SECOND DIVISION

[G.R. No. 152685. December 4, 2007]

PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, *petitioner, vs.* **NATIONAL TELECOMMUNICATIONS COMMISSION, JOSEPH A. SANTIAGO, in his capacity as NTC Commissioner, and EDGARDO CABARRIOS, in his capacity as Chief, CCAD,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; THE TERM "CAPITAL," EXPLAINED.— Crucial in point is our disquisition in G.R. No. 127937 entitled *National Telecommunications Commission v. Honorable Court of Appeals*, which we quote: "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 by, 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 be loosely 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 considerations therefore." Two concepts can be gleaned from the above. First,

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what constitutes capital stock that is subject to the SRF. Second, such capital stock is equated to the "trust fund" of a corporation held in trust as security for satisfaction to creditors in case of corporate liquidation.

2. ID.; ID.; ID.; DIVIDENDS; VALUED AT THE AMOUNT OF THE DECLARED DIVIDEND TAKEN FROM THE UNRESTRICTED RETAINED EARNINGS OF A CORPORATION; STOCK DIVIDENDS, ELUCIDATED.— Dividends, regardless of the form these are declared, that is, cash, property or stocks, are valued at the amount of the declared dividend taken from the unrestricted retained earnings of a corporation. Thus, the value of the declaration in the case of a stock dividend is the actual value of the original issuance of said stocks. In G.R. No. 127937 we said that "in the case of stock dividends, it is the amount that the corporation transfers from its surplus profit account to its capital account" or "it is the amount that the corporation receives in consideration of the original issuance of the shares." It is "the distribution of current or accumulated earnings to the shareholders of a corporation pro rata based on the number of shares owned." Such distribution in whatever form is valued at the declared amount or monetary equivalent. Thus, it cannot be said that no consideration is involved in the issuance of stock dividends. In fact, the declaration of stock dividends is akin to a forced purchase of stocks. By declaring stock dividends, a corporation ploughs back a portion or its entire unrestricted retained earnings either to its working capital or for capital asset acquisition or investments. It is simplistic to say that the corporation did not receive any actual payment for these. When the dividend is distributed, it ceases to be a property of the corporation as the entire or portion of its unrestricted retained earnings is distributed pro rata to corporate shareholders. When stock dividends are distributed, the amount declared ceases to belong to the corporation but is distributed among the shareholders. Consequently, the unrestricted retained earnings of the corporation are diminished by the amount of the declared dividend while the stockholders' equity is increased. Furthermore, the actual payment is the cash value from the unrestricted retained earnings that each shareholder foregoes for additional stocks/shares which he would otherwise receive as required by the Corporation Code to be given to the

stockholders subject to the availability and conditioned on a certain level of retained earnings. Elsewise put, where the unrestricted retained earnings of a corporation are more than 100% of the paid-in capital stock, the corporate Board of Directors is mandated to declare dividends which the shareholders will receive in cash unless otherwise declared as property or stock dividends, which in the latter case the stockholders are forced to forego cash in lieu of property or stocks. In essence, therefore, the stockholders by receiving stock dividends are forced to exchange the monetary value of their dividend for capital stock, and the monetary value they forego is considered the actual payment for the original issuance of the stocks given as dividends. Therefore, stock dividends acquired by shareholders for the monetary value they forego are under the coverage of the SRF and the basis for the latter is such monetary value as declared by the board of directors.

3. ID.; PUBLIC SERVICE ACT, AS AMENDED; PUBLIC TELECOMMUNICATIONS COMPANIES; SUPERVISION AND REGULATION FEES; BASIS OF ASSESSMENT IN CASE AT BAR.— We are not unaware that in accounting practice, the journal entries for transactions are recorded in historical value or cost. Thus, the purchase of properties or assets is recorded at acquisition cost. The same is true with liabilities and equity transactions where the actual loan and the amount paid for the subscription are recorded at the actual payment, including the premiums paid for the subscription of capital stock. Moreover, it is common practice that the values of the accounts recorded at historical value or cost are not increased or decreased due to market forces. In the case of properties, the appreciation in values is generally not recorded as income nor the increase in the corresponding asset because the increase or decrease is not yet realized until the property is actually sold. The same is true with the capital account. The market value may be much higher than the actual payment of the par value and premium of capital stock. Still, the books of account will not reflect such increase; and vice-versa, any decrease of the value of stocks is likewise not reflected in the books of account. Thus, given the general practice that book entries of the premiums and subscriptions for capital stock are the actual value for the original issuance of stocks, then the NTC was correct to follow the schedule of capital

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stocks submitted by PLDT. Moreover, the "Trust Fund" doctrine, the second concept this Court elucidated in G.R. No. 127937 xxx bolsters the correctness of the assessments made by the NTC. As a fund in trust for creditors in case of liquidation, the actual value of the subscriptions and the value of stock dividends distributed may not be decreased or increased by the fluctuating market value of the stocks. Thus, absent any showing by PLDT of the actual payment it received for the original issuance of its capital stock, the assessments made by the NTC, based on the schedule of outstanding capital stock of PLDT recorded at historical value payments made, is deemed correct. Anent stock dividends, the value transferred from the unrestricted retained earnings of PLDT to the capital stock account pursuant to the issuance of stock dividends is the proper basis for the assessment of the SRF, which the NTC correctly assessed.

APPEARANCES OF COUNSEL

Alampay Gatchalian Mawis & Alampay for petitioner.
The Solicitor General for respondents.

R E S O L U T I O N

VELASCO, JR., *J.*:

Before us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court. It assails the February 12, 2001 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 61033, which dismissed petitioner's special civil action for *certiorari* and prohibition, and the March 21, 2002 Resolution[3]

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[1] *Rollo,* pp. 11-43.

[2] *Id*. at 44-56. Penned by Associate Justice Salvador J. Valdez, Jr. and concurred in by Presiding Justice Salome A. Montoya (Chairperson) and Associate Justice Wenceslao I. Agnir, Jr. of the First Division.

[3] *Id*. at 58-59. Penned by the Associate Justice Salvador J. Valdez, Jr. and concurred in by Associate Justices Eubolo G. Verzola, Roberto A. Barrios, and Perlita J. Tria Tirona; with Associate Justice Wenceslao I. Agnir, Jr., dissenting; *id*. at 60-67.

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of the CA denying petitioner's motion for reconsideration. The petition raises the sole issue on whether the appellate court erred in holding that the assessments of the National Telecommunications Commission (NTC) were contrary to our Decision in G.R. No. 127937 entitled *NTC v. Honorable Court of Appeals*.[4]

This case pertains to Section 40 (e)[5] of the Public Service Act[6] (PSA), as amended on March 15, 1984, pursuant to Batas Pambansa Blg. 325, which authorized the NTC to collect from public telecommunications companies Supervision and Regulation Fees (SRF) of Php0.50 for every Php100 or a fraction of the capital and stock subscribed or paid for of a stock corporation, partnership or single proprietorship of the capital invested, or of the property and equipment, whichever is higher.

Under Section 40 (e) of the PSA, the NTC sent SRF assessments to petitioner Philippine Long Distance Telephone Company (PLDT) starting sometime in 1988. The SRF

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[4] July 28, 1999, 311 SCRA 508.

[5] Chapter VI, FEES

Section 40. The National Telecommunications Commission is authorized and ordered to charge and collect from any public telecommunication service or applicants, as the case may be, the following fees as re-imbursement of its expenses in the authorization, supervision and/or regulation of public telecommunication services:

(e) For annual reimbursement of the expenses incurred by the National Telecommunications Commission in the supervision of public telecommunication services and/or in the regulation or fixing of their rates, fifty centavos for each one hundred pesos or fraction thereof, of the capital stock subscribed or paid for a stock corporation, partnership or single proprietorship of the capital invested, or of the property and equipment, whichever is higher.

The fees provided in paragraph (e) shall be paid on or before September thirtieth of each year with a penalty of fifty per centum in case of delinquency. Provided, further, that if the fees or any balance thereof are not paid within sixty days from the said date, the penalty shall be increased by one per centum for every month thereafter of delinquency.

[6] Commonwealth Act No. 146, as amended, approved on November 7, 1936.

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assessments were based on the market value of the outstanding capital stock, including stock dividends, of PLDT. PLDT protested the assessments contending that the SRF ought to be based on the par value of its outstanding capital stock. Its protest was denied by the NTC and likewise, its motion for reconsideration.

PLDT appealed before the CA. The CA modified the disposition of the NTC by holding that the SRF should be assessed at par value of the outstanding capital stock of PLDT, excluding stock dividends.

With the denial of the NTC's partial reconsideration of the CA Decision, the issue of the basis for the assessment of the SRF was brought before this Court under G.R. No. 127937 wherein we ruled that the SRF should be based neither on the par value nor the market value of the outstanding capital stock but on the value of the stocks subscribed or paid including the premiums paid therefor, that is, the amount that the corporation receives, inclusive of the premiums if any, in consideration of the original issuance of the shares. We added that in the case of stock dividends, it is the amount that the corporation transfers from its surplus profit account to its capital account, that is, the amount the stock dividends represent is equivalent to the value paid for its original issuance.

PLDT wanted our July 28, 1999 Decision in G.R. No. 127937 clarified. It posited that the SRF should be based on the par value in consonance with our holding in *Philippine Long Distance Telephone Company v. Public Service Commission*,[7] and that the premiums on issued shares should not be included in the valuation of the outstanding capital stock. Through our November 15, 1999 Resolution in G.R. No. 127937, we elucidated that our July 28, 1999 decision was not in conflict with our ruling in *Philippine Long Distance Telephone Company* since we never enunciated in the said case that the phrase "capital stock subscribed or paid" must be determined at par value. We reiterated that the term "capital stock subscribed or paid" is the amount

[7] G.R. No. L-26762, August 29, 1975, 66 SCRA 341.

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that the corporation receives, inclusive of the premiums, if any, in consideration of the original issuance of the shares.

Thereafter, to comply with our disposition in G.R. No. 127937, for the reassessment of the SRF based on the value of the stocks subscribed or paid including the premiums paid for the stocks, if any, the NTC sent the assailed assessments of February 10, 2000[8] and September 5, 2000[9] to PLDT which included the value of stock dividends issued by PLDT. The assailed assessments were based on the schedule of capital stock submitted by PLDT.

PLDT now contends that our disposition in G.R. No. 127937 excluded stock dividends from the SRF coverage, while the NTC asserts the contrary. Also, PLDT questions the assessments for violating our disposition in G.R. No. 127937 since these assessments were identical to the previous assessments from 1988 which were questioned by PLDT in G.R. No. 127937 for being based on the market value of its outstanding capital stock.

PLDT wrote a letter protesting the assailed February 10, 2000 assessment which was not acted upon by the NTC. Instead, the NTC sent a second assailed assessment on September 5, 2000. Thus, in an attempt to clarify and resolve this issue, PLDT filed a Motion for Clarification of Enforcement of the Decision dated 28 July 1999 in G.R. No. 127937 which this Court simply noted for the case had already become final and executory.

Thus, on October 2, 2000, PLDT instituted the special civil action for *certiorari* and prohibition docketed as CA-G.R. SP No. 61033[10] before the CA. To maintain the status quo and to defer the enforcement of the assailed assessments and subsequent assessments, on October 3, 2000, the CA issued a Temporary Restraining Order. On December 4, 2000, a writ of preliminary injunction was granted.

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[8] *Rollo,* pp. 82-83.

[9] *Id.* at 84-85.

[10] *Id.* at 87-107.

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Subsequently, on February 12, 2001, the CA rendered the assailed Decision dismissing the petition. The dispositive portion reads:

> WHEREFORE, the petition is DISMISSED for lack of merit, and the writ of preliminary injunction heretofore issued is DISSOLVED.[11]

PLDT's motion for reconsideration was denied by the CA's Special Division of Five on March 21, 2002.

Hence, the instant petition for review, raising the core issue:

> THE COURT OF APPEALS ERRED IN HOLDING THAT THE DISPUTED NTC ASSESSMENTS WERE NOT CONTRARY TO THE PURISIMA DECISION.[12]

The petition is bereft of merit.

PLDT argues that in our Decision in G.R. No. 127937 we have excluded from the coverage of the SRF the capital stocks issued as stock dividends. Petitioner argues that G.R. No. 127937 clearly delineates between capital subscribed and stock dividends to the effect that the latter are not included in the concept of capital stock subscribed because subscribers or shareholders do not pay for their subscriptions as no amount is received by the corporation in consideration of such issuances since these are effected as mere book entries, that is, the transfer from the retained earnings account to the capital or stock account. To bolster its position, PLDT repeatedly used the phrase "actual payments" received by a corporation as a consideration for issuances of shares which do not apply to stock dividends.

We are not persuaded.

Crucial in point is our disquisition in G.R. No. 127937 entitled *National Telecommunications Commission v. Honorable Court of Appeals*, which we quote:

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[11] *Id.* at 56.

[12] *Id.* at 21.

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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 by, 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 be loosely 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 considerations therefor.[13] (Emphasis supplied.)

Two concepts can be gleaned from the above. First, what constitutes capital stock that is subject to the SRF. Second, such capital stock is equated to the "trust fund" of a corporation held in trust as security for satisfaction to creditors in case of corporate liquidation.

The first asks if stock dividends are part of the outstanding capital stocks of a corporation insofar as it is subject to the SRF. They are. The first issue we have to tackle is, are all the stock dividends that are part of the outstanding capital stock of PLDT subject to the SRF? Yes, they are.

PLDT's contention, that stock dividends are not similarly situated as the subscribed capital stock because the subscribers or shareholders do not pay for their issuances as no amount

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[13] *Supra* note 4, at 514-515.

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was received by the corporation in consideration of such issuances since these are effected as a mere book entry, is erroneous.

Dividends, regardless of the form these are declared, that is, cash, property or stocks, are valued at the amount of the declared dividend taken from the unrestricted retained earnings of a corporation. Thus, the value of the declaration in the case of a stock dividend is the actual value of the original issuance of said stocks. In G.R. No. 127937 we said that "in the case of stock dividends, it is the amount that the corporation transfers from its surplus profit account to its capital account" or "it is the amount that the corporation receives in consideration of the original issuance of the shares." It is "the distribution of current or accumulated earnings to the shareholders of a corporation pro rata based on the number of shares owned."[14] Such distribution in whatever form is valued at the declared amount or monetary equivalent.

Thus, it cannot be said that no consideration is involved in the issuance of stock dividends. In fact, the declaration of stock dividends is akin to a forced purchase of stocks. By declaring stock dividends, a corporation ploughs back a portion or its entire unrestricted retained earnings either to its working capital or for capital asset acquisition or investments. It is simplistic to say that the corporation did not receive any actual payment for these. When the dividend is distributed, it ceases to be a property of the corporation as the entire or portion of its unrestricted retained earnings is distributed pro rata to corporate shareholders.

When stock dividends are distributed, the amount declared ceases to belong to the corporation but is distributed among the shareholders. Consequently, the unrestricted retained earnings of the corporation are diminished by the amount of the declared dividend while the stockholders' equity is increased. Furthermore, the actual payment is the cash value from the unrestricted retained earnings that each shareholder foregoes for additional stocks/ shares which he would otherwise receive as required by the

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[14] BLACK'S *LAW DICTIONARY* 478 (6th ed., 1990).

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Corporation Code to be given to the stockholders subject to the availability and conditioned on a certain level of retained earnings.[15] Elsewise put, where the unrestricted retained earnings of a corporation are more than 100% of the paid-in capital stock, the corporate Board of Directors is mandated to declare dividends which the shareholders will receive in cash unless otherwise declared as property or stock dividends, which in the latter case the stockholders are forced to forego cash in lieu of property or stocks.

In essence, therefore, the stockholders by receiving stock dividends are forced to exchange the monetary value of their dividend for capital stock, and the monetary value they forego is considered the actual payment for the original issuance of the stocks given as dividends. Therefore, stock dividends acquired by shareholders for the monetary value they forego are under the coverage of the SRF and the basis for the latter is such monetary value as declared by the board of directors.

On the second issue, do the assailed NTC assessments violate the ruling in G.R. No. 127937? PLDT contends that these did

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[15] CORPORATION CODE, SEC. 43. *Power to declare dividends.*— The board of directors of a stock corporation may declare dividends out of the unrestricted retained earnings which shall be payable in cash, in property, or in stock to all stockholders on the basis of outstanding stock held by them; *Provided*, That any cash dividends due on delinquent stock shall first be applied to the unpaid balance on the subscription plus costs and expenses, while stock dividends shall be withheld from the delinquent stockholder until his unpaid subscription is fully paid; *Provided, further*, That no stock dividend shall be issued without the approval of stockholders representing not less than two-thirds (2/3) of the outstanding capital stock at a regular or special meeting duly called for the purpose.

Stock corporations are prohibited from retaining surplus profits in excess of one hundred (100%) percent of their paid-in capital stock, except: (1) when justified by definite corporate expansion projects or programs approved by the Board of Directors; or (2) when the corporation is prohibited under any loan agreement with any financial institution or creditor, whether local or foreign, from declaring dividends without its/his consent, and such consent has not yet been secured; or (3) when it can be clearly shown that such retention is necessary under special circumstances obtaining in the corporation, such as when there is a need for special reserve for probable contingencies.

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since the assessments are identical to the previous assessments from 1988 which were questioned by PLDT in the seminal G.R. No. 127937 for being based on the market value of its outstanding capital stock.

A cursory review of the assessments made by the NTC prior to our July 28, 1999 Decision in G.R. No. 127937 and the assailed assessments of February 10, 2000 and September 5, 2000 does show that the assessments are substantially identical. In our July 28, 1999 Decision in G.R. No. 127937, we noted, and similarly true in the petition before us, that, "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."[16]

Hence, as before, we cannot factually determine whether the assailed assessments substantially followed our Decision in G.R. No. 127937. It is apparent that the assessments are identical and that the NTC in the earlier case asserted that the SRF be based on the market value of the capital stock, yet it assessed it to PLDT. However, a closer look at the assailed assessments of February 13, 2000 and September 5, 2000 would show that the NTC based its assessment on the schedule of capital stock submitted by PLDT. PLDT did not dispute this; it only disputed the level of assessment which was the same as before.

Now, where should the NTC base its assessment? It is incumbent upon PLDT to furnish the NTC the actual payment made on the subscription of its capital stock in order for the NTC to assess the proper SRF. Logically, the NTC would base its SRF assessment of PLDT from PLDT data.

PLDT should not bewail that the assailed assessments are substantially the same assessments it protested in G.R. No. 127937. After all, it had not shown the actual figures of the amount of premiums and subscriptions it had received for the original issuances of its capital stock. While indeed it submitted a table of the comparative assessments made by the NTC to this Court,

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[16] *Supra* note 4, at 516.

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PLDT has not furnished the NTC nor this Court the correct figures of the actual payments made for its capital stock.

We are not unaware that in accounting practice, the journal entries for transactions are recorded in historical value or cost. Thus, the purchase of properties or assets is recorded at acquisition cost. The same is true with liabilities and equity transactions where the actual loan and the amount paid for the subscription are recorded at the actual payment, including the premiums paid for the subscription of capital stock.

Moreover, it is common practice that the values of the accounts recorded at historical value or cost are not increased or decreased due to market forces. In the case of properties, the appreciation in values is generally not recorded as income nor the increase in the corresponding asset because the increase or decrease is not yet realized until the property is actually sold. The same is true with the capital account. The market value may be much higher than the actual payment of the par value and premium of capital stock. Still, the books of account will not reflect such increase; and vice-versa, any decrease of the value of stocks is likewise not reflected in the books of account. Thus, given the general practice that book entries of the premiums and subscriptions for capital stock are the actual value for the original issuance of stocks, then the NTC was correct to follow the schedule of capital stocks submitted by PLDT.

Moreover, the "Trust Fund" doctrine, the second concept this Court elucidated in G.R. No. 127937 and quoted above, bolsters the correctness of the assessments made by the NTC. As a fund in trust for creditors in case of liquidation, the actual value of the subscriptions and the value of stock dividends distributed may not be decreased or increased by the fluctuating market value of the stocks. Thus, absent any showing by PLDT of the actual payment it received for the original issuance of its capital stock, the assessments made by the NTC, based on the schedule of outstanding capital stock of PLDT recorded at historical value payments made, is deemed correct.

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Anent stock dividends, the value transferred from the unrestricted retained earnings of PLDT to the capital stock account pursuant to the issuance of stock dividends is the proper basis for the assessment of the SRF, which the NTC correctly assessed.

WHEREFORE, we *DENY* the petition for lack of merit, and *AFFIRM* the February 12, 2001 Decision and March 21, 2002 Resolution in CA-G.R. SP No. 61033. Costs against petitioner.

SO ORDERED.

Quisumbing (Chairperson), Carpio, Carpio Morales, and *Tinga, JJ.,* concur.