

SECOND DIVISION

[G.R. No. 196112, February 26, 2014]

**GMA NETWORK, INC., PETITIONER, VS. NATIONAL
TELECOMMUNICATIONS COMMISSION, RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated October 12, 2010 and a Resolution^[3] dated March 9, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 112437 which affirmed the Orders dated May 25, 2009^[4] and January 8, 2010^[5] of respondent National Telecommunications Commission in BMC Case No. 93-538, imposing a fine against petitioner GMA Network, Inc. for operating a radio station with an expired provisional authority.

The Facts

Petitioner GMA Network, Inc. (GMA), formerly known as Republic Broadcasting System, Inc., is a Filipino-owned domestic corporation engaged in the business of radio and television broadcasting, which has been granted a legislative franchise to construct, install, operate and maintain radio and television broadcasting stations in the Philippines for a period of 25 years under Republic Act No. (RA) 7252,^[6] enacted on March 20, 1992.^[7]

On the other hand, respondent National Telecommunications Commission (NTC) is a government agency which, under Executive Order No. (EO) 546^[8] dated July 23, 1979, has been authorized to, *inter alia*, (a) “[i]ssue Certificate[s] of Public Convenience for the operation of communications utilities and services, radio communications systems, wire or wireless telephone or telegraph systems, radio and television broadcasting system and other similar public utilities,” and (b) “[g]rant permits for the use of radio frequencies for wireless telephone and telegraph systems and radio communication systems including amateur radio stations and radio and television broadcasting systems.”^[9]

GMA, by virtue of its legislative franchise, filed with the NTC an application for the issuance of a Certificate of Public Convenience (CPC) to install, operate and maintain a 5-kilowatt amplitude modulation (AM) radio station in Puerto Princesa City, Palawan, docketed as BMC Case No. 93-538. Pending approval, the NTC issued an Order^[10] dated January 14, 1997, provisionally authorizing GMA to install, operate and maintain said radio station. The provisional authority (PA) was valid for 18 months from date, or until July 14, 1998, and expressly stated that it may be “subject to amendment, alteration, suspension, revocation or cancellation when public welfare, morals and national security so requires or when grantee operates

beyond its authorization granted.” As manifested in its Compliance^[11] dated January 27, 1997, GMA accepted the terms and conditions stated in the PA.

GMA failed to renew its PA upon its expiration on July 14, 1998. Nevertheless, it continued its broadcast operations on the basis of temporary permits issued by the NTC, the first of which, numbered BSD-0356-98, was issued on April 14, 1998 for the period April 2, 1998 to April 1, 2001,^[12] and the second, numbered BSD-0195-2001, on May 21, 2001 for the period April 2, 2001 to April 1, 2004.^[13]

On September 13, 2002, some four (4) years after the expiration of its PA, GMA filed with the NTC an *Ex-Parte* Motion for Issuance of Certificate of Public Convenience^[14] (*Ex-Parte* Motion), claiming: (a) full compliance with the terms and conditions of its PA; and (b) its current operation of said radio station by virtue of temporary permit number BSD-0195-2001. Meanwhile, GMA continued to operate its radio station on the strength of NTC-issued temporary permits, the third of which, numbered BSD-0302-2004, was issued on June 23, 2004 for the period April 2, 2004 to April 1, 2007,^[15] and the fourth, numbered BSD-0197-2007, on March 27, 2007 for the period April 2, 2007 to April 1, 2010.^[16]

In an Order^[17] dated February 26, 2009, the NTC set the *Ex-Parte* Motion for clarificatory hearing and also directed GMA to submit a written explanation (within 10 days from receipt) why it should not be administratively sanctioned for the motion’s late filing and for operating its radio station with an expired PA.

In its Compliance^[18] dated March 12, 2009, GMA explained that its failure to timely renew its PA was without deliberate intent but by mere inadvertence caused by the confusion in the turn-over of the custody of its documents from its previous lawyer, and that it immediately filed the *Ex-Parte* Motion upon discovering its omission. Further, it alleged that notwithstanding the non-renewal of its PA, it had fully complied with the terms and conditions thereof, and that its continued operation was actually authorized by the NTC by virtue of the four (4) temporary permits covering the period 1998 to 2010. Finally, invoking the 60-day prescriptive period under Section 28 of Commonwealth Act No. 146,^[19] as amended, otherwise known as the “Public Service Act” (Public Service Act), it argued that the NTC could no longer sanction the late filing of its *Ex-Parte* Motion considering the lapse of more than six (6) years from its filing on September 13, 2002.^[20]

In an Order^[21] dated May 25, 2009, the NTC renewed GMA’s PA for three (3) years, or until July 14, 2012, but, pursuant to Section 21 of the Public Service Act, imposed upon it a fine of P152,100.00 for operating its radio station with an expired PA from July 14, 1998 to September 13, 2002, or for 1521 days (the fine having been pegged at the rate of P100 per day).

Consequently, GMA filed a Motion for Partial Reconsideration^[22] from the imposition of the aforesaid fine, but the NTC, in an Order^[23] dated January 8, 2010, merely reduced its amount to P76,050.00. Dissatisfied, GMA elevated the matter to the CA,^[24] contending that: (a) the 60-day prescriptive period provided under Section 28 of the Public Service Act already barred the NTC from imposing said fine; (b) the fine imposed amounts to more than P25,000.00 and, hence, contrary to the policy

embodied in Section 23 of the Public Service Act; and (c) the imposition of said fine was improper considering that the NTC had already authorized it to operate its radio station through temporary permits

The CA Ruling

In a Decision^[25] dated October 12, 2010, the CA dismissed the appeal, finding no merit in GMA's contention that the violation committed had already prescribed pursuant to Section 28 of the Public Service Act. Citing the 1962 case of *Sambrano v. PSC and Phil. Rabbit Bus Lines, Inc.*^[26] (*Sambrano*), it held that the abovementioned 60-day prescriptive period is only available as a defense in criminal proceedings, and not to those which are administrative in character.^[27] Hence, since the assailed fine was imposed by the NTC to administratively sanction GMA for its non-compliance with the conditions of its PA pursuant to Section 21 of the Public Service Act,^[28] the 60-day prescriptive period cannot be raised by GMA as a defense. Further, the CA found that the NTC's imposition of the assailed fine at the reduced rate of P50.00 per day was well within the limit of Section 21 of the Public Service Act, noting too that the fine was, at best, minimal and conservative in light of the duration of GMA violation.^[29] It appears though that the CA did not address GMA's argument anent the fact that its continued operation was based on temporary permits issued by the NTC.

Feeling aggrieved, GMA moved for reconsideration which was, however, denied in a Resolution^[30] dated March 9, 2011, hence, this petition.

The Issue Before the Court

The essential issue in this case is whether or not the CA erred in upholding the P76,050.00 fine imposed by the NTC upon GMA.

The Court's Ruling

The petition lacks merit.

A. Prescriptibility

While it was clearly established that GMA violated the terms and conditions of its PA when it continued to operate its radio station despite the PA's expiration,^[31] it, however, invokes the 60-day prescriptive period under Section 28 of the Public Service Act which states that:

Section 28. **Violations of the orders, decisions, and regulations of the Commission and the terms and conditions of any certificates issued by the Commission shall prescribe after sixty days** and violations of the provisions of this Act shall prescribe after one hundred and eighty days. (Emphasis and underscoring supplied)

It asseverates that the NTC's attempt to penalize it for supposedly operating with an expired PA should be deemed barred by the afore-cited limitation since the NTC's action came only after the lapse of almost 10 years from the time its alleged violation took place – that is, after the subject PA expired on July 14, 1998.^[32]

The Court disagrees.

The NTC's authority to impose fines for a public service utility's violation or failure to comply with the terms and conditions of any certificate/s issued by it is expressly sanctioned under Section 21 of the Public Service Act which reads as follows:

Section 21. **Every public service violating or failing to comply with the terms and conditions of any certificate or any orders, decisions or regulations of the Commission shall be subject to a fine of not exceeding two hundred pesos per day for every day during which such default or violation continues; and the Commission is hereby authorized or empowered to impose such fine, after due notice and hearing.**

The fines so imposed shall be paid to the Government of the Philippines through the Commission, and failure to pay the fine in any case within the time specified in the order or decision of the Commission shall be deemed good and sufficient reason for the suspension of the certificate of said public service until payment shall be made. The remedy provided in this section shall not be a bar to, or affect any other remedy provided in this Act but shall be cumulative and additional to such remedy or remedies. (Emphasis supplied)

In *Globe Telecom, Inc. v. NTC*,^[33] the Court intimated that the NTC's imposition of a fine pursuant to Section 21 of the Public Service Act is made in an **administrative** proceeding, and thus, must comply with the requirements of notice and hearing. Also, in the same case, the Court classified the fine imposed under the same provision to be one which is **regulatory** and **punitive** in character, viz.:^[34]

Section 21 requires notice and hearing because fine is a sanction, **regulatory and even punitive in character**. Indeed, the requirement is the essence of due process. Notice and hearing are the bulwark of **administrative due process**, the right to which is among the primary rights that must be respected even in **administrative proceedings**. The right is guaranteed by the Constitution itself and does not need legislative enactment. The statutory affirmation of the requirement serves merely to enhance the fundamental precept. The right to notice and hearing is essential to due process and its non-observance will, as a rule, invalidate the **administrative proceedings**.

In citing Section 21 as the basis of the fine, NTC effectively concedes the necessity of prior notice and hearing. Yet the agency contends that the sanction was justified by arguing that when it took cognizance of Smart's complaint for interconnection, "it may very well look into the issue of whether the parties had the requisite authority to operate such services." As a result, both parties were sufficiently notified that this was a matter that NTC could look into in the course of the proceedings. The parties subsequently attended at least five hearings presided by NTC.

That particular argument of the NTC has been previously disposed of. But it is essential to emphasize the need for a hearing before a fine may be

imposed, as it is clearly a punitive measure undertaken by an administrative agency in the exercise of its quasi-judicial functions. Inherently, notice and hearing are indispensable for the valid exercise by an administrative agency of its quasi-judicial functions. (Emphases and underscoring supplied; citations omitted)

In this relation, the Court, in *Sambrano*, ruled that the 60-day prescriptive period provided under Section 28 of the Public Service Act **can be availed of as defenses only in criminal proceedings filed under Chapter IV thereof, and not in proceedings that pertain to the regulatory or administrative aspects of a public service utility's observance of the terms and conditions of his permit to operate**, viz.:^[35]

This Court has already held, in *Collector of Internal Revenue et al. vs. Buan*, G. R. L-11438; and *Sambrano v. Public Service Commission*, G.R. L-11439 and L-11542, decided on July 31, 1958, that **the 60-day prescriptive period fixed by section 28 of the Public Service Law is available as a defense only in criminal or penal proceedings filed under Chapter IV of the Act**. Consequently, **the Public Service Commission is not barred from receiving evidence of the prescribed violations for the purpose of determining whether an operator has or has not faithfully kept the conditions of his certificate of permit, whether he failed or not to render the services he is required to furnish to the customers, and whether or not the infractions are sufficient cause to cancel or modify the certificate. Proceedings of this kind are held primarily to ensure adequate and efficient service as well as to protect the public against the operator's malfeasances or abuses; they are not penal in character**. True, the cancellation of the certificate may mean for an operator actual financial hardship; yet the latter is merely incidental to the protection of the traveling public. Hence, in refusing to admit evidence of prescribed violations as part of the complainant's case against the Philippine Rabbit Lines for a modification or cancellation of the latter's permit, we hold that the Commission committed error.

x x x x

The order appealed from is modified in the sense that the respondent Commission shall admit evidence of violations committed by the respondent Philippine Rabbit Bus Lines, Inc., even if no complaint against such violations were filed within 60 days from their commission. x x x. (Emphasis supplied)

It is well to note that the criminal proceedings under Chapter IV of the Public Service Act, as mentioned in the *Sambrano* ruling, pertain to those found under Sections 23, 24, 25, and 26^[36] thereof as these provisions pertain to fines imposed "in the discretion of the court" – which means they are imposed in criminal court proceedings – as contradistinguished from Section 21 which may be imposed by the NTC (then, by the Public Service Commission), after due notice and hearing,

In view of the foregoing, the Court thus finds GMA's reliance on the 60-day prescriptive period under Section 28 of the Public Service Act to be misplaced