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THIRD DIVISION

[G.R. No. 127937. July 28, 1999]

NATIONAL TELECOMMUNICATIONS COMMISSION, *petitioner, vs.* **HONORABLE COURT OF APPEALS and PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,** *respondents.*

SYNOPSIS

Sometime in 1988, the National Telecommunications Commission (NTC) served on the Philippine Long Distance Telephone Company (PLDT) assessment notices and demands for payment, among others, the amount of ₱7,495,161.00 as supervision and regulation fee under Section 40(e) of the Public Service Act for 1988, computed at ₱0.50 per ₱100 PLDT outstanding capital stock as of December 31, 1987 which consisted of Serial Preferred Stock and Common Stock. The PLDT protested on the said assessment by claiming that the assessment under Section 40(e) should only have been on the basis of the par values of its outstanding capital stock. However, the NTC denied the said protest. On appeal, the Court of Appeals ruled that the computation for the annual supervision and regulation fees under Section 40 (e) of the Public Service Act, as amended, should be fifty centavos for each one hundred pesos or fraction thereof of the par value of the capital stock subscribed and paid excluding stock dividends, premiums or capital in excess of par. Not contented with the said decision, the NTC filed this petition.

Succinct and clear is the ruling of the Court in the case of *Philippine Long Distance Telephone Company vs. Public Service Commission* (66 SCRA 341), that the basis for computation of the face to be charged by NTC on PLDT, is "*the capital stock subscribed or paid* and not, alternatively, the property and equipment."

The law in point is clear and categorical. There is no room for construction. It simply calls for application. To repeat, the fee in question is based on the capital stock subscribed or paid, nothing less nothing more.

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SYLLABUS

1. **MERCANTILE LAW; PUBLIC SERVICE ACT; SUPERVISION AND REGULATION FEES; BASIS FOR COMPUTATION IS THE CAPITAL STOCK SUBSCRIBED OR PAID.** — Succinct and clear is the ruling of this Court in the case of *Philippine Long Distance Telephone Company vs. Public Service Commission*, 66 SCRA 341, that the basis for computation of the fee to be charged by NTC on PLDT, is "*the capital stock subscribed or paid* and not, alternatively, the property and equipment."The law in point is clear and categorical. There is no room for construction. It simply calls for application. To repeat, the fee in question is based on the capital stock subscribed or paid, nothing less nothing more.

2. **ID.; ID.; ID.; A LEGISLATIVE IMPOSITION.** — It bears stressing that it is not the NTC that imposed such a fee. It is the legislature itself. Since Congress has the power to exercise the State inherent powers of Police Power, Eminent Domain and Taxation, the distinction between police power and the power to tax, which could be significant if the exercising authority were mere political subdivisions (since delegation by it to such political subdivisions of one power does not necessarily include the other), would not be of any moment when, as in the case under consideration, Congress itself exercises the power. All that is to be done would be to apply and enforce the law when sufficiently definitive and not constitutionally infirm.

3. **ID.; CORPORATION LAW; CAPITAL; DEFINED.** — The term "capital" and other terms used to describe the capital structure of a corporation are of universal acceptance, and their usages have long been established in jurisprudence. Briefly, capital refers to the value of the property or assets of a corporation.

4. **ID.; ID.; CAPITAL SUBSCRIBED; ELUCIDATED.** — The capital subscribed is the total amount of the capital that persons (subscribers or shareholders) have agreed to take and pay for, which need not necessarily be, and can be more than, the par value of the shares. In fine, it is the amount that the corporation receives, inclusive of the premiums if any, in consideration of the original issuance of the shares. In the case of stock dividends, it is the amount that the corporation transfers from its surplus profit account to its capital account. It is the same amount that can loosely be termed as the "trust fund" of the corporation.

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5. ID.; ID.; TRUST FUND DOCTRINE; ELUCIDATED. — The "Trust Fund" doctrine considers this subscribed capital as a trust fund for the payment of the debts of the corporation, to which the creditors may look for satisfaction. Until the liquidation of the corporation, no part of the subscribed capital may be returned or released to the stockholder (except in the redemption of redeemable shares) without violating this principle. Thus, dividends must never impair the subscribed capital; subscription commitments cannot be condoned or remitted; nor can the corporation buy its own shares using the subscribed capital as the consideration therefor.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Alampay Gatchalian Mawis Carranza & Alampay for private respondent.

D E C I S I O N

PURISIMA, *J.*:

At bar is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court seeking to modify the October 30, 1996 *Decision*[1] and the January 27, 1997 *Resolution*[2] of the Court of Appeals[3] in CA-G.R. SP No. 34063.

The antecedent facts that matter can be culled as follows:

Sometime in 1988, the National Telecommunications Commission (*NTC*) served on the Philippine Long Distance Telephone Company (*PLDT*) the following assessment notices and demands for payment:

"1. the amount of ₱7,495,161.00 as supervision and regulation fee under Section 40 (e) of the PSA for the said year, 1988, computed

[1] *Rollo*, pp. 30-52.

[2] *Rollo*, pp. 54-55.

[3] Special Thirteenth Division composed of Justices F.A. Martin, Jr., (*Chairman*); Ma. Alicia Austria-Martinez (*Member*); and Ruben T. Reyes (*Ponente*).

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at ₱0.50 per ₱100.00 of the Protestant's (PLDT) outstanding capital stock as at December 31, 1987 which then consisted of Serial Preferred Stock amounting to ₱1,277,934,390.00 (Billion) and Common Stock of ₱221,097,785 (Million) or a total of ₱1,499,032,175.00 (Billion).

2. the amount of ₱9.0 Million as permit fee under Section 40 (f) of the PSA for the approval of the protestant's increase of its authorized capital stock from ₱2.7 Billion to ₱4.5 Billion; and

3. the amounts of ₱12,261,600.00 and ₱33,472,030.00 as permit fees under Section 40 (g) of the PSA in connection with the Commission's decisions in NTC Cases Nos. 86-13 and 87-008 respectively, approving the Protestant's equity participation in the Fiber Optic Interpacific Cable systems and X-5 Service Improvement and Expansion Program."[4]

In its two letter-protests[5] dated February 23, 1988 and July 14, 1988, and position papers[6] dated November 8, 1990 and March 12, 1991, respectively, the PLDT challenged the aforesaid assessments, theorizing *inter alia* that:

"(a) The assessments were being made *to raise revenues* and not as mere reimbursements for actual regulatory expenses in violation of the doctrine in *PLDT vs. PSC*, 66 SCRA 341 [1975];

(b) The assessment under Section 40 (e) should only have been on the basis of the *par values* of private respondent's outstanding capital stock;

(c) Petitioner has no authority to compel private respondent's payment of the assessed fees under Section 40 (f) for the increase of its authorized capital stock since petitioner did not render any supervisory or regulatory activity and incurred no expenses in relation thereto.

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[4] Petition, p. 3; *Rollo*, p. 11.

[5] Annexes "G" and "H", Petition; *Rollo*, pp. 59-71.

[6] Annexes "I" and "J", Petition, *Rollo*, pp. 72; 92-93.

[7] Petition , p. 5; *Rollo*, p. 13.

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On September 29, 1993, the NTC rendered a Decision[8] in NTC Case No. 90-223, denying the protest of PLDT and disposing thus:

"FOR ALL THE FOREGOING, finding PLDT's protest to be without merit, the Commission has no alternative but to uphold the law and DENIES the protest of PLDT. Unless otherwise restrained by a competent court of law, the Common Carrier Authorization Department (CCAD) is hereby directed to update its assessments and collections on PLDT and all public telecommunications carriers for the payment of the fees in accordance with the provisions of Section 40 (e) (f) and (g) of the Revised NTC Schedule of Fees and Charges.

This decision takes effect immediately.

SO ORDERED."

On October 22, 1993, PLDT interposed a *Motion* for *Reconsideration*,[9] which was denied by NTC in an *Order*[10] issued on May 3, 1994.

On May 12, 1994, PLDT appealed the aforesaid Decision to the Court of Appeals, which came out with its questioned Decision of October 30, 1996, modifying the disposition of NTC as follows:

"WHEREFORE, the assailed decision and order of the respondent Commission dated September 29, 1993 and May 03, 1994, respectively, in NTC Case No. 90-223 are hereby MODIFIED. The Commission is ordered to recompute its assessments and demands for payment from petitioner PLDT as follows:

A. For annual supervision and regulation fees (SRF) under Section 40 (e) of the Public Service Act, as amended, they should be computed at fifty centavos for each one hundred pesos or fraction thereof of the par value of the capital stock subscribed or paid excluding stock dividends, premiums or capital in excess of par.

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[8] Annex "K", Petition; *Rollo*, pp. 94-106.

[9] Annex " M", Petition; *Rollo*, pp. 120-125.

[10] NTC's Order, "Annex" N", Petition; *Rollo*, pp. 126-136.

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B. For permit fees for the approval of petitioner's increase of authorized capital stock under Section 40 (f) of the same Act, they should be computed at fifty for each one hundred pesos or fraction thereof, regardless of any regulatory service or expense incurred by respondent."

On November 20, 1996, NTC moved for partial reconsideration of the abovementioned Decision, with respect to the basis of the assessment under Section 40(e), *i.e.,* par value of the subscribed capital stock. It also sought a partial reconsideration of the fee of fifty (₱0.50) centavos for the issuance or increasing of the capital stock under Section 40 (f).[11]

With the denial of its motions for reconsideration by the Resolution of the Court of Appeals dated January 27, 1997, petitioner found its way to this Court via the present Petition; posing as sole issue:

WHETHER THE COURT OF APPEALS ERRED IN HOLDING THAT THE COMPUTATION OF SUPERVISION AND REGULATION FEES UNDER SECTION 40 (F) OF THE PUBLIC SERVICE ACT SHOULD BE BASED ON THE PAR VALUE OF THE SUBSCRIBED CAPITAL STOCK.

Simply put, the submission of NTC is that the fee under Section 40 (e) should be based on the *market value* of PLDT's outstanding capital stock inclusive of stock dividends and premium, and not on the *par value* of PLDT's capital stock *excluding* stock dividends and premium, as contended by PLDT.

Succinct and clear is the ruling of this Court in the case of *Philippine Long Distance Telephone Company vs. Public Service Commission*, 66 SCRA 341, that the basis for computation of the fee to be charged by NTC on PLDT, is "*the capital stock subscribed or paid* and not, alternatively, the property and equipment."

The law in point is clear and categorical. There is no room for construction. It simply calls for application. To repeat, the

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[11] See: "V", Petition; *Rollo*, pp. 231-236.

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fee in question is based on the capital stock subscribed or paid, nothing less nothing more.

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The term "capital" and other terms used to describe the capital structure of a corporation are of universal acceptance, and their usages have long been established in jurisprudence. Briefly, capital refers to the value of the property or assets of a corporation. The capital subscribed is the total amount of the capital that persons (subscribers or shareholders) have agreed to take and pay for, which need not necessarily be, and can be more than, the par value of the shares. In fine, it is the amount that the corporation receives, inclusive of the premiums if any, in consideration of the original issuance of the shares. In the case of stock dividends, it is the amount that the corporation transfers from its surplus profit account to its capital account. It is the same amount that can loosely be termed as the "trust fund" of the corporation. The "Trust Fund" doctrine considers this subscribed capital as a trust fund for the payment of the debts of the corporation, to which the creditors may look for satisfaction. Until the liquidation of the corporation, no part of the subscribed capital may be returned or released to the stockholder (except in the redemption of redeemable shares) without violating this principle. Thus, dividends must never impair the subscribed capital; subscription commitments cannot be condoned or remitted; nor can the corporation buy its own shares using the subscribed capital as the consideration therefor.[12]

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[12] See Sec. 122, Corporation Code.

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In the same way that the Court in *PLDT vs. PSC* has rejected the "value of the property and equipment" as being the proper basis for the fee imposed by Section 40(e) of the Public Service Act, as amended by Republic Act No. 3792, so also must the Court disallow the idea of computing the fee on "the par value of [PLDT's] capital stock subscribed or paid excluding stock dividends, premiums, or capital in excess of par." Neither, however, is the assessment made by the National Telecommunications Commission on the basis of the *market value* of the subscribed or paid-in capital stock acceptable since it is itself a deviation from the explicit language of the law.

From the pleadings on hand, it can be gleaned that the assessment for supervision and regulation fee under Section 40(e) made by NTC for 1988, computed at ₱0.50 per 100 of PLDT's *outstanding capital stock* as of December 31, 1987, amounted to ₱7,495,161.00. The same was based on the amount of ₱1,277,934,390.00 of serial preferred stocks and ₱221,097,785.00 of common stocks or a total of ₱1,499,032,175.00. The assessment was reported to include stock dividends, premium on issued common shares and premium on preferred shares converted into common stock.[13] The actual capital paid or the amount of capital stock paid and for which PLDT received actual payments were not disclosed or extant in the records before the Court. The only other item available is the amount assessed by petitioner from PLDT, which had been based on market value of the outstanding capital stock on given dates.[14]

All things studiedly considered, and mindful of the aforesaid ruling of this Court in the case of *Philippine Long Distance Telephone Company vs. Public Service Commission*, it should be reiterated that the proper basis for the computation of subject fee under Section 40(e) of the Public Service Act, as amended by Republic Act No. 3792, is "*the capital stock subscribed or paid and not, alternatively, the property and equipment.*"

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[13] *Rollo*, p. 158.

[14] *Rollo*, pp. 108-109; pp. 139-140.

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WHEREFORE, the decision of the Court of Appeals, dated October 30, 1996, and its Resolution, dated January 27, 1997, in CA G.R. SP No. 34063, as well as the decision of the National Telecommunication Commission, dated September 29, 1993, and Order, dated May 3, 1994, in NTC case No. 90-223, are hereby *SET ASIDE* and the National Telecommunication Commission is hereby ordered to make a re-computation of the fee to be imposed on Philippine Long Distance Telephone Company on the basis of the latter's capital stock subscribed or paid and strictly in accordance with the foregoing disquisition and conclusion.

No pronouncement as to costs.

SO ORDERED.

Romero (Chairman), Vitug, and *Gonzaga-Reyes, JJ.,* concur.

Panganiban, J., no part. Former counsel of a party.

EN BANC

[G.R. No. 129051. July 28, 1999]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROMEO MOLINA *y* FLORES,** *accused-appellant.*

SYNOPSIS

Accused-appellant was convicted of the crime of murder by the Regional Trial Court of Urdaneta, Pangasinan and was meted the supreme penalty of death. Before the Supreme Court on automatic review, the high tribunal affirmed the judgment of the trial court finding accused-appellant guilty of murder with the modification that the penalty be reduced from death to