

EXPRESS TELECOMMUNICATIONS CO., INC., (EXTELCOM), PETITIONER, VS. AZ COMMUNICATIONS, INC., RESPONDENT.

G.R. No. 196902. July 13, 2020

Ponente: LEONEN, J.

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LEONEN, J.:

When a case has been resolved with finality by this Court, a motion to intervene, as in this case, effectively becomes moot.

Before this Court is a Petition for Review on Certiorari[1] that assails the Court of Appeals' Resolutions[2] denying Express Telecommunications Company, Inc.'s (Extelcom) Motion for Leave to Intervene.

On August 23, 2005, the National Telecommunications Commission opened applications for the assignment of five 3G radio frequency bands to qualified public telecommunications entities.[3] This was undertaken through Memorandum Circular No. 07-08-2005, or the Rules and Regulations on the Allocation and Assignment of 3G Radio Frequency Bands (2005 Memorandum).[4]

AZ Communications, Inc. (AZ Comm) was one of the applicants.[5]

Upon evaluation, four of the five 3G radio frequency bands were given to Smart Communications, Inc., Globe Telecoms, Inc., Digitel Mobile Philippines, Inc., and Connectivity Unlimited Resource Enterprise, Inc.[6] AZ Comm's application was denied, along with those of Bayan Telecommunications, Inc. (BayanTel), Next Mobile, Inc. (Next Mobile), and Multi-Media Telephony, Inc. (Multi-Media).[7]

AZ Comm and the other companies sought reconsideration, but their motions were denied. Thus, they filed separate petitions to question the denial of their claims. For its part, AZ Comm went to the Court of Appeals, filing a Petition for Review under Rule 43 of the Rules of Court.[8]

In the meantime, the National Telecommunications Commission declared the 2005 Memorandum as *functus officio*, or expired. In its stead, Memorandum Circular No. 01-03-2010 (2010 Memorandum) was issued on March 12, 2010, outlining the new rules on the assignment of the last allocated 3G radio frequency band.[9]

Extelcom entered at this juncture, applying for the last band under the 2010 Memorandum. On account of its application, Extelcom also sought to intervene in the separate petitions of AZ Comm, BayanTel, Next Mobile, and Multi-Media.[10] It argued that its application would be affected by the grant of the petitions in these cases.[11]

Extelcom was allowed to intervene in the petitions of BayanTel, Next Mobile, and Multi-Media.[12]

However, as to AZ Comm's petition, Extelcom's motion was denied.[13] In its November 8, 2010 Resolution,[14] the Court of Appeals ruled that Extelcom had no standing to intervene because it did not apply for a 3G radio frequency band under the 2005 Memorandum. It further noted that Extelcom failed to intervene in the proceedings before judgment has become final and executory. Thus, it found that allowing the motion for intervention would only delay the proceedings.[15]

Extelcom sought reconsideration, but in a May 16, 2011 Resolution,[16] the Court of Appeals denied its motion. Hence, Extelcom filed this Petition for Review on Certiorari[17] against AZ Comm.

Insisting that it has standing to intervene in respondent's Petition, petitioner asserts its clear legal interest as a prospective applicant for the last 3G radio frequency band, noting that its application would be affected if respondent were awarded instead.[18] It argues that the grant of respondent's petition will render moot the 2010 Memorandum and its own application.[19] Petitioner will also allegedly suffer damages as it has already spent millions to develop a 3G-compliant network system.[20]

Petitioner also contends that its right to apply under the 2010 Memorandum is absolute.[21] It avers that its proposal to the National Telecommunications Commission exceeds the minimum requirements and qualifications, making it the best qualified applicant for the 3G radio frequency band.[22]

Petitioner maintains that intervention is still proper since there is no final and executory judgment yet. It notes, at the outset, that the Court of Appeals erred in classifying the National Telecommunications Commission proceedings as trial proceedings, when they are administrative in character.[23] Even if they were trial proceedings, petitioner notes that it had been allowed to intervene in the other cases, notably when this Court itself had allowed its intervention in BayanTel's case.[24]

In any case, petitioner says that since it sought to intervene before the pending case was decided on its merits, the intervention must prosper.[25]

Petitioner further asserts that its intervention will not delay or prejudice the parties' rights. It claims that its intervention is necessary as it hinges on the same issue of whether respondent should be awarded the last remaining 3G radio frequency band. To require a separate action, it points out, will cause more costs and delays, and encourage multiplicity of suits.[26]

Petitioner also points out that conflicting court decisions may arise should there be a separate suit. It notes that this Court has even consolidated the petitions of BayanTel and Next Mobile to avoid confusion.[27]

Furthermore, petitioner argues that the matter is of transcendental importance because telecommunications services are imbued with public interest. The radio frequency spectrum is allegedly a "scarce public resource" that should be granted only to those most qualified.[28]

In any case, petitioner argues that the award of the 3G radio frequency band to respondent will be improper given that the 2005 Memorandum has been declared *functus officio*. [29] Moreover, it asserts that the National Telecommunications Commission's factual findings are entitled to great weight and respect.[30]

In its Comment,[31] respondent refutes petitioner's insistence on having legal standing.[32] It points out that petitioner admitted that it was not an original applicant for the 3G radio frequency band under the 2005 Memorandum and is not even a party to the proceedings before the National Telecommunications Commission.[33] It adds that petitioner's desire and qualification to be awarded the 3G radio frequency band is not a sufficient legal interest over the subject matter in litigation.[34]

Respondent further maintains that petitioner's participation in the proceedings is not a matter of transcendental importance. It argues that there will be no violation of any constitutional or legal provision if it received the 3G radio frequency band.[35]

In any case, respondent points out that petitioner allegedly cannot claim that there are no other parties with a more direct and specific interest in the subject matter in litigation because there are numerous other party-litigants.[36] It adds that allowing the intervention would disregard due process of law and will cause numerous delays. As to

the contention on a possible multiplicity of suits, respondent notes that petitioner, to begin with, cannot file a separate suit since it has no connection to the subject matter in litigation.[37]

In its Reply,[38] petitioner again asserts that it should be allowed to intervene in respondent's case, it having a right as an applicant under the 2010 Memorandum.[39]

Petitioner further reiterates that it has been allowed to intervene in the cases of BayanTel, Next Mobile, and Multi-Media, which have the same factual milieu, and in which it has been recognized to be adversely affected by the disposition of the matter in litigation.[40]

Petitioner also insists that the requirement of standing may be relaxed because telecommunications services are of transcendental importance and of a high degree of public interest.[41]

Finally, petitioner argues there is no factual or legal basis to conclude that due process would be disregarded and that proceedings would be delayed because of its intervention. It maintains that the exercise of its right under the 2010 Memorandum rests on the same issues in respondent's case.[42]

In a July 16, 2012 Resolution, this Court directed respondent to inform it of the status of its case in CA-G.R. SP. No. 105251, where petitioner seeks to intervene.[43]

Respondent filed its Compliance,[44] manifesting that it has elevated the case to this Court via a Petition for Review on Certiorari. The case was docketed in the Third Division as G.R. No. 199915, entitled AZ Communications, Inc. vs. Globe Telecoms, Inc., et al.[45]

In its April 11, 2012 Resolution, this Court's Third Division denied respondent's Petition in G.R. No. 199915.[46] It affirmed the National Telecommunications Commission's denial of respondent's application for failing to meet the qualifications under the 2005 Memorandum.[47] This ruling was denied with finality in a July 16, 2012 Resolution.[48]

In its October 17, 2012 Resolution, this Court noted and accepted respondent's Compliance.[49]

The sole issue now is whether or not this Court's denial with finality of respondent AZ Communications, Inc.'s Petition in G.R. No. 199915 renders moot petitioner Express Telecommunications Company, Inc.'s motion to intervene.

This Court holds that this case is moot.

A case is moot when a supervening event has terminated the legal issue between the parties, such that this Court is left with nothing to resolve. It can no longer grant any relief or enforce any right, and anything it says on the matter will have no practical use or value.[50] In *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*: [51]

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.

In this case, the supervening issuance of Sugar Order No. 5, s. 2013-2014 which revoked the effectivity of the Assailed Sugar Orders has mooted the main issue in the case a quo - that is the validity of the Assailed Sugar Orders. Thus, in view of this circumstance, resolving the procedural issue on forum-shopping as herein raised would not afford the parties any substantial relief or have any practical legal effect on the case.[52] (Citations

omitted)

Without any legal relief that may be granted, courts generally decline to resolve moot cases, lest the ruling result in a mere advisory opinion.[53] This rule stems from this Court's judicial power, which is limited to settling actual cases and controversies involving legally demandable and enforceable rights.[54] There must be a judicially resolvable conflict involving legal rights, with one party asserting a claim and the other opposing it:

An actual case or controversy involves a conflict of legal right, an opposite legal claims susceptible of judicial resolution. It is "definite and concrete, touching the legal relations of parties having adverse legal interest"; a real and substantial controversy admitting of specific relief.[55] (Citation omitted)

Thus, in *Republic v. Moldex Realty, Inc.*,[56] this Court declined to rule on an application for registration of title after it had been withdrawn by the party filing it:

This court's power of judicial review is limited to actual cases and controversies. Article VIII, Section 1 of the Constitution provides:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by "law.

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.

There is an actual case or controversy when the case presents conflicting or opposite legal rights that may be resolved by the court in a judicial proceeding....

....

A case becomes moot and academic when, by virtue of supervening events, the conflicting issue that may be resolved by the court ceases to exist. There is no longer any justiciable controversy that may be resolved by the court. This court refuses to render advisory opinions and resolve issues that would provide no practical use or value. Thus, courts generally "decline jurisdiction over such case or dismiss it on ground of mootness."

Respondent's Manifestation stating its withdrawal of its application for registration has erased the conflicting interests that used to be present in this case. Respondent's Manifestation was an expression of its intent not to act on whatever claim or right it has to the property involved. Thus, the controversy ended when respondent filed that Manifestation.

A ruling on the issue of respondent's right to registration would be nothing but an advisory opinion. "[T]he power of judicial review does not repose upon the courts a "self-starting capacity." This court cannot, through affirmation or denial, rule on the issue of respondent's right to registration because respondent no longer asserts this right.[57] (Emphasis supplied, citations omitted)

Courts have no power to act on a matter if there is no actual case or justiciable controversy. This Court shall not render advisory opinions or resolve theoretical issues. The rule holds true even when there had previously been a legal conflict or claim, but it has become moot because a supervening event has rendered the legal issue inexistent. When a case has become moot, there is no longer a conflict of rights that needs to be resolved by the courts.

The rule admits several exceptions. In *Ilusorio v. Bagnio Country Club Corporation*,[58] this Court discussed that while one issue in the case became moot, the case should not be automatically dismissed if there are other issues

raised that need resolving:

There is no dispute that the action for mandamus and injunction filed by Erlinda has been mooted by the removal of the cottage from the premises of BCCC. The staleness of the claims becomes more manifest considering the reliefs sought by Erlinda, i.e., to provide access and to supply water and electricity to the property in dispute, are hinged on the existence of the cottage. Collaterally, the eventual removal of the cottage rendered the resolution of issues relating to the prayers for mandamus and injunction of no practical or legal effect. A perusal of the complaint, however, reveals that Erlinda did not only pray that BCCC be enjoined from denying her access to the cottage and be directed to provide water and electricity thereon, but she also sought to be indemnified in actual, moral and exemplary damages because her proprietary right was violated by the respondents when they denied her of beneficial use of the property. In such a case, the court should not have dismissed the complaint and should have proceeded to trial in order to determine the propriety of the remaining claims. Instructive on this point is the Court's ruling in *Garayblas v. Atienza, Jr.*:

The Court has ruled that an issue becomes moot and academic when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value. In such cases, there is no actual substantial relief to which the plaintiff would be entitled to and which would be negated by the dismissal of the complaint. However, a case should not be dismissed simply because one of the issues raised therein had become moot and academic by the onset of a supervening event, whether intended or incidental, if there are other causes which need to be resolved after trial. When a case is dismissed without the other substantive issues in the case having been resolved would be tantamount to a denial of the right of the plaintiff to due process.[59] (Citations omitted)

Osmeña III v. Social Security System[60] also enumerated other exceptions:

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness - save when, among others, a compelling constitutional issue raised requires the formulation of controlling principles to guide the bench, the bar and the public; or when the case is capable of repetition yet evading judicial review.

The case, with the view we take of it, has indeed become moot and academic for interrelated reasons.

....

Under the law on obligations and contracts, the obligation to give a determinate thing is extinguished if the object is lost without the fault of the debtor. And per Art. 1192 (2) of the Civil Code, a thing is considered lost when it perishes or disappears in such a way that it cannot be recovered. In a very real sense, the interplay of the ensuing factors: a) the BDO-EPCIB merger; and b) the cancellation of subject Shares and their replacement by totally new common shares of BDO, has rendered the erstwhile 187.84 million EPCIB shares of SSS "unrecoverable" in the contemplation of the adverted Civil Code provision.[61] (Citations omitted)

Moldex also enumerated other instances when this Court may rule on moot cases:

- (1) Grave constitutional violations;
- (2) Exceptional character of the case;
- (3) Paramount public interest;
- (4) The case presents an opportunity to guide the bench, the bar, and the public; or
- (5) The case is capable of repetition yet evading review.[62] (Citations omitted)

None of these exceptions are present in this case.

Claiming that its rights may be adversely affected, petitioner here seeks to intervene in respondent's Petition in what later became G.R. No. 199915. However, since that Petition has been denied with finality, there is no more need to rule on whether petitioner may still intervene in that case.

To begin with, there is no more case to intervene in. Thus, to rule on whether petitioner had the right to intervene would be a useless exercise and will result in an opinion on a hypothetical situation.

Moreover, respondent can no longer assert any right to the last 3G radio frequency band, as the National Telecommunications Commission did not deem it qualified under the 2005 Memorandum. This finding has been affirmed by this Court with finality. Thus, there is no longer anything that would affect petitioner's alleged right under the 2010 Memorandum. As far as its intervention is concerned, it no longer has any standing.

Even petitioner is aware that the denial of respondent's Petition will render its own Petition in this case moot. In its Petition, it stated:

16. As narrated earlier, the Honorable Court of Appeals denied herein petitioner's Motion for Leave to Intervene and Admit Attached Opposition-in-Intervention in a Resolution dated 08 November 2010. Its subsequent Motion for Reconsideration was likewise denied in a Resolution dated 16 May 2011.

17. It bears mentioning however that in a later Resolution dated 26 May 2011, the Honorable Court of Appeals dismissed Respondent's appeal via a Petition for Review under Rule 43. In effect, herein Petitioner's attempts at intervention may be possibly rendered moot and academic.

18. The said decision, however, has not yet become final and executory at this time. Nonetheless, Petitioner hereby submits the present Petition for Review on Certiorari Ex Abutandi Ad Cautelam in order to protect its interest and in order not to foreclose its legal standing to intervene in the said case.[63] (Emphasis supplied)

Additionally, in its Reply, petitioner alleged:

6. In a Resolution dated 11 April 2012 in G.R. No. 199915, this Honorable Court denied herein respondent's (petitioner therein) petition and held that the Court of Appeals was correct in upholding the Orders of the National Telecommunications Commission (NTC) which denied herein respondent's application for the issuance of a certificate of public convenience and necessity, . . .

7. On 14 May 2012, herein petitioner received a copy of herein respondent's Motion for Reconsideration of the Resolution dated 11 April 2012 in G.R. No. 199915.

8. Hence, considering that the denial of respondent's petition has not yet attained finality in view of its motion for reconsideration, herein petitioner respectfully submits its Reply Ex Abutandi Ad Cautelam to respondent's Comment/Opposition in order not to foreclose its legal standing to intervene in the said case.[64]

Before petitioner even filed its Petition here, it had manifested that it would withdraw its case if respondent decided not to seek reconsideration of the Court of Appeals Decision in CA-G.R. SP No. 105251.[65]

Thus, petitioner is merely waiting for the denial of respondent's Petition to be final. It recognizes that if this was denied with finality, there is no need for intervention. Indeed, that was what eventually happened.

WHEREFORE, the Petition for Review on Certiorari is DENIED on the ground of mootness.

SO ORDERED.

Gesmundo, Carandang, Zalameda and Gaerlan, JJ., concur.

[1]Rollo, pp. 26-59.

[2]Id. at 12-14 and 16-18. The November 8, 2010 and May 16, 2011 Resolutions were penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Josefina Guevara- Salonga and Mariflor P. Punzalan-Castillo of the Fourth Division of the Court of Appeals, Manila.

[3]Id. at 28.

[4]Id. at 83.

[5]Id. at 29.

[6]Id. at 13 and 29.

[7]Id. at 29.

[8]Id.

[9]Id. at 30.

[10]Id.

[11]Id. at 33-34.

[12]Id. at 31. It cites the following as the case numbers of the said cases: G.R. No. 191656, CA-G.R. SP No. 105250, and G.R. No. 189221 for Bayantel, Next Mobile, and Multi-Media, respectively.

[13]Id. at 14.

[14]Id. at 12-14.

[15]Id. at 13-14.

[16]Id. at 16-18.

[17]Id. at 26-59.

[18]Id. at 33 and 37

[19]Id. at 37.

[20]Id. at 38.

[21]Id. at 35.

[22]Id. at 35-37.

[23]Id. at 38-39.

[24]Id. at 41.

[25]Id.

[26]Id. at 44-45.

[27]Id. at 45.

[28]Id. at 51-52.

[29]Id. at 46.

[30]Id. at 48.

[31]Id. at 129-137.

[32]Id. at 132.

[33]Id. at 131.

[34]Id. at 132.

[35]Id. at 133-134.

[36]Id. at 134.

[37]Id. at 134-135.

[38]Id. at 144-155.

[39]Id. at 147.

[40]Id. at 148-149.

[41]Id. at 149.

[42]Id. at 151.

[43]Id. at 156. *AZ Communications, Inc. vs. GLOBE Telecoms, Inc. et al.*, CA-G.R. SP. No. 105251.

[44]Id. at 157-163-A.

[45]Id. at 157-159.

[46]Id. at 246.

[47]Id.

[48]Id. at 261.

[49]Id. at 262.

[50]*Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, 728 Phil. 535, 540 (2014) [Per J. Perlas-Bernabe, Second Division].

[51]728 Phil. 525 (2014) [Per J. Perlas-Bernabe, Second Division].

[52]Id. at 540-541.

[53]*Republic v. Moldex Realty, Inc.*, 780 Phil. 553, 560 (2016) [Per J. Leonen, Second Division],

[54]CONST., art. VIII, sec. 1 provides:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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.

[55]*David v. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006) [Per J. Sandoval-Gutierrez, En Banc].

[56]780 Phil. 553 (2016) [Per J. Leonen, Second Division].

[57]Id. at 559-561.

[58]738 Phil. 135 (2014) [Per J. Perez, Second Division].

[59]Id. at 140-142.

[60]559 Phil. 723 (2007) [Per J. Garcia, En Banc].

[61]Id. at 735-736.

[62]Republic v. Moldex Realty, Inc., 780 Phil. 553, 561 (2016) [Per J. Leonen, Second Division].

[63]Rollo, pp. 31-32.

[64]Id. at 145-146.

[65]Id. at 20.

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