

BAYAN TELECOMMUNICATIONS INC. (FORMERLY INTERNATIONAL COMMUNICATIONS CORPORATION), PETITIONER,-VS.- REPUBLIC OF THE PHILIPPINES AND NATIONAL TELECOMMUNICATIONS COMMISSION, RESPO...

G.R. NO. 161140. January 31, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails (a) the Decision[1] dated September 25, 2003 of the Court of Appeals in CA-G.R. CV No. 74283, which affirmed the Order[2] dated October 12, 2000 of the Regional Trial Court (RTC) of Pasig City, Branch 71, dismissing SCA No. 1962 for declaratory relief; and (b) the Court of Appeals' Resolution[3] dated December 5, 2003, which denied the motion for reconsideration.

The case stemmed from the petition for declaratory relief filed before the RTC of Pasig City, by petitioner Bayan Telecommunications Inc., against respondents Republic of the Philippines and National Telecommunications Commission (NTC). Petitioner specifically sought the suspension of the requirement, under Section 21 of Republic Act No. 7925,[4] of a public offering of 30% of the aggregate common stocks of telecommunication entities with regulated types of services within five years from the effectivity of the Act or the entity's first start of commercial operations, whichever comes later. Petitioner claimed that it was impossible for it to make a bona fide public offering at that time because its financial condition, the Philippine economy, and the stock market were not conducive for a successful public offering. It also claimed that impossibility of performance was an implied exception to the abovesited provision of Rep. Act No. 7925.

The Solicitor General moved for the dismissal of the petition for failure to state a cause of action. The Solicitor General maintained that the provisions of Section 21[5] of Rep. Act No. 7925 are clear and free of any ambiguity, and that petitioner failed to exhaust administrative remedies as it did not first ask for an exemption from the application of said provision.

On October 12, 2000, the trial court dismissed the petition for failure to state a cause of action. It ruled as follows:

WHEREFORE, in view of the foregoing, the Motion to Dismiss is hereby GRANTED. The case is DISMISSED as the petition states no cause of action, without costs.

SO ORDERED.[6]

Petitioner sought reconsideration, but it was denied. Petitioner then elevated the case to the Court of Appeals.

On September 25, 2003, the appellate court affirmed the trial court's ruling. It held that the elements of justiciable controversy and ripeness for judicial determination were absent as there was no showing that petitioner asked for an exemption from or deferment of compliance with the requirement of Section 21, from the NTC, and was refused. The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED and the appealed Order dated October 12, 2000 of the court a quo in SCA No. 1962 is hereby affirmed and upheld.

With costs against the petitioner-appellant.

SO ORDERED.[7]

Petitioner now comes before us raising the following issues:

- Whether or not there is ambiguity in the provisions of Section 21 of R.A. 7925 that would require the remedy of a declaratory relief?
- Whether or not there is a justiciable controversy ripe for judicial determination?
- Whether or not the matters relating to a [bona fide] public offering by Telecommunication Entities are within the regulatory power or authority of the National Telecommunications Commission (NTC)?
- Whether or not the petitioner, which is not in a position to make a [bona fide] public offering due to the negative condition of the economy, the negative interest of the investing public in the stock market and the condition of the company, is still bound by the provisions under section 21 of the Telecommunications Law...[8]

Simply stated, we are asked to resolve: (1) Whether there is an ambiguity in the cited provision of Section 21, Rep. Act No. 7925 which justifies an action for declaratory relief. And, also whether there is a justiciable controversy ripe for judicial determination. (2) If so, is petitioner excused from complying with Section 21 of Rep. Act No. 7925?

Petitioner contends that there is a justiciable controversy ripe for judicial determination as it faces a possible sanction from the NTC for its inability to comply with the mandate of Rep. Act No. 7925. It claims that the present case falls within the exceptions to the general rule of exhaustion of administrative remedies, since there is no administrative review provided by law as the NTC does not have the power to decide the validity of the law and the questions involved are essentially judicial.

Petitioner contends that applying blindly the literal import of Section 21 would lead to absurd and destructive results because the huge amount needed to undertake a public offering could only bring more losses to the corporation in case it fails to attract the investing public due to its unattractive financial condition. It maintains that impossibility or impracticability of compliance excuses it from complying with said provision.

Respondents counter that Section 21 is clear and unambiguous, hence, there is no need for judicial interpretation. They maintain that petitioner's claim of impossibility or impracticability of compliance is purely speculative, adding that there are a good number of publicly listed telecommunication companies. Besides, respondents argue, Section 21 does not provide for any exception.

Respondents state, however, that there were yet no implementing rules and guidelines by the NTC or any administrative agency to carry into effect the requirement imposed by Section 21 of Rep. Act No. 7925. Hence, according to respondents, petitioner's apprehension of an administrative sanction was merely conjectural and anticipatory. Citing *Garcia v. Executive Secretary*,[9] they argue that under the circumstances, there is no justiciable controversy ripe for judicial determination. Respondents also contend that courts do not have the power to order the suspension of the application of a law or its provision especially where there is no constitutional challenge to such legal provision. They assert that the NTC has the power and authority to implement Rep. Act No. 7925, hence they aver that the issue of suspension or deferment of the initial public offering for telecommunication companies is best left to its sound judgment.

After seriously considering the submission of the parties, we agree that respondents' contentions are valid while petitioner's plea lacks merit.

Section 1, Rule 63 of the Rules of Court reads:

Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

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For such an action for declaratory relief before a trial court to prosper, it must be shown that (a) there is a justiciable controversy, (b) the controversy is between persons whose interests are adverse, (c) the party seeking the relief has a legal interest in the controversy, and (d) the issue invoked is ripe for judicial determination.[10] Respondents contest the presence of the first and last requisites insofar as petitioner's case is concerned.

A justiciable controversy is a definite and concrete dispute touching on the legal relations of parties having adverse legal interests, which may be resolved by a court of law through the application of a law.[11] In the case at bar, petitioner fears the risk of possible sanctions. However, a mere apprehension of an administrative sanction does not give rise to a justiciable controversy.[12] Rep. Act No. 7925 does not provide for a penalty for noncompliance with Section 21, and as correctly pointed out by the Solicitor General, there are yet no implementing rules or guidelines to carry into effect the requirement imposed by the said provision. Whatever sanctions petitioner fears are merely hypothetical.

An issue is ripe for judicial determination when litigation is inevitable,[13] or when administrative remedies have been exhausted.[14] There is no showing of either in the present case. Instead, petitioner asserts that this case falls within the exceptions to the rule on exhaustion of administrative remedies, specifically when there is no administrative review provided by law or when the questions involved are essentially judicial. To our mind, petitioner should have first raised its concerns with the NTC, the agency authorized to implement Rep. Act No. 7925. Only after a categorical denial of its claim of exemption from or deferment of compliance with Section 21 can petitioner proceed to court. As it is now, we agree with the trial and appellate courts that petitioner has no cause of action.

Observance of the mandate regarding exhaustion of administrative remedies is a sound practice and policy. The doctrine insures an orderly procedure which favors a preliminary sifting process and withholds judicial interference until administrative process would have been allowed to duly run its course.[15] The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide correctly.[16]

Considering that the requirements of an action for declaratory relief have not been met, the trial court properly dismissed the case for lack of cause of action. The appellate court did not err in affirming said dismissal. At this point, we shall no longer discuss the second issue, involving excuse from compliance with Section 21 of Rep. Act No. 7925, for it will not serve any practical purpose in the resolution of this petition.

WHEREFORE, the instant petition is DENIED for lack of merit. The Decision dated September 25, 2003 and Resolution dated December 5, 2003 of the Court of Appeals in CA-G.R. CV No. 74283 are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Carpio, Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 97-106. Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Mario L. Guariña III and Jose C. Reyes, Jr. concurring.

[2] Id. at 47-49.

[3] Id. at 115.

[4] AN ACT TO PROMOTE AND GOVERN THE DEVELOPMENT OF PHILIPPINE TELECOMMUNICATIONS AND THE DELIVERY OF PUBLIC TELECOMMUNICATIONS SERVICES. (Promulgated on March 1, 1995 and became effective on March 23, 1995.)

[5] SEC. 21. Public Ownership.- In compliance with the Constitutional mandate to democratize ownership of public utilities, all telecommunications entities with regulated types of services shall make a bona fide public offering through the stock exchanges of at least thirty percent (30%) of its aggregate common stocks within a period of five (5) years from the effectivity of this Act or the entity's first start of commercial operations, whichever date is later. The public offering shall comply with the rules and regulations of the Securities and Exchange Commission.

[6] Rollo, p. 49.

[7] Id. at 106.

[8] Id. at 14-15.

[9] G.R. No. 100883, December 2, 1991, 204 SCRA 516.

[10] Office of the Ombudsman v. Ibay, G.R. No. 137538, September 3, 2001, 364 SCRA 281, 286.

[11] Cutaran v. Department of Environment and Natural Resources, G.R. No. 134958, January 31, 2001, 350 SCRA 697, 704-705.

[12] Id. at 705; Guingona, Jr. v. Court of Appeals, G.R. No. 125532, July 10, 1998, 292 SCRA 402, 416.

[13] Office of the Ombudsman v. Ibay, supra.

[14] See Corsiga v. Defensor, G.R. No. 139302, October 28, 2002, 391 SCRA 267, 276.

[15] Garcia v. Court of Appeals, G.R. No. 100579, June 6, 2001, 358 SCRA 416, 432.

[16] Carale v. Abarintos, G.R. No. 120704, March 3, 1997, 269 SCRA 132, 141, citing De los Santos v. Limbaga, No. L-15976, January 31, 1962, 4 SCRA 224, 226.

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