

SECURITIES AND EXCHANGE COMMISSION, PETITIONER, VS. GMA NETWORK, INC., RESPONDENT.

G.R. No. 164026. December 23, 2008

Ponente: TINGA, J.

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TINGA, J.:

Petitioner Securities and Exchange Commission (SEC) assails the Decision[1] dated February 20, 2004 of the Court of Appeals in CA-G.R. SP No. 68163, which directed that SEC Memorandum Circular No. 1, Series of 1986 should be the basis for computing the filing fee relative to GMA Network, Inc.'s (GMA's) application for the amendment of its articles of incorporation for purposes of extending its corporate term.

The undisputed facts as narrated by the appellate court are as follows:

On August 19, 1995, the petitioner, GMA NETWORK, INC., (GMA, for brevity), a domestic corporation, filed an application for collective approval of various amendments to its Articles of Incorporation and By-Laws with the respondent Securities and Exchange Commission, (SEC, for brevity). The amendments applied for include, among others, the change in the corporate name of petitioner from "Republic Broadcasting System, Inc." to "GMA Network, Inc." as well as the extension of the corporate term for another fifty (50) years from and after June 16, 2000.

Upon such filing, the petitioner had been assessed by the SEC's Corporate and Legal Department a separate filing fee for the application for extension of corporate term equivalent to 1/10 of 1% of its authorized capital stock plus 20% thereof or an amount of P1,212,200.00.

On September 26, 1995, the petitioner informed the SEC of its intention to contest the legality and propriety of the said assessment. However, the petitioner requested the SEC to approve the other amendments being requested by the petitioner without being deemed to have withdrawn its application for extension of corporate term.

On October 20, 1995, the petitioner formally protested the assessment amounting to P1,212,200.00 for its application for extension of corporate term.

On February 20, 1996, the SEC approved the other amendments to the petitioner's Articles of Incorporation, specifically Article 1 thereof referring to the corporate name of the petitioner as well as Article 2 thereof referring to the principal purpose for which the petitioner was formed.

On March 19, 1996, the petitioner requested for an official opinion/ruling from the SEC on the validity and propriety of the assessment for application for extension of its corporate term.

Consequently, the respondent SEC, through Associate Commissioner Fe Eloisa C. Gloria, on April 18, 1996, issued its ruling upholding the validity of the questioned assessment, the dispositive portion of which states:

"In light of the foregoing, we believe that the questioned assessment is in accordance with law. Accordingly, you are hereby required to comply with the required filing fee."

An appeal from the aforequoted ruling of the respondent SEC was subsequently taken by the petitioner on the ground that the assessment of filing fees for the petitioner's application for extension of corporate term equivalent to 1/10 of 1% of the authorized capital stock plus 20% thereof is not in accordance with law.

On September 26, 2001, following three (3) motions for early resolution filed by the petitioner, the respondent SEC En Banc issued the assailed order dismissing the petitioner's appeal, the dispositive portion of which provides as follows:

WHEREFORE, for lack of merit, the instant Appeal is hereby dismissed.

SO ORDERED.[2]

In its petition for review[3] with the Court of Appeals, GMA argued that its application for the extension of its corporate term is akin to an amendment and not to a filing of new articles of incorporation. It further averred that SEC Memorandum Circular No. 2, Series of 1994, which the SEC used as basis for assessing P1,212,200.00 as filing fee for the extension of GMA's corporate term, is not valid.

The appellate court agreed with the SEC's submission that an extension of the corporate term is a grant of a fresh license for a corporation to act as a juridical being endowed with the powers expressly bestowed by the State. As such, it is not an ordinary amendment but is analogous to the filing of new articles of incorporation.

However, the Court of Appeals ruled that Memorandum Circular No. 2, Series of 1994 is legally invalid and ineffective for not having been published in accordance with law. The challenged memorandum circular, according to the appellate court, is not merely an internal or interpretative rule, but affects the public in general. Hence, its publication is required for its effectivity.

The appellate court denied reconsideration in a Resolution[4] dated June 9, 2004.

In its Memorandum[5] dated September 6, 2005, the SEC argues that it issued the questioned memorandum circular in the exercise of its delegated legislative power to fix fees and charges. The filing fees required by it are allegedly uniformly imposed on the transacting public and are essential to its supervisory and regulatory functions. The fees are not a form of penalty or sanction and, therefore, require no publication.

For its part, GMA points out in its Memorandum,[6] dated September 23, 2005, that SEC Memorandum Circular No. 1, Series of 1986 refers to the filing fees for amended articles of incorporation where the amendment consists of extending the term of corporate existence. The questioned circular, on the other hand, refers only to filing fees for articles of incorporation. Thus, GMA argues that the former circular, being the one that specifically treats of applications for the extension of corporate term, should apply to its case.

Assuming that Memorandum Circular No. 2, Series of 1994 is applicable, GMA avers that the latter did not take effect and cannot be the basis for the imposition of the fees stated therein for the reasons that it was neither filed with the University of the Philippines Law Center nor published either in the Official Gazette or in a newspaper of general circulation as required under existing laws.

It should be mentioned at the outset that the authority of the SEC to collect and receive fees as authorized by law is not in question.[7] Its power to collect fees for examining and filing articles of incorporation and by-laws and amendments thereto, certificates of increase or decrease of the capital stock, among others, is recognized. Likewise established is its power under Sec. 7 of P.D. No. 902-A to recommend to the President the revision, alteration, amendment or adjustment of the charges which it is authorized to collect.

The subject of the present inquiry is not the authority of the SEC to collect and receive fees and charges, but rather the validity of its imposition on the basis of a memorandum circular which, the Court of Appeals held, is

ineffective.

Republic Act No. 3531 (R.A. No. 3531) provides that where the amendment consists in extending the term of corporate existence, the SEC "shall be entitled to collect and receive for the filing of the amended articles of incorporation the same fees collectible under existing law as the filing of articles of incorporation."^[8] As is clearly the import of this law, the SEC shall be entitled to collect and receive the same fees it assesses and collects both for the filing of articles of incorporation and the filing of an amended articles of incorporation for purposes of extending the term of corporate existence.

The SEC, effectuating its mandate under the aforequoted law and other pertinent laws,^[9] issued SEC Memorandum Circular No. 1, Series of 1986, imposing the filing fee of 1/10 of 1% of the authorized capital stock but not less than P300.00 nor more than P100,000.00 for stock corporations, and 1/10 of 1% of the authorized capital stock but not less than P200.00 nor more than P100,000.00 for stock corporations without par value, for the filing of amended articles of incorporation where the amendment consists of extending the term of corporate existence.

Several years after, the SEC issued Memorandum Circular No. 2, Series of 1994, imposing new fees and charges and deleting the maximum filing fee set forth in SEC Circular No. 1, Series of 1986, such that the fee for the filing of articles of incorporation became 1/10 of 1% of the authorized capital stock plus 20% thereof but not less than P500.00.

A reading of the two circulars readily reveals that they indeed pertain to different matters, as GMA points out. SEC Memorandum Circular No. 1, Series of 1986 refers to the filing fee for the amendment of articles of incorporation to extend corporate life, while Memorandum Circular No. 2, Series of 1994 pertains to the filing fee for articles of incorporation. Thus, as GMA argues, the former circular, being squarely applicable and, more importantly, being more favorable to it, should be followed.

What this proposition fails to consider, however, is the clear directive of R.A. No. 3531 to impose the same fees for the filing of articles of incorporation and the filing of amended articles of incorporation to reflect an extension of corporate term. R.A. No. 3531 provides an unmistakable standard which should guide the SEC in fixing and imposing its rates and fees. If such mandate were the only consideration, the Court would have been inclined to rule that the SEC was correct in imposing the filing fees as outlined in the questioned memorandum circular, GMA's argument notwithstanding.

However, we agree with the Court of Appeals that the questioned memorandum circular is invalid as it does not appear from the records that it has been published in the Official Gazette or in a newspaper of general circulation. Executive Order No. 200, which repealed Art. 2 of the Civil Code, provides that "laws shall take effect after fifteen days following the completion of their publication either in the Official Gazette or in a newspaper of general circulation in the Philippines, unless it is otherwise provided."

In *Tañada v. Tuvera*,^[10] the Court, expounding on the publication requirement, held:

We hold therefore that all statutes, including those of local application and private laws, shall be published as a condition for their effectivity, which shall begin fifteen days after publication unless a different effectivity date is fixed by the legislature.

Covered by this rule are presidential decrees and executive orders promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature, or, at present, directly conferred by the Constitution. Administrative rules and regulations must also be published if their purpose is to enforce or implement existing law pursuant also to a valid delegation.

Interpretative regulations and those merely internal in nature, that is, regulating only the personnel of the administrative agency and not the public, need not be published. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties.[11]

The questioned memorandum circular, furthermore, has not been filed with the Office of the National Administrative Register of the University of the Philippines Law Center as required in the Administrative Code of 1987.[12]

In *Philsa International Placement and Services Corp. v. Secretary of Labor and Employment*,^[13] Memorandum Circular No. 2, Series of 1983 of the Philippine Overseas Employment Administration, which provided for the schedule of placement and documentation fees for private employment agencies or authority holders, was struck down as it was not published or filed with the National Administrative Register.

The questioned memorandum circular, it should be emphasized, cannot be construed as simply interpretative of R.A. No. 3531. This administrative issuance is an implementation of the mandate of R.A.

No. 3531 and indubitably regulates and affects the public at large. It cannot, therefore, be considered a mere internal rule or regulation, nor an interpretation of the law, but a rule which must be declared ineffective as it was neither published nor filed with the Office of the National Administrative Register.

A related factor which precludes consideration of the questioned issuance as interpretative in nature merely is the fact the SEC's assessment amounting to P1,212,200.00 is exceedingly unreasonable and amounts to an imposition. A filing fee, by legal definition, is that charged by a public official to accept a document for processing. The fee should be just, fair, and proportionate to the service for which the fee is being collected, in this case, the examination and verification of the documents submitted by GMA to warrant an extension of its corporate term.

Rate-fixing is a legislative function which concededly has been delegated to the SEC by R.A. No. 3531 and other pertinent laws. The due process clause, however, permits the courts to determine whether the regulation issued by the SEC is reasonable and within the bounds of its rate-fixing authority and to strike it down when it arbitrarily infringes on a person's right to property.

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 68163, dated February 20, 2004, and its Resolution, dated June 9, 2004, are AFFIRMED. No pronouncement as to costs. SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, [*]Chico-Nazario and Velasco, Jr., JJ., concur.

[*] Additional member in lieu of Associate Justice Arturo D. Brion per Special Order.

[1] Rollo, pp. 10-19; Penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Eloy R. Bello, Jr. and Arturo D. Brion (now an Associate Justice of this Court).

[2]Id. at 11-12.

[3] Id. at 91-115.

[4]Id. at 57.

[5] Id. at 196-221.

[6] Id. at 231-249.

[7] Sec. 139 of B.P. Blg. 68 authorizes the SEC to collect and receive fees as authorized by law or by rules and regulations promulgated by it.

[8] An Act to Further Amend Section Eighteen of the Corporation Law.

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The Securities and Exchange Commissioner shall be entitled to collect and receive the sum of ten pesos for filing said copy of the amended articles of incorporation: Provided, however, That where the amendment consists in extending the term of corporate existence the Securities and Exchange Commissioner shall be entitled to collect and receive for the filing of the amended articles of incorporation the same fees collectible under existing law for the filing of articles of incorporation.

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R.A. No. 3531 took effect on June 20, 1963.

[9] Presidential Decree 902-A, R.A. No. 1143, and the Revised Securities Act.

[10] 230 Phil. 528 (1986).

[11] *Id.* at 535.

[12] Executive Order No. 292, Book VII, Chapter 2, Sec. 3 thereof states:

Sec. 3. Filing.--(1) Every agency shall file with the University of the Philippines Law Center three (3) certified copies of every rule adopted by it. Rules in force on the date of effectivity of this Code which are not filed within three (3) months from that date shall not thereafter be the basis of any sanction against any party or persons.

(2) The records officer of the agency, or his equivalent functionary, shall carry out the requirements of this section under pain of disciplinary action.

(3) A permanent register of all rules shall be kept by the issuing agency and shall be open to public inspection.

[13] 408 Phil. 270 (2001) cited in *National Association of Electricity Consumers for Reforms (NASECORE) v. Energy Regulatory Commission*, G.R. No. 163935, February 2, 2006, 481 SCRA 480, 520.

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