



SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE
RECEIVED
FEB 18 2020
BY: YSA
TIME: 2:50

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**NATIONAL
TELECOMMUNICATIONS
COMMISSION,**

Petitioner,

- versus -

**BRANCOMM CABLE AND
TELEVISION NETWORK CO.,**

Respondent.

G.R. No. 204487

Present:

PERALTA, C.J., *Chairperson*,
CAGUIOA, *Working Chairperson*,
REYES, J. JR.,
LAZARO-JAVIER, and
INTING, * JJ.

Promulgated:

DEC 05 2019

mitabnis

X-----X

DECISION

REYES, J. JR., J.:

The Facts and The Case

Before this Court is a Petition for Review on *Certiorari*¹ seeking to reverse and set aside the March 20, 2012 Decision² and the August 14, 2012 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 111019 which nullified and set aside the March 13, 2009 Omnibus Order⁴ and the subsequent July 17, 2009 Order⁵ of petitioner National Telecommunications Commission (NTC). The Orders of the NTC denied respondent Brancomm Cable and Television Network Co.'s (Brancomm) Opposition and Omnibus

* Additional Member per Special Order No. 2726.

¹ *Rollo*, pp. 8-42.

² Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Jane Aurora C. Lantion and Agnes Reyes-Carpio (Ret.), concurring; *id.* at 45-60.

³ *Id.* at 62-63.

⁴ *CA rollo*, pp. 42-45.

⁵ *Id.* at 47-53.

V

Motion to Dismiss the separate applications filed by Cable Link & Holdings Corporation (Cable Link) for the issuance of certificates of authority to install, operate and maintain a Cable Antenna Television (CATV) system in the Province of Pampanga.

On November 4, 2008, Cable Link filed four applications for the issuance of certificates of authority to install, operate and maintain CATV systems in the Municipalities of Sta. Ana,⁶ Candaba,⁷ Mexico⁸ and Arayat,⁹ all in the Province of Pampanga. The verification and certification against forum shopping of these applications were signed by its counsel, Atty. Basilio B. Bolante (Atty. Bolante).¹⁰

During the scheduled hearing on November 25 and 26, 2008 for the presentation of Cable Link's evidence on compliance with the jurisdictional requirements of its applications in NTC BMC Case Nos. 2008-150, 2008-152 and 2008-153, Brancomm opposed the same and manifested that it was not furnished with copies of Cable Link's applications as well as the annexes attached thereto in violation of Section 2, Rule 8 of the 2006 Revised Rules of Practice and Procedure of the National Telecommunications Commission (NTC Rules).¹¹ Despite Brancomm's opposition, Nilo L. Lozada, NTC's hearing officer, proceeded with the hearing on the jurisdictional requirements of the applications instead of resetting the same.¹²

On November 26, 2008, Cable Link furnished Brancomm with copies of the attachments of its applications consisting of three documents, namely:¹³ (1) Certificate of Filing of Amended Articles of Incorporation; (2) Amended Articles of Incorporation and By-Laws; and (3) Republic Act No. 9382.¹⁴

On December 5, 2008, Brancomm filed its Opposition and Omnibus Motion¹⁵ which sought for the following: (a) dismissal of the applications docketed as NTC BMC Case Nos. 2008-150, 2008-152 and 2008-153 on the ground that the one who signed the verification and certification of non-forum shopping of the same was not shown to have been expressly authorized to do so; the jurat that appears on the verification pages of the applications bore no competent evidence of identity of the person representing the applicant and did not indicate if the notary public personally knows the applicant or the person representing the latter; and the

⁶ Docketed as NTC BMC Case No. 2008-150; *rollo*, pp. 123-125.

⁷ Docketed as NTC BMC Case No. 2008-152; *id.* at 126-128.

⁸ Docketed as NTC BMC Case No. 2008-153; *id.* at 129-131.

⁹ Docketed as NTCBMC Case No. 2008-154; *id.* at 132-134.

¹⁰ *Id.* at 125, 128, 131, 134.

¹¹ *Id.* at 47, 371.

¹² *Id.* at 47, 371-372.

¹³ *Id.* at 47.

¹⁴ AN ACT GRANTING THE CABLE LINK AND HOLDING CORPORATION A FRANCHISE TO CONSTRUCT, INSTALL, ESTABLISH, OPERATE AND MAINTAIN CABLE/COMMUNITY ANTENNAE TELEVISION SYSTEMS IN THE PHILIPPINES.

¹⁵ CA *rollo*, pp. 92-111.

applications failed to comply with NTC Office Order No. 106-10-2007 which prescribed the minimum requirements for the acceptance of applications for CATV system; and (b) annulment of the proceedings that transpired on November 25, 2008 for failure of Cable Link to furnish Brancomm with copies of the affidavits of its witnesses three days before the scheduled hearing in violation of its right to due process as well as Section 5, Rule 11 of the NTC Rules.¹⁶

On March 13, 2009, the NTC issued an Omnibus Order¹⁷ in NTC BMC Case Nos. 2008-150, 2008-152 and 2008-154, the dispositive portion of which reads:

WHEREFORE, Oppositor Brancomm's Opposition and Omnibus Motion is hereby denied for lack of merit. For related reasons above discussed, Oppositor ACCTN's Opposition with Motion Not to Give Application Due Course or, in the alternative, Motion to Direct Applicant to Re-file Present [C]ase Due to Failure to Comply with Minimum Mandatory Requirements for CATV Application is likewise **DENIED** for lack of merit.

In denying Brancomm's Opposition and Omnibus Motion, NTC ratiocinated that the Minutes of the Special Meeting of the Board of Directors¹⁸ dated October 31, 2008, that Cable Link submitted ratified whatever action Atty. Bolante has undertaken in its behalf such as the filing of the said applications. Also, the purported lack of verification of the applications is a matter of form which cannot be a ground for their outright dismissal. The defective jurat had already been cured by Cable Link's submission of amended ones that are compliant with the 2004 Rules on Notarial Practice.¹⁹ The NTC likewise held that the alleged failure of Cable Link to attach in its applications evidence of its technical and financial capabilities does not merit their outright dismissal under NTC Office Order No. 106-10-2007 as the requirement to submit the documents specified in the office order was meant only to expedite the evaluation of the applications. Contrary to the assertion of Brancomm, it was not denied of due process despite the fact that it was not given copies of the testimonies of Cable Link's witnesses three days before the scheduled hearing considering that it will be given ample time to scrutinize and review said testimonies before Brancomm conducts its cross examination.

Not accepting defeat, Brancomm moved for reconsideration²⁰ but the same was denied by the NTC in its Order²¹ dated July 17, 2009, the dispositive portion of which reads:

¹⁶ *Rollo*, pp. 47-48; 372-374.

¹⁷ *CA rollo*, pp. 42-45.

¹⁸ *Rollo*, pp. 186-188.

¹⁹ *Id.* at 192-197.

²⁰ *Id.* at 295-305.

²¹ *CA rollo*, pp. 47-53.

WHEREFORE, premises considered, Oppositor's Motion for Reconsideration is hereby **DENIED** for lack of merit. The Omnibus Order dated March 13, 2009 issued by the Hearing Officer is hereby modified to the extent that Oppositor's Opposition to this application shall stand and included in the evaluation of the present application on the merits.

Let the continuation of the hearing of this case be set on **JULY 28, 2009 at 9:30 in the morning.**

Undeterred, Brancomm elevated the matter before the CA via a Petition for *Certiorari* and Prohibition²² seeking to annul and set aside the March 13, 2009 Omnibus Order and the July 17, 2009 Order of the NTC.

On March 20, 2012, the CA rendered its Decision²³ annulling and setting aside the assailed Orders of the NTC. It held that while the applications of Cable Link contain verifications and certifications against forum shopping, the same do not show that the person who signed the same had the authority to do so. Cable Link was aware of such defect as it, in fact, tried to correct the same by subsequently submitting a Resolution passed by its Board of Directors showing the person's authority to sign the said verifications and certifications. However, instead of clearing doubts, the Resolution posed even more questions given that the Resolution vested the authority to sign the verifications and certifications not on Atty. Bolante, but on another person. NTC cannot excuse Cable Link's failure to submit verifications and certifications on non-forum shopping that are proper in form and substance by construing the rules liberally in its favor given that there could be no substantial compliance with the rules when the wording of the Board Resolution was explicit and unequivocal that it authorizes another person to sign the verification and certification on non-forum shopping.

Contrary to the ruling of the NTC, the CA ruled that Cable Link's failure to comply with NTC Office Order No. 106-10-2007 merits its applications' outright dismissal for the reason that the very wording of the said office order clearly provides that an applicant for the issuance of a certificate of authority to operate a CATV system should submit to the NTC at least the documents that were enumerated therein before the NTC could act upon the application. The contention of the NTC that the requirement of the submission of the documents mentioned in the office order is merely for purposes of facility is contrary to the directive of the office order and the liberal application of the rules is unwarranted. Furthermore, NTC denied Brancomm of its right to due process when it went ahead to hear Cable Link's applications and even allowed it to present its witnesses even if Brancomm was not furnished with the affidavit of the witness Cable Link was going to present three days in advance. While the requirement under Section 5, Rule 11 of the NTC Rules requiring the submission to the

²² Id. at 3-40.

²³ Supra note 2.

Y

opposing party of the said affidavit three days before the scheduled hearing is preceded by the phrase, "*as far as practicable,*" it does not necessarily follow that the mandate of the provision could be dispensed with altogether. Technical rules may be relaxed only when there are underlying considerations that necessitate its relaxation, and only for the furtherance of justice and to benefit the deserving.

Undeterred, NTC filed the present petition premised on the following grounds:

The Issues

I.

The Court of Appeals committed grave error in not holding that Atty. Basilio B. Bolante had ample authority to sign, in behalf of Cable Link, the verification and certification of non-forum shopping of the applications filed in BMC Case Nos. 2008-150, 2008-152 and 2008-154.

II.

The Court of Appeals committed grave error in ruling that the failure of Cable Link to comply with NTC Office Order No. 106-10-2007 was fatal to its Applications.

III.

The Court of Appeals committed grave error in ruling that respondent was denied due process.

IV.

The Court of Appeals committed grave error in not taking into consideration that petitioner, being the government agency entrusted with the regulation of activities coming under its special and technical forte, and possessing the necessary rule-making power to implement its objectives, is in the best position to interpret its own rules, regulations and guidelines.

V.

The Court of Appeals committed grave error in not ruling on the issue of the impropriety of the remedy resorted to by respondent.²⁴

The Arguments of the Parties

NTC argues that contrary to the findings of the CA, Atty. Bolante had sufficient authority to sign the verification and the certification of non-forum shopping portion of Cable Link's applications given that he was designated

²⁴ *Rollo*, pp. 17-18.

as the corporation's legal counsel and representative during the October 31, 2008 Special Meeting of the Board of Directors of Cable Link. The pertinent portion of the minutes of the said special meeting reads as follows:

RESOLVED, as it hereby resolved that the President, **MR. ARMANDO M. MERILLEN**O, be empowered and authorized to sign and execute any and all papers and documents including but not limited to application/petition, motion or memorandum necessary and required before the Commission or any other government agencies in connection with any application filed or to be filed, including the verification thereof as well as the power to engage the services of legal, technical and financial personnel to prepare the needed studies and testify on the same. hereinafter

RESOLVED FURTHER, that **MR. ARMANDO M. MERILLEN**O be authorized to exercise such other powers as may be necessary or needed for the attainment of this resolution, to do and perform any all acts and whatever undertaking's that may be necessary or required for the faithful execution of the foregoing.

RESOLVED, FINALLY, that any and all applications, petitions, motions, and memoranda, among others filed or initiated by **ATTY. BASILIO B. BOLANTE** who is hereby designated as the corporation's legal counsel/representative before the National Telecommunications Commission or any office or agency of the government are hereby adopted, ratified, affirmed and confirmed.²⁵

Aside from bestowing upon Atty. Bolante ample authority to sign the said verification and certification of non-forum shopping in behalf of Cable Link's applications, the resolution passed by the corporation likewise ratified the acts of Atty. Bolante, adopted the contents of the applications and conferred upon Atty. Bolante the power to perform acts necessary or incidental to his authority to represent Cable Link before the NTC. Even assuming that Mr. Armando M. Merilleno (Mr. Merilleno) was the one authorized by Cable Link to sign and execute the required papers and documents before the NTC, there is nothing in the board resolution which suggests that the power to sign the verification and certification was solely vested on Mr. Merilleno. Inasmuch as Atty. Bolante was appointed as Cable Link's representative before the NTC, such appointment necessarily carried with it all powers essential to carry out such mandate, including the power to sign the verifications and certifications of the applications.²⁶

Be that as it may, NTC contends that any official, employee or representative of a corporation can sign the verification and certification without need of a board resolution for as long as such person is in a position to verify the truthfulness and the correctness of the allegations in the petition. Here, Atty. Bolante was designated not only as the representative of Cable Link, but as its counsel as well. As such, he was in a position to

²⁵ Id. at 187.

²⁶ Id. at 18-20.

Y

verify the truthfulness and correctness of the allegations in all the applications he himself prepared because he attended the special board meeting of Cable Link where the applications were presented and read before the entire Board of Directors, and the allegations of which were adopted during the said meeting. Hence, Atty. Bolante clearly had authority to sign the verification and certification of non-forum shopping in behalf of the corporation.²⁷

Even assuming that the verification was defective, NTC argues that the same does not affect the validity or efficacy of a pleading, and does not divest it of jurisdiction to take cognizance of the applications, since the verification is merely a formal, and not a jurisdictional requirement.²⁸ Also, NTC's acceptance of Cable Link's applications was in keeping with the liberal construction under Section 3, Rule 1 of the NTC Rules, and consistent with jurisprudential pronouncements that rules of procedure are, as a matter of course, construed liberally in proceedings before administrative bodies given that it is not bound by the technical niceties of law and procedure and the rules obtaining in the courts of law. Besides, the outright dismissal of the applications for containing a defective verification would serve no beneficial purpose because Cable Link could easily take steps to cure the defect of the applications and refile them. In such event, Cable Link would be obliged to pay anew filing fees when it refiles its applications which is contrary to the avowed policy of construing the NTC Rules liberally in order to promote public interest and assist the parties in obtaining just, speedy and inexpensive determination of their cases. Moreover, the requirement under the Rules of Court that judicial initiatory pleadings must be accompanied with a certification of non-forum shopping cannot be strictly applied to pleadings filed before the NTC given that the NTC Rules do not require pleadings filed before it to contain the said certification.²⁹

Contrary to the ruling of the CA, NTC avers that there is nothing in NTC Office Order No. 106-10-2007 that would even remotely suggest that the non-submission of all the documents enumerated therein shall result to the outright dismissal of an application. NTC insists that the attachment of all the documents listed under the said office order was only meant to expedite the resolution of the application for CATV operation and nothing more. Thus, if the hearing officer believes that waiting for the submission of all the documents would only lead to unnecessary delay in the resolution of the applications given that the applicant would have to present the remaining documents during trial under pain of denial of the applications, there would be no prejudice to interested third parties if the hearing officer takes

²⁷ Id. at 20-23.

²⁸ Id. at 24-25.

²⁹ Id. at 25-28.

cognizance of the applications pending submission of all the required documents.³⁰

NTC likewise claims that the CA gravely erred in ruling that Cable Link's failure to furnish Brancomm with copies of its applications and the affidavits of its intended witnesses in advance violated the latter's right to due process, and is a ground for the immediate dismissal of the former's applications considering that such requirement is not mandatory, but only permissive as clearly provided under Section 5, Rule 11 of the NTC Rules. Besides, even if Brancomm was not given advance copies of the affidavits of Cable Link's witnesses, it was not deprived of the opportunity to conduct an extensive cross-examination. Brancomm could very well hear the witness's testimony and then sought for the deferment of the cross-examination, pursuant to Section 13, Rule 11 of the NTC Rules, to give it sufficient time to study the direct testimony of Cable Link's witnesses as contained in their affidavits which Brancomm was not provided beforehand.³¹

NTC adds that the CA's interpretation of NTC Office Order No. 106-10-2007 and the above-mentioned NTC Rules as mandatory in character conflicts with the interpretation given to them by the NTC that said office order and Rules are merely directory. As the government agency entrusted with the regulation of activities coming under its technical expertise, and possessed with the necessary rule-making power to implement its objectives, the NTC's interpretation of its own set of rules must be respected. Furthermore, to sanction the CA's rigid interpretation of these procedural rules would run counter to the settled principle that rules of procedure before administrative bodies are, as a matter of course, construed liberally, and would be inconsistent with NTC's policy that its rules should be liberally construed in order to protect and promote public interest in a suitable manner and to assist the parties in obtaining just, speedy and inexpensive determination of every case before the NTC.³² Moreover, NTC contends that courts may not interfere with purely administrative and discretionary functions, except when the issuing authority has gone beyond its statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to its duty or with grave abuse of discretion. In this case, NTC was not shown to have abused its discretion when it accepted Cable Link's applications for consideration inasmuch as it did so only to enable it to intelligently decide whether the applications should be granted or not.³³

NTC also points out that the CA gravely erred in not ruling on the propriety of the remedy of *certiorari* availed of by Brancomm when it questioned its July 17, 2009 Order. The NTC argues that Brancomm availed of the wrong remedy when it filed a *certiorari* petition before the CA inasmuch as its Opposition and/or Motion to Dismiss were still pending

³⁰ Id. at 29-31.

³¹ Id. at 31-34; 517.

³² Id. at 35-37.

³³ Id. at 517-518.

r

consideration and evaluation alongside Cable Link's applications. What Brancomm should have done was to wait for the resolution of Cable Link's applications, and appeal the same via Rule 43 should the same be not favorable to it.³⁴ Also, by allowing Brancomm's Opposition to stand, it means that the NTC has yet to deliberate upon, evaluate and consider Cable Link's applications. Thus, no injurious effect has yet been inflicted upon Brancomm that is correctible by a *certiorari* petition.³⁵

Brancomm counters that the *certiorari* petition it filed was the proper remedy to question NTC's March 13, 2009 Omnibus Order and July 17, 2009 Order considering that both orders were merely interlocutory orders. While it may be true that interlocutory acts may be assigned as errors in the regular course of an appeal, such remedy is not adequate in Brancomm's case since prejudice may have already been caused to it in the interim. Thus, the *certiorari* petition was resorted to as it was the only recourse available to it to promptly relieve it of the injurious effects of the judgment and acts of NTC. Besides, the July 17, 2009 Order would show that only the Opposition interposed by Brancomm is still pending consideration and evaluation by NTC. Its Omnibus Motion (Motion to Dismiss and Motion to Annul) was not ordered included in the evaluation of Cable Link's applications as falsely claimed by NTC. Thus, the denial of its Omnibus Motion is properly assailable through the writ of *certiorari*.³⁶

Anent Atty. Bolante's act of signing the verification and certification of non-forum shopping in behalf of Cable Link's applications for CATV, Brancomm points out that the same verification and certification made no mention that he was authorized by Cable Link's Board of Directors to file and/or sign the same. As such, Atty. Bolante is deemed to have filed the applications in his personal capacity. Not being the real party in interest, the applications Atty. Bolante filed, verified and certified stated no cause of action and is dismissible on such ground pursuant to Section 1, paragraph (g) of Rule 16 of the Rules of Court and *Casimiro v. Roque*.³⁷ The belated filing of the October 31, 2008 Board Resolution passed by the Board of Directors of Cable Link is not sufficient to cure the fatal defect of the verification and certification for the reason that, although the Board Resolution ratified the filing of any and all petitions, motions, and memoranda filed or initiated by Atty. Bolante, it did not explicitly vest him with authority to sign the verification and certification against forum shopping nor ratified his act of signing the same. The clear and unambiguous wording of the Board Resolution would readily reveal that the one authorized by the Board of Directors to sign and execute any and all papers in connection with Cable Link's applications, including the verification was not Atty. Bolante, but Armando M. Merilleno, Cable Link's President. The Board Resolution merely ratified the act of Atty. Bolante in filing the applications and no other.

³⁴ Id. at 37-38.

³⁵ Id. at 515-516.

³⁶ Id. at 447-449.

³⁷ 98 Phil. 880, 884-886 (1956).

Furthermore, Brancomm contends that the NTC could not excuse the defective verification and certification on the ground that Section 3, Rule 1 of the NTC Rules provides for the Rules' liberal application inasmuch as NTC failed to give sufficient reason for the disregard of the mandatory character of the rules on verification and certification, and substantiate the existence of public interest that would be prejudiced in case of the dismissal of Cable Link's applications on account of the defective verification and certification. Since Cable Link's applications lacked the proper verification and certification, the NTC should have denied the same.³⁸

Even if it were to concede that the lack of verification and certification is only a formal defect, the same would still result to the striking off of the applications filed given that Section 2, Rule 6 of the NTC Rules strictly provides that only pleadings, motions, documents and other papers which conform to the formal requirements of the NTC Rules shall be accepted for filing.³⁹

Brancomm do not agree with NTC that non-compliance with NTC Office Order No. 106-10-2007 does not warrant the outright dismissal of the applications. It argues that the wording of the said office order categorically prescribed the minimum requirements for the acceptance of an application to operate and maintain CATV systems in the country. Considering that the office order is geared towards the expeditious resolution of cases, it stands to reason that compliance with the requirements set forth therein is mandatory. The absence of the minimum requirements strips the NTC of jurisdiction to accept Cable Link's applications much less hear and decide the same. Thus, when NTC accepted the applications and acted on them, it clearly acted with grave abuse of discretion amounting to lack or excess of jurisdiction.⁴⁰

Brancomm maintains that its right to due process was violated when Cable Link failed to furnish it with copies not only of the annexes referred to in its applications, but also of the affidavits of its witnesses notwithstanding the mandatory requirement laid down in Section 3, Rule 6 of the NTC Rules. Cable Link's non-compliance with the mandate of the said rule, as a matter of fact, resulted to the failure of the NTC to acquire jurisdiction over its applications. Thus, NTC gravely abused its discretion when it ruled that Cable Link complied with the jurisdictional requirements relative to its applications. What the NTC should have done instead was to cause the striking off of the documents filed before it pursuant to Section 2, Rule 6 of the NTC Rules.⁴¹

Even assuming that NTC could validly exercise jurisdiction over the applications of Cable Link despite said defects, NTC should have at least deferred the hearing on the applications, as provided by Section 3, Rule 8 of

³⁸ *Rollo*, pp. 450-457.

³⁹ *Id.* at 457-458.

⁴⁰ *Id.* at 458-460.

⁴¹ *Id.* at 460-462.

Y

the NTC Rules, until after it had complied with the required service of all the annexes attached to its applications. In this case, the hearing on jurisdictional compliance in the applications were scheduled on November 25 and 26, 2008. However, it was only on November 26, 2008, when Brancomm received the attachments of Cable Link's applications in NTC BMC Case Nos. 2008-150, 2008-152 and 2008-153 in clear violation of the dictates of Section 2, Rule 8 of the NTC Rules that all pleadings, documents and other papers, together with all annexes attached thereto shall be served to all the affected parties at least 15 days before the hearing date. Such notwithstanding, the NTC hearing officer allowed the proceedings to continue on November 25, 2008 and even directed Cable Link to present its first witness, whose affidavit was not provided at least three days before the scheduled hearing pursuant to Section 5, Rule 11 of the NTC Rules, and testify on financial documents consisting of credit facilities which were never mentioned nor attached to the affidavits of the said witness despite Brancomm's repeated objections. While the NTC Rules may be liberally construed, such liberal construction does not authorize the blatant disregard of Brancomm's right to be given the opportunity to scrutinize, peruse, examine, study and pore over the affidavits and documents of the applicant's witnesses before they were presented and offered as evidence in clear violation of its right to due process. That Brancomm will be given copies of affidavits and annexes attached to the applications, and that it will be allowed to conduct its cross examination on the next scheduled trial date does not cure the fact that the proceedings before the NTC was a nullity right from the beginning as it violated the very Rules NTC promulgated and gave Cable Link undue advantage at the expense of Brancomm.⁴²

Brancomm contends further that NTC cannot justify the abuse of its discretion in (1) ruling that the October 31, 2008 Board Resolution belatedly submitted by Cable Link is sufficient to render the verification and certification of non-forum shopping signed by Atty. Bolante valid; (2) accepting Cable Link's applications absent the minimum requirements imposed by NTC Office Order No. 106-10-2007; (3) ruling that Cable Link complied with the jurisdictional requirements despite its failure to furnish Brancomm, the oppositor, with the annexes attached to its applications; (4) denying Brancomm of due process when NTC proceeded to hear Cable Link's applications over which it has not validly acquired jurisdiction and even allowed Cable Link to present its witnesses; and (5) allowing Cable Link to present its first witness and testify on financial matters, the documents pertaining thereto as well as the affidavit of the said witness not having furnished to it beforehand so as to give it sufficient time to examine the same by insisting on the liberal interpretation of NTC's own rules and invoking its exclusive authority to interpret the same given that its rules are couched in basic and ordinary terms, not necessitating NTC's technical expertise to construe its construction. To sanction NTC's disregard of all the requirements it alone imposed for the acceptance of CATV applications *sans*

⁴² Id. at 462-464.

Y

any justification would result in a bizarre situation where an administrative agency can suspend its own rules anytime it pleases, thereby placing upon the applicant the power to decide whether it wants to comply with the NTC Rules or not, thus running counter to the rule enunciated in Section 4, Rule 11 of the NTC Rules which states that the NTC hearing commissioner or officer shall take full control of the proceedings.

The Ruling of the Court

Preliminary Considerations

The function of a petition for review on *certiorari* is to enable this Court to determine and correct any error of judgment committed in the exercise of jurisdiction.⁴³ However, much like in labor cases, when this Court reviews the legal correctness of the CA's decision in resolving a petition for *certiorari* under Rule 65, it still evaluates the case in the prism of whether the latter tribunal correctly determined the presence or absence of grave abuse of discretion on the part of the court or other tribunal *a quo*.⁴⁴ Even if elevated *via* Rule 45, it is still bound by the intrinsic limitations of a Rule 65 *certiorari* proceeding as it does not address mere errors of judgment, unless the error transcends the bounds of the tribunal's jurisdiction.⁴⁵

At this point, the Court now proceeds to determine whether the CA erred in holding that the NTC *gravely* abused its discretion in allowing Cable Link to proceed with its application proceedings.

Nature and Functions of the NTC

The NTC is mandated, under Executive Order (E.O.) No. 546,⁴⁶ among others, to establish and prescribe rules, regulations, standards and specifications in all cases related to the issued Certificate of Public Convenience, promulgate rules and regulations as public safety and interest may require, and supervise and inspect the operation of radio stations and telecommunications facilities.⁴⁷ Under Section 16 of E.O. No. 546, the NTC likewise exercises quasi-judicial powers. The scope of such function to implement the necessary rules and regulations was later on expanded in E.O. No. 205⁴⁸ to include the operation of CATV services. Finally, Republic Act

⁴³ See: *Marasigan v. Fuentes*, 776 Phil. 574, 581 (2016), citations omitted.

⁴⁴ See: *Our Haus Realty Development Corporation v. Parian*, 740 Phil. 699, 709 (2014).

⁴⁵ See: *Inocente v. St. Vincent Foundation for Children and Aging, Inc.*, 788 Phil. 62, 73-74 (2016).

⁴⁶ Creating a Ministry of Public Works and a Ministry of Transportation and Communications (July 23, 1979).

⁴⁷ See: Section 15 (e), (g) and (h).

⁴⁸ Regulating the Operation of Cable Antenna Television (CATV) Systems in the Philippines, and for Other Purposes (June 30, 1987).

K

No. 7925⁴⁹ or the Public Telecommunications Policy Act of the Philippines (PTPA) was enacted which provided for the power and functions of the NTC and which governed the issuance or granting of franchises to qualified entities.

Nature of NTC Proceedings

Under Section 16 of the PTPA, the NTC has the power to impose conditions on the issuance of a franchise such as the Certificate of Public Convenience and Necessity (CPCN) and a certificate of authority, so that qualified entities may lawfully engage in the operation of public telecommunications services such as providing CATV. Pursuant to its power to promulgate rules as well as its power to adopt “an administrative process which would facilitate the entry of qualified service providers” under Section 5 (a) of the PTPA, the NTC adopted the NTC Rules. Under the NTC Rules, there are two (2) major categories or sets of procedures: (a) Procedure in **Application** (Part II); and Procedure in **Complaints** (Part III). In an *application proceeding*, an applicant “seeks authorization or permission to undertake any matter or activity” within the NTC’s regulatory power⁵⁰ or the object is to obtain a CPCN or any other form of authority from the NTC;⁵¹ while in a *complaint proceeding*, the object is to subject a holder of a CPCN (or any other NTC authority) or any other person operating a service or activity, or possessing any instrument or equipment without any NTC license or permit, to any penalty or disciplinary measure for violation of any provision of law, rules and regulations.⁵²

As to the nature of the aforementioned NTC proceedings, there is a need to distinguish between purely administrative proceedings and quasi-judicial proceedings.

On the one hand, a *purely administrative proceeding* is one which does not involve the settling of disputes involving conflicting rights and obligations. It is merely concerned with either: (a) the direct implementation of laws to certain given facts as a consequence of regulation; or (b) an undertaking to gather facts needed to pursue a further legal action or remedy in the case of investigation. In other words, it does not make binding pronouncements as to a party’s rights and/or obligations as a result of a conflict or controversy whether legal or factual. Covered by this type of proceeding is an agency’s grant or denial of applications, licenses, permits, and contracts which are executive and administrative in nature.⁵³

⁴⁹ AN ACT TO PROMOTE AND GOVERN THE DEVELOPMENT OF PHILIPPINE TELECOMMUNICATIONS AND THE DELIVERY OF PUBLIC TELECOMMUNICATIONS SERVICES (March 1, 1995).

⁵⁰ Section 3, Rule 4, Part I of the NTC Rules.

⁵¹ Section 1, Rule 7, Part II of the NTC Rules.

⁵² Section 1, Rule 10, Part III of the NTC Rules.

⁵³ See: *Liwat-Moya v. Ermita*, G.R. No. 191249, March 14, 2018, citations omitted.

On the other hand, a *quasi-judicial proceeding* is the power to hear and determine questions of fact to which the legislative policy is to apply, and to decide in accordance with the standards laid down by the law itself in enforcing and administering the same law.⁵⁴ It involves: (a) taking and evaluating evidence; (b) determining facts based upon the evidence presented; and (c) rendering an order or decision supported by the facts proved.⁵⁵ In other words, it involves a determination, with respect to the matter in controversy, of what the law is; what the legal rights and obligations of the contending parties are; and based thereon and the facts obtaining, the adjudication of the respective rights and obligations of the parties.⁵⁶

In the case of the NTC, the foregoing discussion inevitably leads to the legal conclusion that *application proceedings* pertain to its *purely administrative function* while *complaint proceedings* pertain to its *quasi-judicial function*.

Application proceedings involve the NTC's assessment of an applicant's requirements with the object of determining whether a grant of authorization or permission to undertake a regulated activity is warranted. Here, an applicant is being scrutinized of its fitness to secure a license. Relatively, complaint proceedings involve the NTC's assessment and settling of the contending parties' respective rights and obligations in a legal dispute. Here, pieces of evidence are weighed and legal arguments are considered before upholding or revoking a party's authorization or permission to undertake a regulated activity.

On the Proceedings Affecting Cable Link's Applications

It is settled in the records that the proceeding in this case indisputably pertains to Cable Link's applications for the issuance of a certificate of authority to operate a CATV. As such, the Court now proceeds to determine whether the petitioner: (a) violated due process requirements by allowing the hearing of Cable Link's applications despite Brancomm's alleged loss of opportunity to examine the subject applications and their accompanying requirements; and (b) abused its discretion in not considering Cable Link's applications as ridden with fatal defects.

I. On Due Process

In our jurisdiction, the constitutional guarantee of due process is not limited to an exact definition—it is flexible in that it depends on the circumstances and varies with the subject matter and the necessities of the

⁵⁴ *Bedol v. Comelec*, 621 Phil. 498, 510 (2009).

⁵⁵ *Ligtas v. People*, 766 Phil. 750, 771 (2015), citations omitted.

⁵⁶ *Encinas v. PO1 Agustin, Jr.*, 709 Phil. 236, 256 (2013), citations omitted.

V

situation.⁵⁷ However undefined, due process has always been consistently divided into two components: (a) substantive due process; and (b) procedural due process. Substantive due process is one which requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty, or property; while procedural due process involves the basic rights of notice and hearing, as well as the guarantee of being heard by an impartial and competent tribunal.⁵⁸ The former component of due process bars certain arbitrary, wrongful government actions "regardless of the fairness of the procedures used to implement them."⁵⁹ Comparatively, the latter form of due process strictly requires one who could be potentially deprived of life, liberty or property through a proceeding to be given notice and a real opportunity to be heard.⁶⁰ Stated differently, the Due Process Clause provides that certain substantive rights — life, liberty, and property — cannot be deprived except pursuant to constitutionally adequate procedures.⁶¹

As applied to administrative proceedings to which this case pertains, procedural due process has been recognized to include the following: (a) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (b) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (c) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (d) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.⁶²

Finally, an important concept to remember in procedural due process is that the Due Process Clause is set in motion only when there is actual or a risk of an impending *deprivation* of life, liberty or property.⁶³ Accordingly, "life," "liberty," and "property" are broad terms and are purposely left to gather meaning from experience.⁶⁴ In the case of "property" to which this case involves, it has been commonly understood to include *interests* therein which pertain to some form of benefit enjoyed by owners. Thus, to have a "property interest" in a benefit, a person or entity must clearly have a

⁵⁷ *Saunar v. Ermita*, G.R. No. 186502, December 13, 2017, 848 SCRA 351, 362.

⁵⁸ *Secretary of Justice v. Lantion*, 379 Phil. 165, 202-203 (2000).

⁵⁹ *Zinermon v. Burch*, 494 U.S. 113 (1990), <https://caselaw.findlaw.com/us-supreme-court/494/113.html>.

⁶⁰ *Disciplinary Board, Land Transportation Office v. Gutierrez*, 812 Phil. 148, 154 (2017).

⁶¹ *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985), <<https://caselaw.findlaw.com/us-supreme-court/470/532.html>>

⁶² *Vivo v. Philippine Amusement and Gaming Corporation*, 721 Phil. 34, 43 (2013), citations omitted.

⁶³ It is well settled that "[t]he requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property." (*Santosky v. Kramer*, 455 U.S. 745 [1982], citations omitted).

⁶⁴ *National Mutual Insurance Co. v. Tidewater Transfer Co., Inc.*, 337 U.S. 582 (1949), <<https://caselaw.findlaw.com/us-supreme-court/337/582.html>>

legitimate claim of entitlement to it which is more than an abstract need, desire or unilateral expectation.⁶⁵

In this case, Brancomm's right to due process was never violated by the NTC as the former had not established or demonstrated any vested right worthy of legal protection. A license does not vest absolute rights to the holder.⁶⁶ It is not a contract, property or a property right protected by the due process clause of the Constitution.⁶⁷ Relatedly, there certainly is no such thing as a vested right to expectation of future profits which can be gained from possession of a franchise.⁶⁸

As earlier explained, proceedings related to permit applications are non-adversarial in nature for there are virtually no contending parties. Although an administrative agency may entertain oppositors to an application, such undertaking does not automatically convert the proceeding to a quasi-judicial one for a couple of reasons: (a) the subject of application proceedings pertain only to an applicant's privilege to engage in a regulated activity—it does not vest or deprive a party to such proceedings of any right or legally protected interest; and (b) oppositions to applications merely *aid* an administrative agency's function in regulating or assessing an applicant's legal fitness to hold a franchise. Besides, the State may choose to require procedures for reasons other than protection against deprivation of substantive rights, but in making that choice the State *does not create* an independent substantive right.⁶⁹ Such procedures are commonly utilized in aid of purely administrative proceedings such as permit or license applications where an implementing agency follows a set of guidelines in evaluating an applicant's fitness to possess a franchise.

The NTC, although utilizing procedures that are quasi-judicial in nature, does not adjudicate rights as the end-result involves a grant or denial of the permit or franchise such as CPCN or a certificate of authority application. As pointed out earlier, "a license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority granting it and the person to whom it is granted; *neither is it property or a property right*, nor does it create a vested right."⁷⁰ Since no adjudication of rights are involved, the NTC's act of processing the certificate of authority applications is not a quasi-judicial act but a purely administrative act.

⁶⁵ See: *Board of Regents of State Colleges v. Roth*, 408 U.S. 564 (1972), <<https://caselaw.findlaw.com/us-supreme-court/408/564.html>>

⁶⁶ See: *Republic v. Rosemoor Mining and Development Corporation*, 470 Phil. 363, 369 (2004).

⁶⁷ *Oposa v. Hon. Factoran, Jr.*, 296 Phil. 694, 720 (1993).

⁶⁸ See: *Southern Luzon Drug Corporation v. Department of Social Welfare and Development*, 809 Phil. 315, 345 (2017); *Zabal v. Duterte*, G.R. No. 238467, February 12, 2019.

⁶⁹ *Olim v. Wakinekona*, 461 U.S. 238 (1983), citations omitted, <https://caselaw.findlaw.com/us-supreme-court/461/238.html>

⁷⁰ *Chavez v. Hon. Romulo*, 475 Phil. 486, 512 (2004), citations omitted.

T

In application proceedings before the NTC, no one will be deprived of any vested right or legitimate claim of entitlement when there are deviations to procedural rules. Proceedings pertaining to permit applications merely enable and aid an administrative agency to properly assess the requirements submitted by an applicant whether he, she or it is entitled to be granted a State franchise to engage in a regulated activity. The only logical consequence or risk of an administrative agency's failure in properly assessing and verifying the fitness of an applicant to engage in such regulated activity is the eventual nullification of a subsequently granted or issued franchise for being unsanctioned by law. In other words, an erroneous issuance of a permit resulting from failure of an administrative agency to follow its application proceedings only results in a voidable franchise for failure to follow legal requirements. It does not grant due process rights to a third party oppositor to a permit or franchise application as the process involves only the agency and the applicant. However, a voidable franchise may be attacked in a complaint proceeding and strict requirements of administrative due process will now apply.

Besides, the term "jurisdictional requirements" used in Section 3, Rule 8, Part II of the NTC Rules is actually a misnomer. In a general context, jurisdiction means "[t]he authority of law to act officially in a particular matter in hand."⁷¹ And since only the law can vest jurisdiction or authority on an administrative agency to either perform a set of functions or act in a particular manner, it cannot technically vest or oust itself of jurisdiction by enacting its own rules of procedure. Instead, an administrative agency's jurisdiction is fixed by law and determined by examining the facts whether the conditions demonstrated satisfy statutory requirements for the assumption of jurisdiction. In other words, an administrative agency's procedural rules, especially relative to permit or franchise applications, do not determine the presence or absence of its own authority to conduct such proceedings. This is the reason why the last sentence of the same rule states that "[f]ailure to comply with the above provisions shall be subject to the sound discretion of the Commission who may *postpone* or *defer* the hearing of the case."⁷² It demonstrates that failure to comply with "jurisdictional requirements" does not even divest the NTC of its jurisdiction to accept or warrant a dismissal of a certificate of authority application under the NTC Rules. Such rule presupposes that the NTC may suspend the application proceedings indefinitely until the applicant subsequently complies with all statutory requirements or order full compliance of such requirements; unless, of course, a ruling of dismissal is proper in cases where the applicant abandons its application or fails to exert efforts of compliance for an unreasonable length of time.

⁷¹ *Frazier v. Moffatt*, 108 Cal.App.2d 379 (1951), citing: Cooley on Torts, p. 417, <<https://caselaw.findlaw.com/ca-court-of-appeal/1799037.html>>

⁷² Section 3, Rule 8, Part II of the NTC Rules.

At this point, it now becomes immaterial whether it was proper for the NTC to allow the rectification of Cable Link's defective application (*i.e.* Atty. Bolante's alleged lack of authority to sign the verification and the certification of non-forum shopping portion of Cable Link's applications, failure to meet the prescribed minimum requirements for the acceptance of an application, failure to send potential oppositors copies of its applications and supporting documents, *etc.*) as Brancomm had *no legitimate interest* (such as the right to due process or supposed right to monopoly) which will be adversely affected. Brancomm basically had no right to due process at the stage of the subject application proceedings because it has failed to demonstrate any legitimate claim of entitlement, especially its interest to maintain its monopoly in providing CATV services in the areas covering Sta. Ana, Candaba, Mexico and Arayat, all in the Province of Pampanga. Here, Brancomm cannot be said to have been "deprived" of "property" without due process of law just because the NTC allowed Cable Link to rectify its defective applications.

More importantly, monopolies and combinations in restraint of trade have already been outlawed and punished even before the enactment of the Philippine Competition Act,⁷³ by Article 186⁷⁴ of the Revised Penal Code. Even the second whereas clause⁷⁵ of E.O. No. 205 as well as Sections 5 (f)⁷⁶ and 17⁷⁷ of the PTPA empowers the NTC to curb monopolistic (and even quasi-monopolistic) behaviors of service providers which are inimical to healthy competition. Obviously, no legitimate interest or claim of entitlement can arise or result in something which is legally discouraged or declared to be unlawful.

However, this is not to say that the respondent has no interest at all to protect as regards Cable Link's certificate of authority applications as competing CATV service provider. Since NTC is tasked and empowered by E.O. No. 205 to regulate the CATV service industry, it may take into consideration the legitimate interests of *all* stakeholders during application proceedings. For example, if the NTC is able to determine from the application requirements submitted to it that a prospective entrant to the industry intends to use without compensation⁷⁸ or detrimentally displace the existing essential facilities of those already lawfully in operation, oppositors

⁷³ R.A. No. 10667 (July 21, 2015).

⁷⁴ As amended by R.A. No. 1956 (An Act Amending Article One Hundred and Eighty-Six of the Revised Penal Code, Concerning Monopolies and Combinations in Restraint of Trade [June 22, 1957]).

⁷⁵ WHEREAS, when the public interest so requires, **monopolies** in commercial mass media shall be **regulated** or **prohibited**; x x x (Emphasis supplied)

⁷⁶ Protect consumers against misuse of a telecommunications entity's monopoly or quasi-monopolistic powers by, but not limited to, the investigation of complaints and exacting compliance with service standards from such entity x x x

⁷⁷ The Commission shall, however, retain its residual powers to regulate rates or tariffs when ruinous competition results or when a monopoly or a cartel or combination in restraint of free competition exists and the rates or tariffs are distorted or unable to function freely and the public is adversely affected. In such cases, the Commission shall either establish a floor or ceiling on the rates or tariffs.

⁷⁸ It is important to point out that the added use generally contributes to the acceleration of an existing facility's depreciation rate. As such, the owner of the facility used and profited by another should be properly compensated for the gradual loss of property thru depreciation.

will undoubtedly be considered to have legitimate interests to be protected by the guarantee of due process. In which case, there will be a need to make binding pronouncements affecting legitimate interests or claims of entitlement. Consequently, the application proceedings will now be converted from purely administrative to quasi-judicial in nature thereby triggering the necessary application of due process requirements. Be that as it may, absent any legitimate interest on the part of stakeholders who may be potential oppositors, the process relative to certificate of authority applications cannot be considered as a quasi-judicial proceeding as it presents no justiciable controversy requiring the settlement of rights and obligations. In other words, there is *generally* nothing for the NTC to adjudicate in processes involving certificate of authority applications.

Finally, the records reveal that the application proceeding before the NTC relative to Cable Link's application is **still ongoing**. Moreover, it is also not disputed that Brancomm had already been recognized by the NTC as a party to the instant application proceeding. As such, it is obvious that Brancomm has not yet been foreclosed with the opportunity to independently assess for itself the salient statutory requirements or documents submitted by Cable Link in its application. On this score, the CA's perception or finding of due process violation is premature at this stage in the application proceedings. Besides, it is only when NTC finally grants Cable Link's applications despite failure to comply with statutory requirements can Brancomm initiate the proper complaint proceedings governed by Part III of the NTC Rules.

II. On the Presence of Grave Abuse:

It is already settled in the foregoing discussions that Brancomm had not yet acquired any legitimate claim of entitlement to protect in the subject application proceedings involving Cable Link. Furthermore, it is likewise settled that Brancomm's right to due process has not been violated yet by the NTC which allowed Cable Link's certificate of authority application proceedings to continue and to be rectified.

On this score, the Court emphasizes that grave abuse of discretion must be alleged and proved to exist for a petition for *certiorari* to prosper.⁷⁹ As such, "grave abuse of discretion" has been defined as a capricious or whimsical exercise of judgment that is patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law.⁸⁰ It also includes a virtual refusal to act in contemplation of law or an exercise of power in an arbitrary and despotic manner by reason of passion

⁷⁹ *Government Service Insurance System Board of Trustees v. Court of Appeals, et al.*, G.R. No. 230953, June 20, 2018.

⁸⁰ *Rodriguez v. Presiding Judge of the RTC of Manila – Branch 17*, 518 Phil. 455, 462 (2006).


or personal hostility.⁸¹ Thus, mere abuse of discretion is not enough in order to oust the court of its jurisdiction — it must be **grave**.⁸²

In the instant case, the records are bereft of any indication of any abuse on NTC's part in giving due course to Cable Link's applications. More so, assuming *arguendo* that there was "abuse" in allowing the subject application proceedings to continue, Brancomm was not able to prove or even explain in its petition for *certiorari* before the CA that the same was grave. Due to this failure to substantiate the existence of grave abuse on NTC's part, the CA erred in granting the respondent's petition for *certiorari*.


WHEREFORE, in view of the foregoing, the Court **REVERSES** the March 20, 2012 Decision and the August 14, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 111019 for erroneously ascribing grave abuse of discretion on the part of the National Telecommunications Commission's act of giving due course to Cable Link & Holdings Corporation's certificate of authority applications. Consequently, the March 13, 2009 Omnibus Order and the July 17, 2009 Order of the National Telecommunications Commission in NTC BMC Case Nos. 2008-150, 2008-152 and 2008-154 are hereby **REINSTATED**.

Costs against the respondent.

SO ORDERED.


JOSE C. REYES, JR.
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Chief Justice
Chairperson

⁸¹ *Philippine National Bank v. Gregorio*, 818 Phil. 321, 337 (2017).

⁸² *Intec Cebu, Inc. v. Court of Appeals*, 788 Phil. 31, 42 (2016).



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



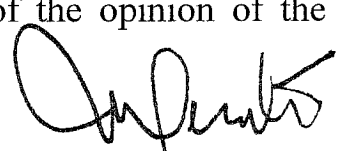
AMY C. LAZARO-JAVIER
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice