

THIRD DIVISION

[G.R. No. 164314, September 26, 2008]

**SECURITIES AND EXCHANGE COMMISSION, PETITIONER, VS.
PICOP RESOURCES, INC., RESPONDENT.**

D E C I S I O N

REYES, R.T., J.:

A party generally advocates the rules for his benefit, but invokes exceptions when he violates it. *Karaniwang isinusulong ng isang panig ang tuntunin para sa kanyang kapakanan, ngunit humihingi ng pagtatangi kapag siya ang lumalabag nito.*

The aphorism finds relevance in this petition for review on *certiorari*^[1] of two Resolutions^{1-a} of the Court of Appeals (CA). The first Resolution denied the motion for extension to file a petition for review, the second denied the motion for reconsideration.

The Facts

On March 26, 2002, respondent PICOP Resources, Inc. (PICOP) filed with petitioner Securities and Exchange Commission (SEC) an application for amendment of its Articles of Incorporation (AOI) extending its corporate existence for another fifty (50) years. PICOP paid the filing fee of P210.00 based on SEC Memorandum Circular No. 2, Series of 1994 (1994 Circular).^[2]

The SEC, however, informed PICOP of the appropriate filing fee of P12 Million, or 1/5 of 1% of its authorized capital stock of P6 Billion.^[3] PICOP sought clarification of the applicable filing fee and the reduction of the amount of P12 Million prescribed by the SEC.^[4] What followed were several exchanges of correspondence on the applicable filing fee for amended AOI extending the corporate term of PICOP.^[5]

Through Director Benito A. Cataran of the Company Registration and Monitoring Department, the SEC held that the P12 Million assessment^[6] is based on Republic Act (RA) No. 3531.^[7] This Act provides that in case an amendment of the AOI consists of extending the term of corporate existence, the SEC shall be entitled to collect and receive the same fees collectible under existing law for the filing of AOI.^[8]

PICOP elevated the matter to the SEC *En Banc*.^[9] It asked for the reduction of the filing fee from P12 Million to P210.00. The present SEC Revised Schedule of Fees^[10] (2001 Circular) does not provide varying filing fees for amended AOI depending on the purpose of the amendment to be introduced.^[11] Neither did the previous

Schedule of Fees (1994 Circular) allow SEC to collect and receive the same fees for amendment of AOI as an original filing.^[12]

Under the latter Circular, the examining and filing fee for amended AOI of both stock and non-stock corporations is only P200.00.^[13]

The SEC *En Banc*, through Commissioner Jesus E.G. Martinez, denied PICOP's request.^[14] He justified the Commission's decision in the following tenor:

This Commission maintains the position that there is no legal basis to exempt PICOP Resources, Inc. from paying the filing fee as assessed by the CRMD.

The assessed fee is based on the pertinent provisions of R.A. 3531. Although SEC memorandum Circular No. 2, Series of 1994 and the Schedule of Revised Fees approved on 23 July 2001 do not provide for a filing fee for extensions of term, these do not limit the Securities and Exchange Commission from imposing the prevailing fees.^[15]

However, the SEC *En Banc* reduced the filing fee to P6 Million by stating:

x x x there appears to be no basis for said fee to be computed at the revised rate of 1/5 of 1% of the authorized capital stock since the formula which was contemplated in SEC Circular Series 1986 is 1/10 of 1% of the authorized capital stock. To adapt (*sic*) the former would be tantamount to a violation of the requirement to properly apprise the public of substantive change.^[16]

PICOP sought a reconsideration^[17] of the *En Banc* ruling. It argued that RA No. 3531 has been repealed by the Corporation Code of 1980 and Presidential Decree 902-A.^[18] Section 139^[19] of the Corporation Code authorizes the SEC to collect and receive fees as authorized by law or by rules and regulation promulgated by the SEC.

Along this line, PICOP posited that SEC Memorandum Circular No. 1, Series of 1986 (1986 Circular) rules on the specific subject matter of "Filing Fees for Amended Articles of Incorporation Extending the Term of Corporate Existence." The prescribed filing fee is 1/10 of 1% of the authorized capital stock, with the qualification that it should not be less than P200.00 or more than P100,000.00. PICOP pointed out that no equivalent provision appears in any of the subsequent SEC circulars such as the 1994 and 2001 circulars. Hence, the 1986 Circular should prevail.^[20]

The SEC *En Banc* denied once more PICOP's request to reconsider the earlier ruling and reverted to the P12 Million assessment.^[21] It maintained that the provision on the maximum imposable fee under the 1986 Circular has been amended by the 1994 Circular which removed the maximum imposable fee.^[22] Furthermore, the SEC *En Banc* explained that contentions that its 2001 Circular was not published are erroneous. There was, in fact, due publication in *The Manila Standard* on July 31, 2001. Accordingly, the 2001 Circular became effective on August 15, 2001. Thus, the public was properly apprised of the changes in fees.^[23]

On August 12, 2002, PICOP paid under protest the amount of P11,999,790.00. This was in addition to its original payment of P210.00 to cover the SEC-prescribed filing fee.^[24] Then PICOP again moved for reconsideration.^[25] This was denied by SEC Chairperson Lilia R. Bautista.^[26]

Dissatisfied, PICOP appealed the matter to the Office of the President (OP).^[27] It raised the following issues: (1) whether or not the OP has jurisdiction to entertain the appeal; and (2) in the event that the OP has jurisdiction, how much is the filing fee for the amendment of PICOP's AOI to extend the term of its corporate existence?

OP Disposition

On September 22, 2003, the OP decided in favor of PICOP, disposing as follows:

WHEREFORE, premises considered, the instant appeal is GRANTED and the questioned SEC Order dated August 15, 2002 SET ASIDE. Accordingly, it is hereby DECLARED that the applicable filing fee for the extension of the term of corporate existence of the appellant is P100,000, pursuant to SEC Memorandum Circular No. 1, s. of 1986. Consequently, the SEC is ordered to REFUND whatever amount that the appellant was required to pay in excess.

SO ORDERED.^[28]

The OP maintained that even with the issuance of Executive Order (EO) No. 192,^[29] it retained its appellate jurisdiction over the SEC. EO No. 192 merely provided for the transfer of the administrative supervision of the SEC back to the Department of Finance from the OP.^[30]

Under Section 38, Chapter 7, Book IV of the Administrative Code of 1987, administrative supervision does not extend to "the power to review, reverse, revise, or modify the decisions of regulatory agencies in the exercise of their regulatory or quasi-judicial functions."^[31] Such is rightfully within the ambit of the presidential power of supervision and control,^[32] which includes the authority to review, approve, reverse, or modify acts and decisions of subordinate officials or units.^[33]

The OP added that EO No. 192 does not carry an express repeal of EO No. 60.^[34] Section 2 of EO No. 60^[35] specifically provides that "**matters not expressly appealable to the Court of Appeals under present circulars of the Supreme Court of the Philippines are hereby declared appealable to the Office of the President.**" Hence, the OP retains its appellate jurisdiction in the instant case.

Having established its jurisdiction over the case, the OP disposed of the main issue, thus:

The SEC relies on that specific provision in RA 3531 which provides that where the amendment consists in extending the term of the 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 for the filing of articles of incorporation." The fundamental flaw in this position is that SEC is unable to point to an existing law that justifies the imposition of the fee rate of 1/5 of 1% of the authorized capital stock.

On the other hand, appellant has identified the 1986 Circular, whose **specific subject matter is "Filing Fees for Amended Articles of Incorporation Extending the Term of Corporate Existence."** Under this, it is explicit that the applicable fee for stock corporations is "1/10 of 1% of the authorized capital stock, **but not less than Php200 nor more than Php100,000.**"^[36]

The OP pointed out that unlike the 1994 and 2001 Circulars relied on by the SEC, the 1986 Circular specifically addresses the matter of filing fees on extension of corporate existence. Further, going by the tenet of statutory construction that a special rule cannot be repealed, amended, or altered by a subsequent general rule, ^[37] the OP concluded that the 1986 Circular cannot be repealed, amended, or altered by the 1994 or 2001 Circulars.^[38] The fees provided by the said earlier Circular remain the applicable filing fees.

Two Motions for Reconsideration

By a first motion, the SEC sought a reconsideration. This was **denied** by the OP through a Resolution dated December 19, 2003. It did not find any new matter sufficiently persuasive to modify its earlier ruling.^[39]

Although aware of the prohibition against a second motion for reconsideration, petitioner filed such a motion, compelled by an alleged newly-found evidence. It prayed for the OP's acceptance of SEC Circular No. 2, Series of 1990 (1990 Circular) which removed the filing fee ceilings provided for in the 1986 Circular.^[40] Thus, the prescribed filing fee in cases of filing amended AOI for extending the corporate term is 1/10 of 1% of the authorized capital stock.

The SEC also enumerated the subsequent EOs and Circulars^[41] which called for the increase in SEC fees and charges. The latest of these was the 2001 Circular, which now prescribes the formula of 1/5 of 1% of the authorized capital stock.

The SEC likewise appealed for the OP's consideration of the supervening event which caused the 1990 Circular to be misplaced. The Commission reorganized and streamlined its operations and functions after the effectivity of RA No. 8799 (Securities Regulation Code). As consequence, one-half of its personnel were separated.^[42] The offices of Corporate and Legal Department and Examination and Appraisers Department were abolished. These offices were in charge of implementing and enforcing circulars regarding examination and filing fees for amendment of AOI.^[43]

It was this transfer of offices and personnel following the reorganization that resulted in the loss and displacement of the 1990 Circular. It was only upon diligent search that the said Circular was found.^[44]

On March 19, 2004, the OP **denied** the SEC's second motion for reconsideration for being a prohibitory pleading.^[45] It cited Section 7 of Administrative Order (AO) No. 18,^[46] which provides that only **one** motion for reconsideration by any one party shall be allowed and entertained, save in exceptionally meritorious cases.^[47]

The OP ruled that the SEC's explanation makes out a case of negligence without any showing it was excusable.^[48] The OP found it self-serving and unbelievable that the Commission was unable to "unearth" the 1990 Circular for more than three (3) years. Yet, it was able to produce it in a matter of fifteen (15) days in time for its second motion for reconsideration.

Of greater curiosity to the OP was the submission to the U.P. Law Center of certified true copies of the 1990 Circular only on the same day of the filing of the second motion for reconsideration. This betrayed the SEC's own acknowledgment that such requirement was not earlier complied with. It is clear then that 1990 Circular was not effective at the time PICOP applied for the extension of its corporate term.

Unyielding, the SEC brought the matter to the CA.

CA Ruling

The SEC initially filed a motion for extension to file a petition for review under Rule 43. It requested for an additional fifteen (15) days from April 3, 2004 to file its pleading.^[49]

On May 3, 2004, the CA through its first Resolution denied the motion for having been filed beyond the reglementary period.^[50] The CA said:

Under Section 4, Rule 43 of the Revised Rules of Court, only one (1) motion for reconsideration is allowed. Thus, being a prohibited pleading, the filing of the second motion for reconsideration before the agency *a quo* **did not toll the running of the period within which to file a petition for review, which expired fifteen (15) days after petitioner received a copy of the December 19, 2003 Resolution of the Office of the President.**^[51] (Emphasis supplied)

The SEC erroneously reckoned the period to file its petition for review from March 19, 2004 or the date of the OP's denial of its **second** motion for reconsideration. The filing period actually expired on January 3, 2004 or seventeen (17) days before the Commission even filed its prohibited pleading with the OP.

The SEC sought reconsideration of the CA's first Resolution.^[52] This was subsequently **denied** via a June 30, 2004 Resolution.^[53] The CA ratiocinated:

We have carefully studied subject Motion for Reconsideration in the light of the grounds assigned in support thereof vis-à-vis those interposed by the respondent in its Opposition, and We are not prepared to reverse or set aside Our resolution of dismissal.^[54]

Further, the CA held: