

FIRST DIVISION

[G.R. No. 138295, August 28, 2003]

**PILIPINO TELEPHONE CORPORATION, PETITIONER, VS.
NATIONAL TELECOMMUNICATIONS COMMISSION AND
INTERNATIONAL COMMUNICATIONS CORPORATION,
RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

This petition for review on *certiorari*^[1] seeks to reverse the Joint Decision^[2] of the Court of Appeals in CA-G.R. SP No. 47752^[3] and CA-G.R. SP No. 47972^[4] dated 15 April 1999 denying due course to the petition for *certiorari*^[5] filed by Pilipino Telephone Corporation ("PILTEL") and dismissing the same.

The Facts

On 20 March 1995, the National Telecommunications Commission ("NTC") issued PILTEL a Provisional Authority ("PA") to install, operate and maintain telephone exchanges and public calling offices. The areas covered by PILTEL's PA included Sulu, Zamboanga del Norte, Zamboanga del Sur, Tawi-Tawi, Misamis Occidental, Davao del Sur, South Cotabato, Saranggani and Davao City.

On 21 June 1996, while PILTEL's PA was still valid and subsisting, the International Communications Corporation ("ICC") applied with the NTC for a PA to construct, operate and maintain local exchange services in some of the areas covered by PILTEL's PA. Among the areas included in ICC's application were Misamis Occidental, Zamboanga del Sur, Davao del Sur, South Cotabato and Saranggani.

On 11 November 1996, PILTEL filed its Opposition to ICC's PA application.

On 9 March 1998, the NTC issued an Order ("NTC Order") granting ICC a PA to establish local exchange services in areas that included Misamis Occidental, Zamboanga del Sur, Davao del Sur, South Cotabato and Saranggani.

PILTEL filed a petition for *certiorari* with prayer for the issuance of a temporary restraining order or writ of preliminary injunction with the Court of Appeals on 5 June 1998 to nullify the NTC Order. On 28 July 1998, ICC filed its Comment to PILTEL's Petition, while PILTEL filed its Reply on 28 August 1998.

On 21 September 1998, PILTEL filed an Urgent Motion to Resolve its application for the issuance of a temporary restraining order. PILTEL alleged, among others, that it had yet to receive ICC's Comment despite the lapse of a considerable time from the

Court of Appeals' Resolution requiring ICC to file its Comment.

On 15 April 1999, the Court of Appeals issued a Joint Decision, the dispositive portion of which reads:

WHEREFORE, for finding no grave abuse of discretion, tantamount to lack xxx or excess of jurisdiction, on the part of the National Telecommunications Commission in issuing its challenged Order dated March 9, 1998 in NTC Case No. 96-194 which granted a provisional authority to International Communications Corporation, the two (2) consolidated cases of CA-G.R. SP No. 47752 and CA-G.R. SP No. 47972 are both hereby DENIED DUE COURSE and accordingly DISMISSED.

Costs against the petitioners.

SO ORDERED.^[6]

Hence, this petition.

The Ruling of the Court of Appeals

In its petition for certiorari, PILTEL claimed that the NTC acted with grave abuse of discretion amounting to lack of jurisdiction in granting ICC a PA to operate local exchange service in areas previously assigned to PILTEL. PILTEL alleged that the NTC Order violates Department of Transportation and Communications Circular No. 91-260, Executive Order No. 109 and NTC Memorandum Circular No. 11-9-93. PILTEL also claimed that the NTC Order is tantamount to an unwarranted taking of property without due process of law and violates the equal protection clause of the Constitution. Lastly, PILTEL alleged that the implementation of the NTC Order would foster ruinous competition.

In denying due course to the petition for certiorari, the Court of Appeals gave the following reasons:

First. Petitioner has not sufficiently shown us that other than this special civil action under Rule 65, they have no plain, speedy, and adequate remedy in the ordinary course of law against their perceived grievance. xxx

Second. Assuming *arguendo* that the propriety of the present recourse is not infirm, it is settled, however, that before certiorari may be availed of, petitioner must have filed a motion for reconsideration of the order or act complained of to enable the tribunal, board or office concerned to pass upon and correct its mistakes without the intervention of the higher courts. xxx

Third. Further assuming *arguendo* that certiorari [was] the proper remedy, petitioner still failed to show that the order complained of was tainted with grave abuse of discretion, so much so that after a careful deliberation of the arguments and grounds in support thereof, it undoubtedly appears that the disputed order was issued based on meritorious grounds.^[7]

The Issues

In assailing the decision of the Court of Appeals, PILTEL contends that:

A. THE PETITIONER PROPERLY AVAILED OF THE REMEDY OF CERTIORARI UNDER RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE CONSIDERING THAT:

1. THERE IS NO APPEAL OR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW AVAILABLE TO PETITIONER.
2. THE ISSUES RAISED BY PETITIONER ARE PURELY OF LAW, HENCE, THE FILING OF A MOTION FOR RECONSIDERATION OF THE QUESTIONED ORDER IS NOT A CONDITION *SINE QUA NON*.

B. THE NATIONAL TELECOMMUNICATIONS COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION CONSIDERING THAT:

1. THE GRANT OF THE PROVISIONAL AUTHORITY TO ICC TO OPERATE LOCAL EXCHANGE SERVICE IN AREAS PREVIOUSLY ASSIGNED TO PILTEL UNDER ITS OWN PROVISIONAL AUTHORITY IS VIOLATIVE OF NTC MEMORANDUM CIRCULAR NO. 11-9-93.
2. THE GRANT OF THE PROVISIONAL AUTHORITY TO ICC TO OPERATE LOCAL EXCHANGE SERVICE IN AREAS PREVIOUSLY ASSIGNED TO PILTEL IS TANTAMOUNT TO CONFISCATION OF PROPERTY WITHOUT DUE PROCESS OF LAW.
3. THE GRANT OF THE PROVISIONAL AUTHORITY TO ICC TO OPERATE LOCAL EXCHANGE SERVICE IN AREAS PREVIOUSLY ASSIGNED TO PILTEL WOULD VIOLATE THE LATTER'S RIGHTS AS A PRIOR OPERATOR AND ITS RIGHT TO BE PROTECTED IN ITS INVESTMENT.^[8]

The Court's Ruling

The petition lacks merit.

Whether PILTEL properly availed of the remedy of certiorari

PILTEL insists that the NTC Order is not a proper subject of an appeal since it is interlocutory which did not resolve ICC's pending application for a Certificate of Public Convenience and Necessity. Even assuming that appeal is an available remedy, PILTEL contends that it is not adequate to relieve promptly PILTEL from the injurious effects^[9] of the NTC Order which was immediately executory under the NTC Rules of Practice and Procedure.^[10] PILTEL also insists that a motion for reconsideration is dispensable since the issues raised in the NTC were the same

issues presented in the Court of Appeals and these are purely questions of law. Thus, PILTEL argues, a motion for reconsideration before the NTC would have served no purpose.^[11]

The settled rule is a motion for reconsideration is a prerequisite for the filing of a petition for *certiorari*.^[12] A petitioner must exhaust all other available remedies before resorting to *certiorari*. An exception to this rule arises if the petitioner raises purely legal issues. However, contrary to PILTEL's view, the issues raised in its petition for certiorari before the Court of Appeals were mainly factual in nature. Since PILTEL disputes NTC's factual findings and seeks a re-evaluation of the facts and evidence on record, the issues PILTEL raised are not proper subjects for certiorari. Evidentiary matters or matters of fact raised in the NTC are not proper grounds in the proceedings for certiorari before the Court of Appeals.^[13] The sole office of a writ of certiorari is the correction of errors of jurisdiction and does not include a review of the NTC's evaluation of the evidence and factual findings.^[14]

Even if the NTC Order was immediately executory, it did not excuse PILTEL from filing a motion for reconsideration. Contrary to PILTEL's view, a motion for reconsideration is the plain, speedy and adequate remedy to the adverse NTC Order.^[15] Had PILTEL filed a motion for reconsideration of the NTC Order, the NTC would have had the opportunity to correct the alleged errors.^[16] In addition, PILTEL's failure to file a motion for reconsideration rendered its petition for certiorari dismissible because of failure to exhaust administrative remedies.

In ***Republic v. Express Telecommunication Co., Inc.***,^[17] the Court ruled that Extelcom failed to exhaust available administrative remedies when it filed with the Court of Appeals a petition for *certiorari* and prohibition without a motion for reconsideration, thus:

Clearly, Extelcom violated the rule on exhaustion of administrative remedies when it went directly to the Court of Appeals on a petition for certiorari and prohibition from the Order of the NTC dated May 3, 2000, without first filing a motion for reconsideration. It is well-settled that the filing of a motion for reconsideration is a prerequisite to the filing of a special civil action for certiorari.

xxx

This case does not fall under any of the recognized exceptions to this rule. Although the Order of the NTC dated May 3, 2000 granting provisional authority to Bayantel was immediately executory, it did not preclude the filing of a motion for reconsideration. Under the NTC Rules, a party adversely affected by a decision, order, ruling or resolution may within fifteen (15) days file a motion for reconsideration. ***That the Order of the NTC became immediately executory does not mean that the remedy of filing a motion for reconsideration is foreclosed to the petitioner.*** (Emphasis supplied)

In fine, the Court of Appeals correctly dismissed PILTEL's petition for certiorari for PILTEL's failure to file a motion for reconsideration of the NTC Order.

In ***Benito v. Commission on Elections***,^[18] the Court defined grave abuse of discretion as follows:

Grave abuse of discretion means such ***capricious and whimsical exercise of judgment*** as is equivalent to lack of jurisdiction, or, in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. It is not sufficient that a tribunal, in the exercise of its power, abused its discretion, such abuse must be grave. (Emphasis supplied)

Assuming that PILTEL's petition for certiorari was proper, PILTEL nevertheless miserably failed to show that the NTC gravely abused its discretion amounting to lack or excess of jurisdiction in issuing the NTC Order. The NTC is the regulatory agency of the national government with jurisdiction over all telecommunications entities. ^[19] The law expressly vests in the NTC the power and discretion to grant a provisional permit or authority.^[20] In this case, the NTC did not commit grave abuse of discretion when it issued the questioned Order. The NTC Order explicitly provides for the basis of the issuance of the PA, as follows:

The technical feasibility study submitted and offered in evidence by the applicant contains technical designs which consist of two main components, to wit:

- (a) The rural network component consisting of a number of dispersed switching centers throughout Regions 6, 7, 9, 10, 11 and 12 interconnected by a digital microwave transmission system.
- (b) The transit (Inter-exchange carrier) network consisting of transit switching centers of Manila and Cebu for the interconnection of the ICC LEC Networks with the network of other LEC operators, IGF operators (as well as ICC IGF), CMTS operators and operators of PCO Networks.

Its network design is based on conservative projections and value based engineering assumptions to ensure that an effective and efficient network is provided.

The structure of ICC's LEC has two (2) layer hierarchical network: the transit layer which provides the classic trunk (tool) switching and inter-carrier interconnect functions; and the local exchange carrier.

Applicant will be using Northern Telecom DMS 100/200 and DMS 300 (Toll Exchange) digital switching equipment for its LEC Network/Service in the twenty-two (22) provinces in Visayas and Mindanao areas.

Applicant's proposed LEC project in the Visayas and Mindanao areas will be implemented within [a] three (3) year period with a total number of 250,000 lines as mentioned in the submitted Feasibility Study. The