

## SECOND DIVISION

[ G.R. No. 176694, July 18, 2014 ]

**GMA NETWORK, INC., PETITIONER, VS. CENTRAL CATV, INC.,  
RESPONDENT.**

### DECISION

**BRION, J.:**

We resolve the challenge, under the standards of a Rule 45 petition for review, to the decision<sup>[1]</sup> dated November 14, 2006 and the resolution<sup>[2]</sup> dated February 15, 2007 of the Court of Appeals (CA) in CA-G.R. SP No. 93439 affirming the order<sup>[3]</sup> dated December 10, 2004 of the National Telecommunications Commission (NTC)<sup>[4]</sup> that dismissed the complaint of petitioner GMA Network, Inc. based on the motion to dismiss by way of demurrer to evidence of respondent Central CATV, Inc.

### THE FACTUAL ANTECEDENTS

Sometime in February 2000, the petitioner, together with the Kapisanan ng mga Brodkaster ng Pilipinas, Audiovisual Communicators, Incorporated, Filipinas Broadcasting Network and Rajah Broadcasting Network, Inc. (*complainants*), filed with the NTC a complaint against the respondent to stop it from soliciting and showing advertisements in its cable television (CATV) system, pursuant to **Section 2 of Executive Order (EO) No. 205**.<sup>[5]</sup> Under this provision, a grantee's authority to operate a CATV system shall not infringe on the television and broadcast markets. The petitioner alleged that the phrase "television and broadcast markets" includes the commercial or advertising market.

In its answer, the respondent admitted the airing of commercial advertisement on its CATV network but alleged that Section 3 of EO No. 436, which was issued by former President Fidel V. Ramos on September 9, 1997, expressly allowed CATV providers to carry advertisements and other similar paid segments provided there is consent from their program providers.<sup>[6]</sup>

After the petitioner presented and offered its evidence, the respondent filed a motion to dismiss by demurrer to evidence claiming that the evidence presented by the complainants failed to show how the respondent's acts of soliciting and/or showing advertisements infringed upon the television and broadcast market.<sup>[7]</sup>

### THE NTC RULING

The NTC granted the respondent's demurrer to evidence and dismissed the complaint. It ruled that since EO No. 205 does not define "infringement," EO No. 436 merely clarified or filled-in the details of the term to mean that the CATV operators may show advertisements, provided that they secure the consent of their program

providers. In the present case, the documents attached to the respondent's demurrer to evidence showed that its program providers have given such consent. Although the respondent did not formally offer these documents as evidence, the NTC could still consider them since they formed part of the records and the NTC is not bound by the strict application of technical rules.<sup>[8]</sup>

The NTC added that since the insertion of advertisements under EO No. 436 would result in the alteration or deletion of the broadcast signals of the consenting television broadcast station, its ruling necessarily results in the amendment of these provisions. The second paragraph<sup>[9]</sup> of Section 3 of EO No. 436 is deemed to amend the previous provisional authority issued to the respondent, as well as Sections 6.2.1 and 6.4 of the NTC's Memorandum Circular (MC) 4-08-88. Sections 6.2.1 and 6.4 require the CATV operators within the Grade A or B contours of a television broadcast station to carry the latter's television broadcast signals **in full**, without alteration or deletion. **This is known as the "must-carry-rule."**<sup>[10]</sup>

With the denial of its motion for reconsideration,<sup>[11]</sup> the petitioner went to the CA, alleging that the NTC committed grave procedural and substantive errors in dismissing the complaint.

### **THE CA RULING**

The CA upheld the NTC ruling. The NTC did not err in considering the respondent's pieces of evidence that were attached to its demurrer to evidence since administrative agencies are not bound by the technical rules of procedure.<sup>[12]</sup>

Due to the failure of EO No. 205 to define what constitutes "infringement," EO No. 436 merely filled-in the details without expanding, modifying and/or repealing EO No. 205.<sup>[13]</sup> The NTC was also correct in modifying or amending the must-carry rule under MC 4-08-88 as the NTC merely implemented the directive of EO No. 436.<sup>[14]</sup>

Hence, this present petition for review on *certiorari*.

### **THE PARTIES' ARGUMENTS**

On the procedural issues, the petitioner argues that the NTC erred in: (i) granting the demurrer to evidence based only on the insufficiency of the complaint and not on the insufficiency of evidence; and (ii) considering the evidence of the respondent in its demurrer to evidence on top of the petitioner's evidence.<sup>[15]</sup>

On the substantive issue, the petitioner alleges that the NTC gravely erred in failing to differentiate between EO No. 205, which is a law, and EO No. 436 which is merely an executive issuance. An executive issuance cannot make a qualification on the clear prohibition in the law, EO No. 205.<sup>[16]</sup> In allowing infringement under certain conditions, EO No. 436 overturned EO No. 205 which prohibits, without qualification, the infringement on the markets of free TV networks, such as the petitioner. In doing so, the Executive arrogated upon itself the power of subordinate legislation that Congress has explicitly reserved to the NTC.<sup>[17]</sup>

Too, in granting the demurrer to evidence, the NTC effectively revised EO No. 205, contrary to the basic rule that in the exercise of quasi-legislative power, the delegate cannot supplant and modify its enabling statute.<sup>[18]</sup>

On the other hand, the respondent agrees with the CA that the NTC properly considered the certifications attached to the respondent's demurrer to evidence<sup>[19]</sup> since the petitioner had the chance to peruse these certifications in the course of the presentation of its evidence.

EO No. 205 does not expressly prohibit CATV operators from soliciting and showing advertisements. The non-infringement limitation under Section 2 thereof, although couched in general terms, should not be interpreted in such a way as to deprive CATV operators of legitimate business opportunities.<sup>[20]</sup> Also, EO No. 436, being an executive issuance and a valid administrative legislation, has the force and effect of a law and cannot be subject to collateral attack.<sup>[21]</sup>

### **THE ISSUES**

1) Whether the CA erred in affirming the order of the NTC which granted the respondent's motion to dismiss by demurrer to evidence.

2) Whether the respondent is prohibited from showing advertisements under Section 2 of EO No. 205, in relation to paragraph 2, Section 3 of EO No. 436.

### **THE COURT'S RULING**

We deny the petition for lack of merit.

#### ***Procedural Issues***

The remedy of a demurrer to evidence is applicable in the proceedings before the NTC, pursuant to Section 1, Rule 9, Part 9 of its Rules of Practice and Procedure which provides for the suppletory application of the Rules of Court.

Rule 33<sup>[22]</sup> of the Rules of Court provides for the rule on demurrer to evidence:

**Section 1. Demurrer to evidence.** — After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

In other words, the issue to be resolved in a motion to dismiss based on a demurrer to evidence is whether the plaintiff is entitled to the relief prayed for **based on the facts and the law.**<sup>[23]</sup> In *Casent Realty Development Corp. v. Philbanking Corp.*,<sup>[24]</sup> the Court explained that these facts and law do not include the defendant's

evidence:

What should be resolved in a motion to dismiss based on a demurrer to evidence is whether the plaintiff is entitled to the relief **based on the facts and the law**. The evidence contemplated by the rule on demurrer is that which pertains to the merits of the case, excluding technical aspects such as capacity to sue. However, the plaintiff's evidence should not be the only basis in resolving a demurrer to evidence. **The "facts" referred to** in Section 8 should include all the means sanctioned by the Rules of Court in ascertaining matters in judicial proceedings. These include judicial admissions, matters of judicial notice, stipulations made during the pre-trial and trial, admissions, and presumptions, the **only exclusion being the defendant's evidence**.

In granting the demurrer to evidence in the present case, the NTC considered both the insufficiency of the allegations in the complaint and the insufficiency of the complainants' evidence in light of its interpretation of the provisions of EO No. 205 and EO No. 436. The NTC ruled that the complainants, including the petitioner, failed to prove by substantial evidence that the respondent aired the subject advertisements without the consent of its program providers, as required under EO No. 436. The NTC, therefore, has issued the assailed order upon a consideration of the applicable laws and the evidence of the petitioner. On this score, the grant of the demurrer suffers no infirmity.

However, the NTC further extended its consideration of the issue to the respondent's pieces of evidence that were attached to its demurrer to evidence. On this score, we agree with the petitioner that the NTC erred.

Rule 33 of the Rules of Court, as explained in our ruling in *Casent*, proscribes the court or the tribunal from considering the defendant's evidence in the resolution of a motion to dismiss based on a demurrer to evidence.

While an administrative agency is not strictly bound by technical rules of procedure in the conduct of its administrative proceedings, the relaxation of the rules should not result in violating fundamental evidentiary rules, including due process.<sup>[25]</sup> In the present case, the NTC proceeded against the very nature of the remedy of demurrer to evidence when it considered the respondent's evidence, specifically the certifications attached to the respondent's demurrer to evidence. Despite the petitioner's objections,<sup>[26]</sup> the NTC disregarded the rule on demurrer by allowing the submission of the respondent's evidence while depriving the petitioner of the opportunity to question, examine or refute the submitted documents.<sup>[27]</sup>

That the petitioner had the chance to peruse these documents is of no moment. In a demurrer to evidence, the respondent's evidence should not have been considered in the first place. As the NTC opted to consider the respondent's evidence, it should not have resolved the case through the remedy of demurrer but instead allowed the respondent to formally present its evidence where the petitioner could properly raise its objections. Clearly, there was a violation of the petitioner's due process right.

### ***Substantive Issues***

The primary issue in the present case is whether the respondent, as a CATV operator, could show commercial advertisements in its CATV networks. The petitioner anchors its claim on Section 2<sup>[28]</sup> of EO No. 205 while the respondent supports its defense from paragraph 2, Section 3<sup>[29]</sup> of EO No. 436. The Court finds, however, that both the NTC and the CA failed to correctly appreciate EO No. 205 and EO No. 436 in resolving the present case.

### **1. EO No. 205 is a law while EO No. 436 is an executive issuance**

For one, we agree with the petitioner that the NTC and the CA proceeded from the wrong premise that both EO No. 205 and EO No. 436 are statutes. This is a critical point to consider since the NTC and the CA rulings on the merits would have no leg to stand on had they properly appreciated the nature of these two executive issuances.

EO No. 205 was issued by President Corazon Aquino on June 30, 1987. Under Section 6, Article 18 of the 1987 Constitution, the incumbent President shall continue to exercise legislative powers until the first Congress is convened. The Congress was convened only on July 27, 1987.<sup>[30]</sup> Therefore, at the time of the issuance of EO No. 205, President Aquino was still exercising legislative powers. In fact, the intent to regard EO No. 205 as a law is clear under Section 7 thereof which provides for the repeal or modification of all inconsistent **laws**, orders, issuances and rules and regulations, or parts thereof.

EO No. 436, on the other hand, is an executive order which was issued by President Ramos in the exercise purely of his executive power. In short, it is not a law.

The NTC and the CA, however, failed to consider the distinction between the two executive orders. In considering EO No. 436 as a law, the NTC and the CA hastily concluded that it has validly qualified Section 2 of EO No. 205 and has amended the provisions of MC 4-08-88. Following this wrong premise, the NTC and the CA ruled that the respondent has a right to show advertisements under Section 3 of EO No. 436.

The incorrect interpretation by the NTC and the CA led to the erroneous resolution of the petitioner's complaint and appeal. While the respondent indeed has the right to solicit and show advertisements, as will be discussed below, the NTC and the CA incorrectly interpreted and appreciated the relevant provisions of the law and rules. We seek to correct this error in the present case by ruling that MC 4-08-88 alone sufficiently resolves the issue on whether the respondent could show advertisements in its CATV networks. In other words, EO No. 436 is not material in resolving the substantive issue before us.

### **2. The CATV operators are not prohibited from showing advertisements under EO No. 205 and its implementing rules and regulations, MC 4-08-88**

Section 6<sup>[31]</sup> of EO No. 205 expressly and unequivocally vests with the NTC the delegated legislative authority to issue its implementing rules and regulations.<sup>[32]</sup>

Following this authority, the NTC has issued the implementing rules and regulations