

SECOND DIVISION

[G.R. NO. 161140, January 31, 2007]

**BAYAN TELECOMMUNICATIONS INC. (FORMERLY
INTERNATIONAL COMMUNICATIONS CORPORATION),
PETITIONER,-VS.- REPUBLIC OF THE PHILIPPINES AND
NATIONAL TELECOMMUNICATIONS COMMISSION,
RESPONDENTS.**

RESOLUTION

QUISUMBING, J.:

This petition for review assails (a) the Decision^[1] dated September 25, 2003 of the Court of Appeals in CA-G.R. CV No. 74283, which affirmed the Order^[2] dated October 12, 2000 of the Regional Trial Court (RTC) of Pasig City, Branch 71, dismissing SCA No. 1962 for declaratory relief; and (b) the Court of Appeals' Resolution^[3] dated December 5, 2003, which denied the motion for reconsideration.

The case stemmed from the petition for declaratory relief filed before the RTC of Pasig City, by petitioner Bayan Telecommunications Inc., against respondents Republic of the Philippines and National Telecommunications Commission (NTC). Petitioner specifically sought the suspension of the requirement, under Section 21 of Republic Act No. 7925,^[4] of a public offering of 30% of the aggregate common stocks of telecommunication entities with regulated types of services within five years from the effectivity of the Act or the entity's first start of commercial operations, whichever comes later. Petitioner claimed that it was impossible for it to make a *bona fide* public offering at that time because its financial condition, the Philippine economy, and the stock market were not conducive for a successful public offering. It also claimed that impossibility of performance was an implied exception to the abovesited provision of Rep. Act No. 7925.

The Solicitor General moved for the dismissal of the petition for failure to state a cause of action. The Solicitor General maintained that the provisions of Section 21^[5] of Rep. Act No. 7925 are clear and free of any ambiguity, and that petitioner failed to exhaust administrative remedies as it did not first ask for an exemption from the application of said provision.

On October 12, 2000, the trial court dismissed the petition for failure to state a cause of action. It ruled as follows:

WHEREFORE, in view of the foregoing, the Motion to Dismiss is hereby GRANTED. The case is DISMISSED as the petition states no cause of action, without costs.

SO ORDERED.^[6]

Petitioner sought reconsideration, but it was denied. Petitioner then elevated the case to the Court of Appeals.

On September 25, 2003, the appellate court affirmed the trial court's ruling. It held that the elements of justiciable controversy and ripeness for judicial determination were absent as there was no showing that petitioner asked for an exemption from or deferment of compliance with the requirement of Section 21, from the NTC, and was refused. The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, premises considered, the present appeal is hereby DISMISSED and the appealed Order dated October 12, 2000 of the court a quo in SCA No. 1962 is hereby affirmed and upheld.

With costs against the petitioner-appellant.

SO ORDERED.^[7]

Petitioner now comes before us raising the following issues:

1. Whether or not there is ambiguity in the provisions of Section 21 of R.A. 7925 that would require the remedy of a declaratory relief?
2. Whether or not there is a justiciable controversy ripe for judicial determination?
3. Whether or not the matters relating to a [bona fide] public offering by Telecommunication Entities are within the regulatory power or authority of the National Telecommunications Commission (NTC)?
4. Whether or not the petitioner, which is not in a position to make a [bona fide] public offering due to the negative condition of the economy, the negative interest of the investing public in the stock market and the condition of the company, is still bound by the provisions under section 21 of the Telecommunications Law...^[8]

Simply stated, we are asked to resolve: (1) Whether there is an ambiguity in the cited provision of Section 21, Rep. Act No. 7925 which justifies an action for declaratory relief. And, also whether there is a justiciable controversy ripe for judicial determination. (2) If so, is petitioner excused from complying with Section 21 of Rep. Act No. 7925?

Petitioner contends that there is a justiciable controversy ripe for judicial determination as it faces a possible sanction from the NTC for its inability to comply with the mandate of Rep. Act No. 7925. It claims that the present case falls within the exceptions to the general rule of exhaustion of administrative remedies, since there is no administrative review provided by law as the NTC does not have the power to decide the validity of the law and the questions involved are essentially judicial.

Petitioner contends that applying blindly the literal import of Section 21 would lead to absurd and destructive results because the huge amount needed to undertake a public offering could only bring more losses to the corporation in case it fails to