

# FIRST DIVISION

[ G.R. No. 204487, December 05, 2019 ]

**NATIONAL TELECOMMUNICATIONS COMMISSION, PETITIONER,  
VS. BRANCOMM CABLE AND TELEVISION NETWORK CO.,  
RESPONDENT.**

## D E C I S I O N

**REYES, J. JR., J.:**

### **The Facts and The Case**

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> seeking to reverse and set aside the March 20, 2012 Decision<sup>[2]</sup> and the August 14, 2012 Resolution<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 111019 which nullified and set aside the March 13, 2009 Omnibus Order<sup>[4]</sup> and the subsequent July 17, 2009 Order<sup>[5]</sup> of petitioner National Telecommunications Commission (NTC). The Orders of the NTC denied respondent Brancomm Cable and Television Network Co.'s (Brancomm) Opposition and Omnibus Motion to Dismiss the separate applications filed by Cable Link & Holdings Corporation (Cable Link) for the issuance of certificates of authority to install, operate and maintain a Cable Antenna Television (CATV) system in the Province of Pampanga.

On November 4, 2008, Cable Link filed four applications for the issuance of certificates of authority to install, operate and maintain CATV systems in the Municipalities of Sta. Ana,<sup>[6]</sup> Candaba,<sup>[7]</sup> Mexico<sup>[8]</sup> and Arayat,<sup>[9]</sup> all in the Province of Pampanga. The verification and certification against forum shopping of these applications were signed by its counsel, Atty. Basilio B. Bolante (Atty. Bolante).<sup>[10]</sup>

During the scheduled hearing on November 25 and 26, 2008 for the presentation of Cable Link's evidence on compliance with the jurisdictional requirements of its applications in NTC BMC Case Nos. 2008-150, 2008-152 and 2008-153, Brancomm opposed the same and manifested that it was not furnished with copies of Cable Link's applications as well as the annexes attached thereto in violation of Section 2, Rule 8 of the 2006 Revised Rules of Practice and Procedure of the National Telecommunications Commission (NTC Rules).<sup>[11]</sup> Despite Brancomm's opposition, Nilo L. Lozada, NTC's hearing officer, proceeded with the hearing on the jurisdictional requirements of the applications instead of resetting the same.<sup>[12]</sup>

On November 26, 2008, Cable Link furnished Brancomm with copies of the attachments of its applications consisting of three documents, namely:<sup>[13]</sup> (1) Certificate of Filing of Amended Articles of Incorporation; (2) Amended Articles of Incorporation and By-Laws; and (3) Republic Act No. 9382.<sup>[14]</sup>

On December 5, 2008, Brancomm filed its Opposition and Omnibus Motion<sup>[15]</sup> which sought for the following: (a) dismissal of the applications docketed as NTC BMC Case Nos. 2008-150, 2008-152 and 2008-153 on the ground that the one who signed the verification and certification' of non forum shopping of the same was not shown to have been expressly authorized to do so; the jurat that appears on the verification pages of the applications bore no competent evidence of identity of the person representing the applicant and did not indicate if the notary public personally knows the applicant or the person representing the latter; and the applications failed to comply with NTC Office Order No. 106-10-2007 which prescribed the minimum requirements for the acceptance of applications for CATV system; and (b) annulment of the proceedings that transpired on November 25, 2008 for failure of Cable Link to furnish Brancomm with copies of the affidavits of its witnesses three days before the scheduled hearing in violation of its right to due process as well as Section 5, Rule 11 of the NTC Rules .<sup>[16]</sup>

On March 13, 2009, the NTC issued an Omnibus Order<sup>[17]</sup> in NTC BMC Case Nos. 2008-150, 2008-152 and 2008-154, the dispositive portion of which reads:

**WHEREFORE,** Oppositor Brancomm's Opposition and Omnibus Motion is hereby denied for lack of merit. For related reasons above discussed, Oppositor ACCTN's Opposition with Motion Not to Give Application Due Course or, in the alternative, Motion to Direct Applicant to Re-file Present [C]ase Due to Failure to Comply with Minimum Mandatory Requirements for CATV Application is likewise **DENIED** for lack of merit.

In denying Brancomm's Opposition and Omnibus Motion, NTC ratiocinated that the Minutes of the Special Meeting of the Board of Directors<sup>[18]</sup> dated October 31, 2008, that Cable Link submitted ratified whatever action Atty. Bolante has undertaken in its behalf such as the filing of the said applications. Also, the purported lack of verification of the applications is a matter of form which cannot be a ground for their outright dismissal. The defective jurat had already been cured by Cable Link's submission of amended ones that are compliant with the 2004 Rules on Notarial Practice.<sup>[19]</sup> The NTC likewise held that the alleged failure of Cable Link to attach in its applications evidence of its technical and financial capabilities does not merit their outright dismissal under NTC Office Order No. 106-10-2007 as the requirement to submit the documents specified in the office order was meant only to expedite the evaluation of the applications. Contrary to the assertion of Brancomm, it was not denied of due process despite the fact that it was not given copies of the testimonies of Cable Link's witnesses three days before the scheduled hearing considering that it will be given ample time to scrutinize and review said testimonies before Brancomm conducts its cross examination.

Not accepting defeat, Brancomm moved for reconsideration<sup>[20]</sup> but the same was denied by the NTC in its Order<sup>[21]</sup> dated July 17, 2009, the dispositive portion of which reads:

**WHEREFORE,** premises considered, Oppositor's Motion for Reconsideration is hereby **DENIED** for lack of merit. The Omnibus Order dated March 13, 2009 issued by the Hearing Officer is hereby modified to the extent that Oppositor's Opposition to this application shall stand and included in the evaluation of the present application on the merits.

Let the continuation of the hearing of this case be set on **JULY 28, 2009**  
**at 9:30 in the morning.**

Undeterred, Brancomm elevated the matter before the CA via a Petition for *Certiorari* and Prohibition<sup>[22]</sup> seeking to annul and set aside the March 13, 2009 Omnibus Order and the July 17, 2009 Order of the NTC.

On March 20, 2012, the CA rendered its Decision<sup>[23]</sup> annulling and setting aside the assailed Orders of the NTC. It held that while the applications of Cable Link contain verifications and certifications against forum shopping, the same do not show that the person who signed the same had the authority to do so. Cable Link was aware of such defect as it, in fact, tried to correct the same by subsequently submitting a Resolution passed by its Board of Directors showing the person's authority to sign the said verifications and certifications. However, instead of clearing doubts, the Resolution posed even more questions given that the Resolution vested the authority to sign the verifications and certifications not on Atty. Bolante, but on another person. NTC cannot excuse Cable Link's failure to submit verifications and certifications on non -forum shopping that are proper in form and substance by construing the rules liberally in its favor given that there could be no substantial compliance with the rules when the wording of the Board Resolution was explicit and unequivocal that it authorizes another person to sign the verification and certification on non -forum shopping.

Contrary to the ruling of the NTC, the CA ruled that Cable Link's failure to comply with NTC Office Order No. 106-10-2007 merits its applications' outright dismissal for the reason that the very wording of the said office order clearly provides that an applicant for the issuance of a certificate of authority to operate a CATV system should submit to the NTC at least the documents that were enumerated therein before the NTC could act upon the application. The contention of the NTC that the requirement of the submission of the documents mentioned in the office order is merely for purposes of facility is contrary to the directive of the office order and the liberal application of the rules is unwarranted. Furthermore, NTC denied Brancomm of its right to due process when it went ahead to hear Cable Link's applications and even allowed it to present its witnesses even if Brancomm was not furnished with the affidavit of the witness Cable Link was going to present three days in advance. While the requirement under Section 5, Rule 11 of the NTC Rules requiring the submission to the opposing party of the said affidavit three days before the scheduled hearing is preceded by the phrase, "*as far as practicable*," it does not necessarily follow that the mandate of the provision could be dispensed with altogether. Technical rules may be relaxed only when there are underlying considerations that necessitate its relaxation, and only for the furtherance of justice and to benefit the deserving.

Undeterred, NTC filed the present petition premised on the following grounds:

### **The Issues**

#### **I.**

The Court of Appeals committed grave error in not holding that Atty. Basilio B. Bolante had ample authority to sign, in behalf of Cable Link,

the verification and certification of non-forum shopping of the applications filed in BMC Case Nos. 2008-150, 2008-152 and 2008-154.

## II.

The Court of Appeals committed grave error in ruling that the failure of Cable Link to comply with NTC Office Order No. 106-10-2007 was fatal to its Applications.

## III.

The Court of Appeals committed grave error in ruling that respondent was denied due process.

## IV.

The Court of Appeals committed grave error in not taking into consideration that petitioner, being the government agency entrusted with the regulation of activities coming under its special and technical forte, and possessing the necessary rule-making power to implement its objectives, is in the best position to interpret its own rules, regulations and guidelines.

## V.

The Court of Appeals committed grave error in not ruling on the issue of the impropriety of the remedy resorted to by respondent .<sup>[24]</sup>

### **The Arguments of the Parties**

NTC argues that contrary to the findings of the CA, Atty. Bolante had sufficient authority to sign the verification and the certification of non - forum shopping portion of Cable Link's applications given that he was designated as the corporation's legal counsel and representative during the October 31, 2008 Special Meeting of the Board of Directors of Cable Link. The pertinent portion of the minutes of the said special meeting reads as follows:

**RESOLVED**, as it hereby resolved that the President, **MR. ARMANDO M. MERILLEN**, be empowered and authorized to sign and execute any and all papers and documents including but not limited to application/petition, motion or memorandum necessary and required before the Commission or any other government agencies in connection with any application filed or to be filed, including the verification thereof as well as the power to engage the services of legal, technical and financial personnel to prepare the needed studies and testify on the same. hereinafter

**RESOLVED FURTHER**, that **MR. ARMANDO M. MERILLEN** be authorized to exercise such other powers as may be necessary or needed for the attainment of this resolution, to do and perform any all acts and whatever undertaking's that may be necessary or required for the faithful execution of the foregoing.

**RESOLVED**, FINALLY, that any and all applications, petitions, motions, and memoranda, among others filed or initiated by **ATTY. BASILIO B. BOLANTE** who is hereby designated as the corporation's legal counsel/representative before the National Telecommunications Commission or any office or agency of the government are hereby adopted, ratified, affirmed and confirmed.<sup>[25]</sup>

Aside from bestowing upon Atty. Bolante ample authority to sign the said verification and certification of non -forum shopping in behalf of Cable Link's applications, the resolution passed by the corporation likewise ratified the acts of Atty. Bolante, adopted the contents of the applications and conferred upon Atty. Bolante the power to perform acts necessary or incidental to his authority to represent Cable Link before the NTC. Even assuming that Mr. Armando M. Merilleno (Mr. Merilleno) was the one authorized by Cable Link to sign and execute the required papers and documents before the NTC, there is nothing in the board resolution which suggests that the power to sign the verification and certification was solely vested on Mr. Merilleno. Inasmuch as Atty. Bolante was appointed as Cable Link's representative before the NTC, such appointment necessarily carried with it all powers essential to carry out such mandate, including the power to sign the verifications and certifications of the applications .<sup>[26]</sup>

Be that as it may, NTC contends that any official, employee or representative of a corporation can sign the verification and certification without need of a board resolution for as long as such person is in a position to verify the truthfulness and the correctness of the allegations in the petition. Here, Atty. Bolante was designated not only as the representative of Cable Link, but as its counsel as well. As such, he was in a position to verify the truthfulness and correctness of the allegations in all the applications he himself prepared because he attended the special board meeting of Cable Link where the applications were presented and read before the entire Board of Directors, and the allegations of which were adopted during the said meeting. Hence, Atty. Bolante clearly had authority to sign the verification and certification of non-forum shopping in behalf of the corporation.<sup>[27]</sup>

Even assuming that the verification was defective, NTC argues that the same does not affect the validity or efficacy of a pleading, and does not divest it of jurisdiction to take cognizance of the applications, since the verification is merely a formal, and not a jurisdictional requirement. <sup>[28]</sup> Also, NTC's acceptance of Cable Link's applications was in keeping with the liberal construction under Section 3, Rule 1 of the NTC Rules, and consistent with jurisprudential pronouncements that rules of procedure are, as a matter of course, construed liberally in proceedings before administrative bodies given that it is not bound by the technical niceties of law and procedure and the rules obtaining in the courts of law. Besides, the outright dismissal of the applications for containing a defective verification would serve no beneficial purpose because Cable Link could easily take steps to cure the defect of the applications and refile them. In such event, Cable Link would be obliged to pay anew filing fees when it refiles its applications which is contrary to the avowed policy of construing the NTC Rules liberally in order to promote public interest and assist the parties in obtaining just, speedy and inexpensive determination of their cases. Moreover, the requirement under the Rules of Court that judicial initiatory pleadings must be accompanied with a certification of non-forum shopping cannot be strictly applied to pleadings filed before the NTC given that the NTC Rules do not require