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FIRST DIVISION

[G.R. No. 86738. November 13, 1991]

NESTLE PHILIPPINES, INC., *petitioner, vs.* **COURT OF APPEALS and SECURITIES AND EXCHANGE COMMISSION,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; REVISED SECURITIES ACT; PHRASES "ISSUANCE OF ADDITIONAL CAPITAL STOCK" AND "INCREASED CAPITAL STOCK," CONSTRUED. — Examining the words actually used in Section 6(a)(4) of the Revised Securities Act, and bearing in mind common corporate usage in this jurisdiction, it will be seen that the statutory phrase "issuance of additional capital stock" is indeed infected with a certain degree of ambiguity. This phrase may refer either to: a) the issuance of capital stock as part of and in the course of increasing the authorized capital stock of a corporation; or (b) issuance of already authorized but still unissued capital stock. By the same token, the phrase "increased capital stock" found at the end of Section 6(a)(4), may refer either: 1) to newly or contemporaneously authorized capital stock issued in the course of increasing the authorized capital stock of a corporation; or 2) to previously authorized but unissued capital stock. Both the SEC and the Court of Appeals resolved the ambiguity by construing Section 6(a)(4) as referring only to the issuance of shares of stock as part of and in the course of increasing the authorized capital stock of Nestle. In the case at bar, since the 344,500 shares of Nestle capital stock are proposed to be issued from already authorized but still unissued capital stock and since the present authorized capital stock of 6,000,000 shares with a par value of ₱100.00 per share is not proposed to be further increased, the SEC and the Court of Appeals rejected Nestle's petition. We believe and so hold that the construction thus given by the SEC and the Court of Appeals to Section 6(a)(4) of the Revised Securities Act must be upheld.

2. STATUTORY CONSTRUCTION; CONSTRUCTION GIVEN TO A STATUTE BY AN ADMINISTRATIVE AGENCY

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CHARGED WITH ITS INTERPRETATION AND APPLICATION, ENTITLED TO GREAT RESPECT. — It is a principle too well established to require extensive documentation that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in a sharp conflict with the governing statute or the Constitution and other laws.

3. ID.; ID.; RATIONALE. — The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. In *Asturias Sugar Central, Inc. v. Commissioner of Customs* the Court stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to contemporaneous construction because of the respect due the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are the drafters of the law they interpret.

4. MERCANTILE LAW; REVISED SECURITIES ACT; PURPOSE OF LIMITATION ON THE CLASS OF EXEMPTION TRANSACTION FROM PAYMENT OF FEES TO ISSUANCE OF STOCKS DONE IN THE COURSE OF INCREASING THE AUTHORIZED CAPITAL STOCK. — Consideration of the underlying statutory purpose of Section 6(a)(4) compels us to sustain the view taken by the SEC and the Court of Appeals. The reading by the SEC of the scope of application of Section 6(a)(4) permits greater opportunity for the SEC to implement the statutory objective of protecting the investing public by requiring proposed issuers of capital stock to inform such public of the true financial conditions and prospects of the corporation. By limiting the class of exempt transactions contemplated by the last clause of Section 6(a)(4) to issuances of stock done in the course of and as part of the process of increasing the authorized capital

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stock of a corporation, the SEC is enabled to examine issuances by a corporation of previously authorized but theretofore unissued capital stock, on a case-to-case basis, under Section 6(b); and thereunder, to grant or withhold exemption from the normal registration requirements depending upon the perceived level of need for protection by the investing public in particular cases.

5. ID.; ID.; FEE EQUIVALENT TO ONE-TENTH OF ONE PERCENT OF THE MAXIMUM AGGREGATE PRICE FOR GRANT OF EXEMPTION FROM REGISTRATION, NEITHER UNREASONABLE OR EXORBITANT. — Petitioner Nestle's second claim for exemption is from payment of the fee provided for in Section 6(c) of the Revised Securities Act, a claim based upon petitioner's contention that Section 6(a)(4) covers both issuance of stock in the course of complying with the statutory requirements of increase of authorized capital stock and issuance of previously authorized and unissued capital stock. Petitioner claims that to require it now to pay one-tenth of one percent (1%) of the issued value of the 344,500 shares of stock proposed to be issued, is to require it to pay a second time for the same service on the part of the SEC. Since we have above rejected petitioner's reading of Section 6(a)(4), last clause, petitioner's claim about the additional fee of one-tenth of one percent (1%) of the issue value of the proposed issuance of stock (amounting to ₱34,450 plus ₱344.50 for other fees or a total of ₱37,794.50) need not detain us for long. We think it clear that the fee collected in 21 February 1983 by the SEC was assessed in connection with the examination and approval of the certificate of increase of authorized capital stock then submitted by petitioner. The fee, upon the other hand, provided for in Section 6(c) which petitioner will be required to pay if it does file an application for exemption under Section 6(b), is quite different; this is a fee specifically authorized by the Revised Securities Act, (not the Corporation Code) in connection with the grant of an exemption from normal registration requirements imposed by that Act. We do not find such fee either unreasonable or exorbitant.

APPEARANCES OF COUNSEL

Nepomuceno, Hofilena & Guingona for petitioner.

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D E C I S I O N

FELICIANO, *J.*:

Sometime in February 1983, the authorized capital stock of petitioner Nestle Philippines Inc. ("Nestle") was increased from ₱300 million divided into 3 million shares with a par value of ₱100.00 per share, to ₱600 million divided into 6 million shares with a par value of ₱100.00 per share. Nestle underwent the necessary procedures involving Board and stockholders approvals and effected the necessary filings to secure the approval of the increase of authorized capital stock by respondent Securities and Exchange Commission ("SEC"), which approval was in fact granted. Nestle also paid to the SEC the amount of ₱50,000.00 as filing fee in accordance with the Schedule of Fees and Charges being implemented by the SEC under the Corporation Code.[1]

Nestle has only two (2) principal stockholders: San Miguel Corporation and Nestle S.A. The other stockholders, who are individual natural persons, own only one (1) share each, for qualifying purposes, *i.e.*, to qualify them as members of the Board of Directors being elected thereto on the strength of the votes of one or the other principal shareholder.

On 16 December 1983, the Board of Directors and stockholders of Nestle approved resolutions authorizing the issuance of 344,500 shares out of the previously authorized but unissued capital stock of Nestle, exclusively to San Miguel Corporation and to Nestle S.A. San Miguel Corporation subscribed to and completely paid up 168,800 shares, while Nestle S.A. subscribed to and paid up the balance of 175,700 shares of stock.

On 28 March 1985, petitioner Nestle filed a letter signed by its Corporate Secretary, M.L. Antonio, with the SEC seeking exemption of its proposed issuance of additional shares to its existing principal shareholders, from the registration requirement of Section 4 of the Revised Securities Act and from payment

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[1] Section 139.

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of the fee referred to in Section 6(c) of the same Act. In that letter, Nestle requested confirmation of the correctness of two (2) propositions submitted by it:

"1. That there is no need to file a petition for exemption under Section 6(b) of the Revised Securities Act with respect to the issuance of the said 344,500 additional shares to our existing stockholders out of our unissued capital stock; and

2. That the fee provided in Section 6(c) of [the Revised Securities] Act is not applicable to the said issuance of additional shares."[2]

The principal, indeed the only, argument presented by Nestle was that Section 6(a) (4) of the Revised Securities Act which provides as follows:

SECTION 6. *Exempt transactions*. — a) *The requirement of registration under subsection (a) of Section four of this Act shall not apply to the sale of any security in any of the following transactions*:

x x x x x x xxx

(4) The distribution by a corporation, actively engaged in the business authorized by its articles of incorporation, of securities to its stockholders or other security holders as a stock dividend or other distribution out of surplus; or the issuance of securities to the security holder or other creditors of a corporation in the process of a bona fide reorganization of such corporation made in good faith and not for the purpose of avoiding the provisions of this Act, either in exchange for the securities of such security holders or claims of such creditors or partly for cash and partly in exchange for the securities or claims of such security holders or creditors; *or the issuance of additional capital stock of a corporation sold or distributed by it among its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale or distribution of such increased capital stock*." (Italics supplied)

embraces "not only an increase in the authorized capital stock but also the issuance of additional shares to existing stockholders

[2] Record, pp. 12-13.

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of the unissued portion of the unissued capital stock."[3] Nestle urged that interpretation upon the following argument:

"The use of the term 'increased capital stock' should be interpreted to refer to additional capital stock or equity participation of the existing stockholders as a consequence of either an increase of the authorized capital stock or the issuance of unissued capital stock. If the intention of the pertinent legal provision [were] to limit the exemption to subscription to proposed increases in the authorized capital stock of a corporation, we see no reason why the law should not have been more specific or accurate about it. It certainly should have mentioned 'increase in the authorized capital stock of the corporation' rather than merely the expression 'the issuance of additional capital stock.'[4] (Italics supplied)

Nestle expressly represented in the same letter that all the additional shares proposed to be issued would be issued only to San Miguel Corporation and Nestle S.A. and that no commission or other form of remuneration had been given, directly or indirectly, in connection with the issuance or distribution of such additional shares of stock.

In respect of its claimed exemption from the fee provided for in Section 6(c) of the Revised Securities Act, Nestle contended that since Section 6 (a) (4) of the statute declares (in Nestle's view) the proposed issuance of 344,500 previously authorized but unissued shares of Nestle's capital stock to its existing shareholders as an exempt transaction, the SEC could not collect fees for "the same transaction" twice. Nestle adverted to its payment back in 21 February 1983 of the amount of ₱50,000.00 as filing fees to the SEC when it applied for and eventually received approval of the increase of its authorized capital stock effected by Board and shareholder action last 16 December 1983.

In a letter dated 26 June 1986, the SEC through its then Chairman Julio A. Sulit, Jr. responded adversely to petitioner's

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[3] *Id.*, p. 11.

[4] *Id.*

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requests and ruled that the proposed issuance of shares did not fall under Section 6 (a) (4) of the Revised Securities Act, since Section 6 (a) (4) is applicable only where there is an increase in the authorized capital stock of a corporation. Chairman Sulit held, however, that the proposed transaction could be considered by the Commission under the provisions of Section 6 (b) of the Revised Securities Act which reads as follows:

"(b) The Commission may, from time to time and subject to such terms and conditions as it may prescribe, exempt transactions other than those provided in the preceding paragraph, if it finds that the enforcement of the requirements of registration under this Act with respect to such transactions is not necessary in the public interest and for the protection of the investors by reason of the small amount involved or the limited character of the public offering."

The Commission then advised petitioner to file the appropriate request for exemption and to pay the fee required under Section 6 (c) of the statute, which provides:

"(c) A fee equivalent to one-tenth of one per centum of the maximum aggregate price or issued value of the securities shall be collected by the Commission for granting a general or particular exemption from the registration requirements of this Act."

Petitioner moved for reconsideration of the SEC ruling, without success.

On 3 July 1987, petitioner sought review of the SEC ruling before this Court which, however, referred the petition to the Court of Appeals.

In a decision dated 13 January 1989, the Court of Appeals sustained the ruling of the SEC.

Dissatisfied with the Decision of the Court of Appeals, Nestle is now before this Court on a Petition for Review, raising the very same issues that it had raised before the SEC and the Court of Appeals.

Examining the words actually used in Section 6 (a) (4) of the Revised Securities Act, and bearing in mind common corporate

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usage in this jurisdiction, it will be seen that the statutory phrase "issuance of additional capital stock" is indeed infected with a certain degree of ambiguity. This phrase may refer either to: a) the issuance of capital stock as part of and in the course of increasing the authorized capital stock of a corporation; or (b) issuance of already authorized but still unissued capital stock. By the same token, the phrase "increased capital stock" found at the end of Section 6 (a) (4), may refer either: 1) to newly or contemporaneously authorized capital stock issued in the course of increasing the authorized capital stock of a corporation; or 2) to previously authorized but unissued capital stock.

Under Section 38 of the Corporation Code, a corporation engaged in increasing its authorized capital stock, with the required vote of its Board of Directors and of its stockholders, must file a sworn statement of the treasurer of the corporation showing that at least twenty-five percent (25%) of "such increased capital stock" has been subscribed and that at least twenty-five percent (25%) of the amount subscribed has been paid either in actual cash or in property transferred to the corporation. In other words, the corporation must issue at least twenty-five percent (25%) of the newly or contemporaneously authorized capital stock in the course of complying with the requirements of the Corporation Code for increasing its authorized capital stock.

In contrast, after approval by the SEC of the increase of its authorized capital stock, and from time to time thereafter, the corporation, by a vote of its Board of Directors, and without need of either stockholder or SEC approval, may issue and sell shares of its already authorized but still unissued capital stock to existing shareholders or to members of the general public.[5]

Both the SEC and the Court of Appeals resolved the ambiguity by construing Section 6 (a) (4) as referring *only* to the issuance of shares of stock as part of and in the course of increasing

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[5] See *e.g.*, SEC Ruling dated 4 November 1968 addressed to Maremco Mineral Corporation; *Securities and Exchange Commission Folio*, p. 354 (1960-1976).

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the authorized capital stock of Nestle. In the case at bar, since the 344,500 shares of Nestle capital stock are proposed to be issued from already authorized but still unissued capital stock and since the present authorized capital stock of 6,000,000 shares with a par value of ₱100.00 per share is *not* proposed to be further increased, the SEC and the Court of Appeals rejected Nestle's petition.

We believe and so hold that the construction thus given by the SEC and the Court of Appeals to Section 6 (a) (4) of the Revised Securities Act must be upheld.

In the first place, it is a principle too well established to require extensive documentation that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the governing statute or the Constitution and other laws. As long ago as 1903, this Court said in *In re Allen*[6] that

> "[t]he principle that the contemporaneous construction of a statute by the executive officers of the government, whose duty is to execute it, is entitled to great respect, and should ordinarily control the construction of the statute by the courts, is so firmly embedded in our jurisdiction that no authorities need be cited to support it."[7]

The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute.[8] In *Asturias Sugar Central, Inc. v.*

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[6] 2 Phil. 630 (1903).

[7] 2 Phil. at 640.

[8] *E.g., Abejo, et al. v. Hon. Rafael dela Cruz, etc., et al.,* 149 SCRA 654, 669-670 (1987).

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Commissioner of Customs[9] the Court stressed that executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon. The courts give much weight to contemporaneous construction because of the respect due the government agency or officials charged with the implementation of the law, their competence, expertness, experience and informed judgment, and the fact that they frequently are the drafters of the law they interpret.[10]

In the second place, and more importantly, consideration of the underlying statutory purpose of Section 6(a) (4) compels us to sustain the view taken by the SEC and the Court of Appeals. The reading by the SEC of the scope of application of Section 6(a) (4) permits greater opportunity for the SEC to implement the statutory objective of protecting the investing public by requiring proposed issuers of capital stock to inform such public of the true financial conditions and prospects of the corporation. By limiting the class of exempt transactions contemplated by the last clause of Section 6(a) (4) to issuances of stock done in the course of and as part of the process of increasing the authorized capital stock of a corporation, the SEC is enabled to examine issuances by a corporation of previously authorized but theretofore unissued capital stock, on a case-to-case basis, under Section 6(b); and thereunder, to grant or withhold exemption from the normal registration requirements depending upon the perceived level of need for protection by the investing public in particular cases.

When capital stock is issued in the course of and in compliance with the requirements of increasing its authorized capital stock under Section 38 of the Corporation Code, the SEC as a matter of course examines the financial condition of the corporation,

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[9] 29 SCRA 617 (1969).

[10] *Id.* See also *Ramos v. Court of Industrial Relations*, 21 SCRA 1282 (1967); *Cagayan Valley Enterprises v. Court of Appeals*, 179 SCRA 218 (1989); *Santiago v. Deputy Executive Secretary*, 192 SCRA 199 (1990).

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and hence there is no real need for exercise of SEC authority under the Revised Securities Act. Thus, one of the multiple documentation requirements under the current regulations of the SEC in respect of filing a certificate of increase of authorized capital stock, is submission of "a *financial statement duly certified by an independent Certified Public Accountant* (CPA) *as of the latest date possible or as of the date of the meeting when stockholders approved the increase/decrease in capital stock* or thereabouts."[11] When all or part of the newly authorized capital stock is proposed to be issued as stock dividends, the SEC requirements are even more exacting; they require, in addition to the regular audited financial statements, the submission by the corporation of a "detailed or Long Form Report of the certifying Auditor." Moreover, since approval of an increase in authorized capital stock by the stockholders holding two-thirds (2/3) of the outstanding capital stock is required by Section 38 of the Corporation Code, at a stockholders' meeting held for that purpose, the directors and officers of the corporation may be expected to take pains to inform the shareholders of the financial condition and prospects of the corporation and of the proposed utilization of the fresh capital sought to be raised.

Upon the other hand, as already noted, issuance of previously authorized but theretofore unissued capital stock by the corporation requires only Board of Directors approval. Neither notice to nor approval by the shareholders or the SEC is required for such issuance. There would, accordingly, under the view taken by petitioner Nestle, no opportunity for the SEC to see to it that shareholders (especially the small stockholders) have a reasonable opportunity to inform themselves about the very fact of such issuance and about the condition of the corporation and the potential value of the shares of stock being offered.

Under the reading urged by petitioner Nestle of the reach and scope of the third clause of Section 6(a) (4), the issuance of previously authorized but unissued capital stock would

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[11] SEC, "Basic Requirements for filing certificate of increase/decrease of authorized capital stock."

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automatically constitute an exempt transaction, *without regard* to the length of time which may have intervened between the last increase in authorized capital stock and the proposed issuance during which time the condition of the corporation may have substantially changed, and *without regard* to whether the existing stockholders to whom the shares are proposed to be issued are only two giant corporations as in the instant case, or are individuals numbering in the hundreds or thousands.

In contrast, under the ruling issued by the SEC, an issuance of previously authorized but still unissued capital stock may, in a particular instance, be held to be an exempt transaction by the SEC under Section 6(b) so long as the SEC finds that the requirements of registration under the Revised Securities Act are "not necessary in the public interest and for the protection of the investors" by reason, *inter alia*, of the small amount of stock that is proposed to be issued or because the potential buyers are very limited in number and are in a position to protect themselves. In fine, petitioner Nestle's proposed construction of Section 6(a) (4) would establish an inflexible rule of automatic exemption of issuances of additional, previously authorized but unissued, capital stock. We must reject an interpretation which may disable the SEC from rendering protection to investors, in the public interest, precisely when such protection may be most needed.

Petitioner Nestle's second claim for exemption is from payment of the fee provided for in Section 6 (c) of the Revised Securities Act, a claim based upon petitioner's contention that Section 6 (a) (4) covers *both* issuance of stock in the course of complying with the statutory requirements of increase of authorized capital stock and issuance of previously authorized and unissued capital stock. Petitioner claims that to require it now to pay one-tenth of one percent (1%) of the issued value of the 344,500 shares of stock proposed to be issued, is to require it to pay a second time for the same service on the part of the SEC. Since we have above rejected petitioner's reading of Section 6 (a) (4), last clause, petitioner's claim about the additional fee of one-tenth of one percent (1%) of the issue value of the proposed

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issuance of stock (amounting to ₱34,450 plus ₱344.50 for other fees or a total of ₱37,794.50) need not detain us for long. We think it clear that the fee collected in 21 February 1983 by the SEC was assessed in connection with the examination and approval of the certificate of increase of authorized capital stock then submitted by petitioner. The fee, upon the other hand, provided for in Section 6 (c) which petitioner will be required to pay if it does file an application for exemption under Section 6 (b), is quite different; this is a fee specifically authorized by the Revised Securities Act, (not the Corporation Code) in connection with the grant of an exemption from normal registration requirements imposed by that Act. We do not find such fee either unreasonable or exorbitant.

WHEREFORE, for all the foregoing, the Petition for Review on *Certiorari* is hereby *DENIED* for lack of merit and the Decision of the Court of Appeals dated 13 January 1989 in C.A.-G.R. No. SP-13522, is hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Narvasa (Chairman), Cruz, Griño-Aquino, and *Medialdea, JJ.,* concur.

EN BANC

[G.R. No. 92541. November 13, 1991]

MA. CARMEN G. AQUINO-SARMIENTO, *petitioner, vs.* **MANUEL L. MORATO (in his capacity as Chairman of the MTCRB) and the MOVIE & TELEVISION REVIEW AND CLASSIFICATION BOARD,** *respondents.*