, or which are in derogation of, or defeat, the purpose of a statute. In case of conflict between a statute and an administrative order, the former must prevail.[18]

Not to be confused with the quasi-legislative or rule-making power of an administrative agency is its quasi-judicial or administrative adjudicatory power. This is the power to hear and determine questions of fact to which the legislative policy is to apply and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law. The administrative body exercises its quasi-judicial power when it performs in a judicial manner an act which is essentially of an executive or administrative nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it. In carrying out their quasi-judicial functions, the administrative officers or

bodies are required to investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action and exercise of discretion in a judicial nature.[19]

In questioning the validity or constitutionality of a rule or regulation issued by an administrative agency, a party need not exhaust administrative remedies before going to court. This principle applies only where the act of the administrative agency concerned was performed pursuant to its quasi-judicial function, and not when the assailed act pertained to its rule-making or quasi-legislative power. In *Association of Philippine Coconut Dessicators v. Philippine Coconut Authority*,[20] it was held:

The rule of requiring exhaustion of administrative remedies before a party may seek judicial review, so strenuously urged by the Solicitor General on behalf of respondent, has obviously no application here. The resolution in question was issued by the PCA in the exercise of its rule-making or legislative power. However, only judicial review of decisions of administrative agencies made in the exercise of their quasi-judicial function is subject to the exhaustion doctrine.

Even assuming arguendo that the principle of exhaustion of administrative remedies apply in this case, the records reveal that petitioners sufficiently complied with this requirement. Even during the drafting and deliberation stages leading to the issuance of Memorandum Circular No. 13-6-2000, petitioners were able to register their protests to the proposed billing guidelines. They submitted their respective position papers setting forth their objections and submitting proposed schemes for the billing circular.[21] After the same was issued, petitioners wrote successive letters dated July 3, 2000[22] and July 5, 2000,[23] asking for the suspension and reconsideration of the so-called Billing Circular. These letters were not acted upon until October 6, 2000, when respondent NTC issued the second assailed Memorandum implementing certain provisions of the Billing Circular. This was taken by petitioners as a clear denial of the requests contained in their previous letters, thus prompting them to seek judicial relief.

In like manner, the doctrine of primary jurisdiction applies only where the administrative agency exercises its quasi-judicial or adjudicatory function. Thus, in cases involving specialized disputes, the practice has been to refer the same to an administrative agency of special competence pursuant to the doctrine of primary jurisdiction. The courts will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact, and a uniformity of ruling is essential to comply with the premises of the regulatory statute administered. The objective of the doctrine of primary jurisdiction is to guide a court in determining whether it should refrain from exercising its jurisdiction until after an administrative agency has determined some question or some aspect of some question arising in the proceeding before the court. It applies where the claim is originally cognizable in the courts and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, has been placed within the special competence of an administrative body; in such case, the judicial process is suspended pending referral of such issues to the administrative body for its view.[24]

However, where what is assailed is the validity or constitutionality of a rule or regulation issued by the administrative agency in the performance of its quasi-legislative function, the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the constitution is within the jurisdiction of the regular courts. Indeed, the Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts.[25] This is within the scope of judicial power, which includes the authority of the courts to determine

in an appropriate action the validity of the acts of the political departments.[26] Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.[27]

In the case at bar, the issuance by the NTC of Memorandum Circular No. 13-6-2000 and its Memorandum dated October 6, 2000 was pursuant to its quasi-legislative or rule-making power. As such, petitioners were justified in invoking the judicial power of the Regional Trial Court to assail the constitutionality and validity of the said issuances. In *Drilon v. Lim*,[28] it was held:

We stress at the outset that the lower court had jurisdiction to consider the constitutionality of Section 187, this authority being embraced in the general definition of the judicial power to determine what are the valid and binding laws by the criterion of their conformity to the fundamental law. Specifically, B.P. 129 vests in the regional trial courts jurisdiction over all civil cases in which the subject of the litigation is incapable of pecuniary estimation, even as the accused in a criminal action has the right to question in his defense the constitutionality of a law he is charged with violating and of the proceedings taken against him, particularly as they contravene the Bill of Rights. Moreover, Article X, Section 5(2), of the Constitution vests in the Supreme Court appellate jurisdiction over final judgments and orders of lower courts in all cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.[29]

In their complaint before the Regional Trial Court, petitioners averred that the Circular contravened Civil Code provisions on sales and violated the constitutional prohibition against the deprivation of property without due process of law. These are within the competence of the trial judge. Contrary to the finding of the Court of Appeals, the issues raised in the complaint do not entail highly technical matters. Rather, what is required of the judge who will resolve this issue is a basic familiarity with the workings of the cellular telephone service, including prepaid SIM and call cards - and this is judicially known to be within the knowledge of a good percentage of our population - and expertise in fundamental principles of civil law and the Constitution.

Hence, the Regional Trial Court has jurisdiction to hear and decide Civil Case No. Q-00-42221. The Court of Appeals erred in setting aside the orders of the trial court and in dismissing the case.

WHEREFORE, in view of the foregoing, the consolidated petitions are GRANTED. The decision of the Court of Appeals in CA-G.R. SP No. 64274 dated October 9, 2001 and its Resolution dated January 10, 2002 are REVERSED and SET ASIDE. The Order dated November 20, 2000 of the Regional Trial Court of Quezon City, Branch 77, in Civil Case No. Q-00-42221 is REINSTATED. This case is REMANDED to the court a quo for continuation of the proceedings.

SO ORDERED.

Davide, Jr., C.J., Vitug, and Carpio, JJ., concur.
Azcuna, J., took no part.

[1] Rollo, G.R. No. 151908, pp. 225-228.

[2] Rollo, G.R. No. 152063, p. 112.

[3] Rollo, G.R. No. 151908, p. 229.

[4] *Id.*, p. 230.

- [5] Id., pp. 231-247.
- [6] Id., pp. 248-270.
- [7] Id., pp. 271-273, at 273; penned by Judge Vivencio S. Bacilig.
- [8] Id., pp. 274-277.
- [9] Id., p. 278.
- [10] Id., pp. 123-132, at 131-132; penned by Associate Justice Rodrigo V. Cosico, concurred in by Associate Justices Ramon A. Barcelona and Alicia L. Santos.
- [11] Id., pp. 134-136.
- [12] Id., pp. 23-24.
- [13] Rollo, G.R. No. 152063, pp. 14-15.
- [14] Id., pp. 389-390.
- [15] Id., pp. 391-392.
- [16] Bellosillo, J., Separate Opinion, Commissioner of Internal Revenue v. Court of Appeals, 329 Phil. 987, 1017 [1996].
- [17] Romulo, Mabanta, Buenaventura, Sayoc and De Los Angeles v. Home Development Mutual Fund, G.R. No. 131082, 19 June 2000, 333 SCRA 777, 785-786.
- [18] Conte, et al. v. Commission on Audit, 332 Phil. 20, 36 [1996].
- [19] Bellosillo, J., Separate Opinion, Commissioner of Internal Revenue, G.R. No. 119761, 29 August 1996, *supra*.
- [20] G.R. No. 110526, 10 February 1998, 286 SCRA 109, 117.
- [21] Rollo, G.R. No. 152063, pp. 57-78.
- [22] Id., pp. 79-86.
- [23] Id., pp. 87-89.
- [24] Fabia v. Court of Appeals, G.R. No. 132684, 11 September 2002.
- [25] Spouses Mirasol v. Court of Appeals, G.R. No. 128448, 1 February 2001, 351 SCRA 44, 51.
- [26] Santiago v. Guingona, Jr., G.R. No. 134577, 18 November 1998, 298 SCRA 756, 774.
- [27] CONSTITUTION, Art. VIII, Sec. 1, second paragraph.
- [28] G.R. No. 112497, 4 August 1994, 235 SCRA 135.
- [29] Id., at 139-140.

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