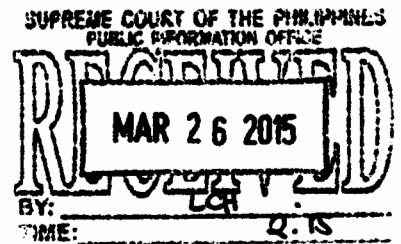




Republic of the Philippines
Supreme Court
Manila



EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated FEBRUARY 24, 2015, which reads as follows:

“G.R. No. 180303 - PHILIPPINE PRESS INSTITUTE, CENTER FOR MEDIA FREEDOM AND RESPONSIBILITY, PHILIPPINE CENTER FOR INVESTIGATIVE JOURNALISM, NEWSBREAK, PROBE PRODUCTIONS, CENTER FOR COMMUNITY JOURNALISM AND DEVELOPMENT, DANILO A. ARAO, RICKY CARANDANG, ARNOLD CLAVIO, SHEILA CORONEL, GEORGINA R. ENCANTO, ANNA LIZA EUGENIO, FEDERICO E. FERNANDEZ, GLENDA GLORIA, ANA PATRICIA HONTIVEROS-PAGKALINAWAN, RODNEY JALECO, MARITNESS JIMENEZ, JAILEEN F. JIMENO, ED LINGAO, JADE LOPEZ, JO ANN Q. MAGLIPON, MALOU MANGAHAS, TINA MONZON-PALMA, HENRY OMAGA-DIAZ, ROWENA PARAAN, JOSE PAVIA, MARIA A. RESSA, LYN RESURRECCION, MARIA CRISTINA V. RODRIGUEZ, DAVID JUDE STA. ANA, JOSELITO SARACHO, LOURDES E. SIMBULAN, JESSICA A. SOHO, MARIA LOURDES TALOSIG, LUIS V. TEODORO, JOSE TORRES, NESSA VALDELLON, ANTONIO T. VELASQUEZ, ROSARIO S. VILLA, CLAUDE VITUG, MARITES VITUG, RUBEN ALABASTRO, ENGELBERT CAMONAYAN APOSTOL, JORGE V. ARUTA, PERGENTINO B. BANDAYREL, JR., LETICIA BONIOL, SONIA M. CAPIO, CIRIACO CINCO, JR., LUCHI CRUZ-VALDES, FERNANDO DEL MUNDO, MA. CONCEPCION INOCENCIO DUMO, ARTEMIO T. ENGRACIA, JR., GABRIEL FORMOSO, JR., LILIBETH SOCORR LOPEZ FRONDOSO, ROSARIO A. GARCELLANO, LORNA KALAW-TIROL, RACHEL E. KHAN, JOSE MA. D. NOLASCO, NILO B. PAUROM, ELENA E. PERNIA, ALELI A. QUIRANTE, VICENTE RODRIGUEZ, JUAN SARMIENTO, JR., RECAH TRINIDAD, ABELARDO S. ULANDAY, and ISAGANI YAMBOT, Petitioners v. EXECUTIVE SECRETARY EDUARDO R. ERMITA, JUSTICE SECRETARY RAUL GONZALEZ, NATIONAL TELECOMMUNICATIONS COMMISSION CHAIRMAN RONALD OLIVAR SOLIS AND PHILIPPINE NATIONAL POLICE DIRECTOR GENERAL ARTURO LOMIBAO, Respondents.

For consideration of the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, which seeks the reversal of the Decision¹ dated May 30, 2007 and the Resolution² dated October 3, 2007 of the Court of Appeals in CA-G.R. SP No. 93529. The Decision of the appellate court dismissed the Amended Petition for *Certiorari*, Prohibition, Temporary Restraining Order and Preliminary Injunction filed by petitioners; while the Resolution of the appellate court denied the petitioners' Motion for Reconsideration of the Court of Appeals' Decision.

The petitioners in this case are journalists and various journalist organizations; while the respondents are officials of the government of then President Gloria Macapagal-Arroyo.

On February 24, 2006, President Arroyo issued Presidential Proclamation No. 1017 (PP 1017) declaring a state of national emergency. On even date, she also issued General Order No. 5 (G.O. No. 5), which implemented PP 1017 and directed the Armed Forces of the Philippines (AFP) Chief of Staff and the Philippine National Police (PNP) Chief, and their respective officers, "to immediately carry out the necessary and appropriate actions and measures to suppress and prevent acts of terrorism and lawless violence."

According to the petitioners, respondent PNP Director General Arturo Lomibao called a press conference on February 25, 2006, where he stated, among others, that in accordance with G.O. No. 5, the AFP and the PNP "will carry out appropriate action and security measures to prevent an escalation of the situation. [Thus] if in our judgment anybody, group or business establishment will contribute to the exacerbation of the national emergency we will carry out what is reasonably necessary and appropriate to suppress and prevent it pursuant to General Order No. 5."³ Thereafter, General Lomibao allegedly "made thinly veiled threats of administrative sanctions, temporary takeover, closure, and/or criminal prosecution if the national media were to publish or air reports that 'contribute' to 'national instability.'"⁴

National Telecommunications Commission (NTC) Chairman Ronald Solis also allegedly reminded the broadcast media that the NTC would strictly enforce the following Memorandum Circulars:

Memorandum Circular No. 11-12-85

SUBJECT: Revision of Memorandum Circular No. 3-04-85

¹ *Rollo*, pp. 64-80; penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) with Associate Justices Aurora Santiago Lagman and Apolinario D. Bruselas, Jr., concurring.
² *Id.* at 81-82.
³ *Id.* at 348.
⁴ *Id.* at 351.

Re: Program Standards

Pursuant to the powers vested upon the National Telecommunications Commission, the Program Standards Promulgated by this Commission under Memorandum Circular No. 3-04-85 is hereby amended to include new paragraphs "5" and "6" to item C page three of said Standards, as follows:

"5" All radio broadcasting and television stations shall provide adequate public service time; shall conform to the ethics of honest enterprise; and shall not use its stations for the broadcasting and/or telecasting of obscene or indecent (sic) language, speech, play, act, or scene, or for the dissemination of false information or wilful misrepresentation, or to the detriment of the public health or to incite[,] encourage, or assist in subversive or treasonable acts.

"6" All radio broadcasting and television stations shall, during any broadcast or telecast, cut off from the air the speech, play, act or scene or other matter being broadcast and/or telecast, if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral.

Please be guided accordingly.⁵

Memorandum Circular No. 22-89 dated December 5, 1989

SUBJECT: Revision of Memorandum Circular No. 11-12-85

Re: Program Standards

Pursuant to the powers vested upon the National Telecommunications Commission, the Program Standards promulgated by this Commission under the Memorandum Circular No. 11-12-85 is hereby amended to include new paragraphs "5" and "6" to item C page three of said Standards, as follows:

"5" All radio broadcasting and television stations shall provide adequate public service time; shall conform to the ethics of honest enterprises; and shall not use its stations for the broadcasting and/or telecasting of obscene or indecent language, speech and/or scene, or for the dissemination of false information or willful misrepresentation, or to the detriment of the public health or to incite, encourage or assist in subversive or treasonable acts.

Corollary to the above and in view of the current on-going state of rebellion/terrorism, the following broadcast/telecast guidelines shall be strictly followed:

A) The airing of rebellious/terrorist propaganda, comments, interviews, information and other similar and/or related materials shall be prohibited.

B) The airing of government strategic information, including but not limited to government military locations, troop movements, troop

⁵ Id. at 94.

numbers, description of government weapons, military units, vehicles and such other government tactical operations shall likewise be prohibited.

“6” All radio broadcasting and television stations shall, during any broadcast or telecast, cut off from the air the speech, play, act or scene or other matter being broadcast and/or telecast, if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral.

All broadcast media entities, radio or television, must conform with the abovementioned guidelines.⁶

Memorandum Circular No. 01-01-01 dated January 17, 2001

SUBJECT: REITERATION OF MEMORANDUM CIRCULAR NO. 11-12-85 RE: PROGRAM STANDARDS

WHEREAS, the National Telecommunications Commission has received sufficient and reliable information from the Office of the Press Secretary of suspicious elements who are out to create a destabilization move against the duly constituted government;

WHEREAS, radio broadcasting and television station are duty bound to provide adequate public service which include among others, airing of fair and balanced reporting;

WHEREAS, in the interest of justice and fair play and all laws in connection therewith such as radio broadcasting and television stations' franchises and authorities, Memorandum Circular No. 11-12-85 is hereby reiterated as follows:

“5” All radio broadcasting and television stations shall provide adequate public service time; shall conform to the ethics of honest enterprise; and shall not use its stations for the broadcasting and/or telecasting of obscene or indecent language, speech, play, act or scene, or for the dissemination of false information or willful misrepresentation, or to the detriment of the public health or to incite, encourage or assist in subversive or treasonable acts.

“6” All radio broadcasting and television stations shall, during any broadcast or telecast, cut off from the air the speech, play, act or scene or other matter being broadcast and/or telecast, if the tendency thereof is to propose and/or incite treason, rebellion or sedition, or the language used therein or the theme thereof is indecent or immoral.

In addition, the airing of rebellious/terrorist propaganda, comments[,] interviews, information and other similar and[/]or related materials shall be prohibited.

All broadcast media entities, radio or television must conform with the abovementioned guidelines.⁷

⁶ Id. at 95-96.

⁷ Id. at 92-93.

On March 3, 2006, President Arroyo issued Proclamation No. 1021, declaring the cessation of the state of national emergency. Despite this, Department of Justice Secretary Raul Gonzalez, PNP Director General Lomibao, and NTC Chairman Solis allegedly continued to threaten the press, directly and indirectly, to toe the line or they will face administrative or criminal sanctions.

On March 3, 2006, NTC Chairman Solis issued NTC Memorandum Circular No. 01-03-2006, which reads:

Memorandum Circular No. 01-03-2006 dated March 3, 2006

SUBJECT: Program Standards for Radio and TV Broadcast and Cable TV Stations

Whereas, the National Telecommunications Commission (NTC) is the government agency vested with the authority to formulate and implement policies, plans, programs, rules and regulations in the establishment, maintenance, and operation of broadcast facilities, systems and services throughout the country;

Whereas, the NTC recognizes that the freedom and independence of the broadcast media is essential to the broad protection accorded to our fundamental civil rights to freedom of speech and the right to true and accurate information, and must thus be safeguarded for the proper performance of its role in a democratic society;

Whereas, the NTC reiterates its recognition of the Kapisanañ ng mga Brodkaster sa Pilipinas (KBP), as the self-regulatory body for the broadcast media in the Philippines, as it had under the 1984 Instrument of Understanding, 1991 Memorandum of Agreement and the 1999 Memorandum of Understanding, as well as the NTC's continued adoption of its program standards in the KBP Radio and Television Codes which KBP has developed and institutionalized, as it did since the issuance of NTC Memorandum Circular 3-4-85;

Whereas, NTC is not herein issuing a new set of guidelines since existing KBP program standards, and this Commission's Memorandum Circular No. 11-12-85 and Memorandum Circular No. 22-89, which are likewise part of KBP program standards, constitute sufficient and widely-accepted benchmarks by the broadcasting industry, and remain to be an appropriate and relevant set of standards to govern and ensure responsible radio and television broadcasting, as well as cablecasting, in order to protect the public interest in times of normalcy and even during times of armed conflict, public peril, calamity, or other national emergency;

Whereas, the NTC supports KBP's strict injunction for broadcast stations not to allow their facilities to be used for advocating the overthrow of government by force or violence, and to not allow the broadcast of materials which tend to propose/incite treason, rebellion, sedition, or pose a clear and present danger to the State;

Whereas, the KBP shares the government's concern that the coverage of troop movements are highly sensitive in nature for reasons of

national defense and national security implications, and should thus exclude information that may identify the location of the troops or provide/show identifiable land marks, give troop estimates, identify troop personnel, or their destination or direction;

Whereas, the supervision of the broadcast and cable TV industries by government or through self-regulation by the broadcast and cable industry themselves calls for the thoughtful and reasonable discretion, and fealty at all times to the observance of due process;

Whereas, not only is it the government and broadcast media's responsibility to know, but it is equally the right of the general public to be informed of the accepted program standards;

WHEREFORE, pursuant to the powers vested upon the NTC, for the reference and guidance of radio and television broadcasting stations and cable TV stations, and for the information of the general public, the NTC hereby adopts the existing program standards of KBP as set forth in the KBP Radio and Television Codes and in other relevant KBP circulars, including those contained in KBP Circular 06-016 dated 27 February 2006, and hereby reiterates and adopts all the provisions of Memorandum Circular No. 11-12-85 and Memorandum Circulars No. 22-89.

All broadcast media and cable TV entities must conform to the abovementioned guidelines.

Pursuant to the Memorandum of Agreement dated 24 September 1991 among the Department of Transportation and Communications, the National Telecommunications Commission and the KBP, it is hereby reiterated that all complaints against any KBP member directly filed before the DOTC or the NTC for violations of broadcast laws, NTC rules and regulations, and KBP Radio and Television Codes and relevant circulars, shall be immediately remanded to the KBP Standard Authority for consideration and adjudication. While all complaints against any other broadcast entity, upon due notice and hearing, shall be immediately acted upon by [the] NTC.

Any circular, memorandum or order previously issued or parts thereof inconsistent herewith are deemed amended, revised or repealed.

This circular shall take effect fifteen (15) days after publication in a newspaper of general circulation.

Quezon City, Philippines, March 3, 2006.⁸

On March 8, 2006, petitioners filed before the Court of Appeals a Petition for *Certiorari*, Prohibition, Temporary Restraining Order and Preliminary Injunction, which was docketed as CA-G.R. SP No. 93529.

Before any responsive pleading was filed, petitioners filed an Amended Petition for *Certiorari*, Prohibition, Temporary Restraining Order and Preliminary Injunction (Amended Petition) on March 31, 2006.

⁸ Id. at 97-98.



Petitioners primarily prayed therein for a judgment that: (1) prohibits respondents and their agents from “stopping, prohibiting or censoring the publication or airing of speech based upon its message, subject matter, or political color or content, and/or from imposing any prior restraint on the press, be it formal or informal, direct or in the form of disguised or thinly veiled threats of administrative sanction or criminal prosecution;”⁹ and (2) annuls and sets aside NTC Memorandum Circular Nos. 01-01-01, 11-12-85, 22-89, and 01-03-2006.

On May 30, 2007, the Court of Appeals rendered judgment, dismissing the above Amended Petition. The appellate court held that the assailed NTC memorandum circulars were issued by the NTC in the exercise of its quasi-legislative powers under Section 15, paragraphs (e) and (g) of Executive Order No. 546.¹⁰ While the petition was denominated as one for *certiorari*, the Court of Appeals observed that its object is actually to invalidate, and primarily to prevent, the enforcement of the questioned memorandum circulars on the ground that they are unconstitutional. The appellate court stated that it is the regular courts that have jurisdiction to pass upon the validity or constitutionality of rules or regulations issued by an administrative agency in the performance of its quasi-legislative functions. Thus, the petitioners should have filed an ordinary action for the nullification of said circulars before the proper RTC. Likewise, the appellate court ruled that the special civil action of prohibition is not a proper remedy for the relief sought by the petitioners since the case does not involve any judgment, order, or resolution of the respondents. Prohibition, according to the Court of Appeals, is not available to assail an administrative issuance issued in the exercise of a quasi-legislative function.

Petitioners sought a reconsideration of the Court of Appeals’ decision, but the same was denied in the Resolution dated October 3, 2007. The appellate court noted that the petitioners’ motion for reconsideration was filed one day beyond the 15-day reglementary period prescribed by the Rules of Court. Consequently, the Court of Appeals ruled that its Decision dated May 30, 2007 had already become final and executory.

In the petition before us, petitioners raise the following issues:

⁹ CA rollo, p. 194.

¹⁰ Executive Order No. 546 is entitled “Creating a Ministry of Public Works and a Ministry of Transportation and Communications.” Section 15(e) and (g) of Executive Order No. 546 state:

SEC. 15. *Functions of the Commission.* - The Commission shall exercise the following functions:

x x x x

e. Establish and prescribe rules, regulations, standards, specifications in all cases related to the issued Certificate of Public Convenience and administer and enforce the same;

x x x x

g. Promulgate such rules and regulations, as public safety and interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain effective competition among private entities in these activities whenever the Commission finds it reasonably feasible[.]

Did the Court of Appeals act contrary to law and jurisprudence [-] to warrant the exercise by this Court of its power of supervision [-] in dismissing the petition –

2.1. On the ground that it should have been filed with the Regional Trial Court and not the Court of Appeals?

2.2. Despite its very own findings that respondents' acts constituted unlawful prior restraint?

2.3. In spite of the ruling of this Honorable Court in *David v. Arroyo*, G.R. No. 141709, May 3, 2006?¹¹

Petitioners fault the Court of Appeals for dismissing their petition on the ground that it should have been filed with the proper RTC. Petitioners argue that a petition for *certiorari*, prohibition or any other extraordinary writ may be filed with either the Court of Appeals or the RTC. Petitioners also aver that the rule on hierarchy of courts does not apply when the issues in a case involve pure questions of law or when exceptional and compelling circumstances are present. Petitioners stress that the case at bar has serious implications since the assailed NTC memorandum circulars are still in force and can be implemented anytime at the whim and pleasure of the State. The nature and circumstances of the case, petitioners allege, are not just capable of repetition but are likely to be repeated.

Petitioners likewise assert that the Court of Appeals sacrificed substantial justice for technicalities when the appellate court dismissed their petition. They insist that “[t]he NTC’s ban on radio and television stations from broadcasting anything that ‘tends’ to incite rebellion, sedition or subversive acts, or constitutes ‘*rebellious/terrorist propaganda*’ is clearly a prior restraint because it prohibits the press, in advance of airing, from releasing news to the public.”¹² Petitioners point out that the questioned memorandum circulars prohibit broadcast networks from airing subversive material – even when the Anti-Subversion Law has long been repealed – and they give the NTC unfettered discretion to prohibit the airing of anything that “tends” to be “rebellious.”¹³ Petitioners posit that the determination of what is subversive or rebellious is not a legislative function but a judicial act. They argue that the issuance of the questioned circulars involves the exercise of a quasi-judicial power. Petitioners maintain that the function of a writ of prohibition is to prevent the unlawful and oppressive exercise of legal authority and to provide for a fair and orderly administration of justice. They, therefore, stress that prohibition is necessary in the instant case in order to protect the rights of journalists and media organizations from unwarranted state intrusion.

The Ruling of the Court

¹¹ *Rollo*, pp. 360-361.

¹² *Id.* at 366.

¹³ *Id.* at 372.

The petition is not meritorious.

The Court rules that the assailed Decision of the Court of Appeals dated May 30, 2007 had already become final and executory, thus precluding this Court from acquiring jurisdiction to modify, much less, reverse the same.

Section 1, Rule 52 of the Rules of Court provides that a party may file a motion for reconsideration of a judgment or final resolution within fifteen (15) days from notice thereof, with proof of service on the adverse party. This 15-day reglementary period for the filing of a motion for reconsideration is non-extendible.¹⁴

In this case, the petitioners' motion for reconsideration of the Court of Appeals judgment was filed one day beyond the reglementary period for doing so. The counsel for the petitioners admitted this lapse and attributed the same to the inadvertence of a member of his staff in stamping the date of receipt of the Court of Appeals decision as June 6, 2007, not June 5, 2007 when they allegedly received said decision. This mistake is fatal to the petitioners' case. As held in *Fortich v. Corona*¹⁵:

Procedural rules, we must stress, should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. The requirement is in pursuance to the bill of rights inscribed in the Constitution which guarantees that "all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies." The adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules. **While it is true that a litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.** There have been some instances wherein this Court allowed a relaxation in the application of the rules, but this flexibility was "never intended to forge a bastion for erring litigants to violate the rules with impunity." **A liberal interpretation and application of the rules of procedure can be resorted to only in proper cases and under justifiable causes and circumstances.** (Emphasis ours.)

Unfortunately, petitioners failed to overcome the burden of proving the existence of cogent reasons to excuse their noncompliance with the reglementary period for filing a motion for reconsideration. We reiterate that it is the duty of an attorney to himself and to his clients to invariably adopt a system whereby he can be sure of receiving promptly all judicial notices during his absence from his address of record. Thus, the attorney

¹⁴ *Philippine Coconut Authority v. Garrido*, 424 Phil. 904, 909 (2002).

¹⁵ 359 Phil. 210, 220 (1998).

must so arrange matters that communications sent by mail, addressed to his office or residence, may reach him promptly.¹⁶ In this occasion, we caution once again that not every entreaty for the relaxation of the rules of procedure shall be so lightly granted by the Court for it will render such rules inutile.¹⁷ Under the circumstances, the Court finds no grave abuse of discretion on the part of the Court of Appeals in denying the petitioners' motion for reconsideration.

At any rate, even if the Court were to relax the rule on the reglementary period for the filing of a motion for reconsideration and take cognizance of the instant petition, the outcome is still not favorable to the petitioners.

A perusal of the Amended Petition before the Court of Appeals reveals that the petitioners' ultimate prayer is the nullification of said circulars on the ground that the same were offensive to the constitutionally protected rights of freedom of speech and of the press and that the NTC was without any authority to issue circulars that restrict expressions based on their message, subject matter and content.

As found by the Court of Appeals, however, the petitioners availed themselves of the wrong remedy in assailing the subject NTC memorandum circulars.

At the outset, the Court of Appeals correctly ruled that the subject memorandum circulars were issued by the NTC in the exercise of its quasi-judicial powers. An administrative agency's quasi-legislative or rule-making power is the power to make rules and regulations which results in delegated legislation that is within the confines of the granting statute and the doctrine of non-delegability and separability of powers.¹⁸

In *Republic of the Philippines v. Express Telecommunication Co., Inc.*,¹⁹ we had occasion to briefly discuss the nature and functions of the NTC, including the laws, rules, and regulations that govern its existence. Thus –

The NTC was created pursuant to Executive Order No. 546, promulgated on July 23, 1979. It assumed the functions formerly assigned to the Board of Communications and the Telecommunications Control Bureau, which were both abolished under the said Executive Order. Previously, the NTC's functions were merely those of the defunct Public Service Commission (PSC), created under Commonwealth Act No. 146, as amended, otherwise known as the Public Service Act, considering that the Board of Communications was the successor-in-interest of the

¹⁶ *Republic of the Philippines v. Arro*, 234 Phil. 617, 622 (1987).

¹⁷ *Ponciano, Jr. v. Laguna Lake Development Authority*, 591 Phil. 194, 209 (2008).

¹⁸ *Smart Communications, Inc. v. National Telecommunications Commission*, 456 Phil. 145, 155-156 (2003).

¹⁹ 424 Phil. 372, 389-390 (2002).

PSC. Under Executive Order No. 125-A, issued in April 1987, the NTC became an attached agency of the Department of Transportation and Communications. (Emphasis ours.)

The functions of the NTC are specifically enumerated in Section 15 of Executive Order No. 546. The relevant portions of Section 15 provide:

SEC. 15. *Functions of the Commission.* - The Commission shall exercise the following functions:

a. Issue Certificate of Public Convenience for the operation of communications utilities and services, radio communications systems, wire or wireless telephone or telegraph systems, radio and television broadcasting system and other similar public utilities;

x x x x

e. Establish and prescribe **rules, regulations, standards**, specifications in all cases related to the issued Certificate of Public Convenience and administer and enforce the same;

x x x x

g. Promulgate such **rules and regulations**, as public safety and interest may require, to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain effective competition among private entities in these activities whenever the Commission finds it reasonably feasible[.] (Emphases ours.)

Clearly, the rule-making powers of the NTC are derived from the above paragraphs (e) and (g) of Section 15 of Executive Order No. 546. Accordingly, the issuance of the assailed memorandum circulars was made pursuant thereto. On this note, the Court categorically stated in *Smart Communications, Inc. v. National Telecommunications Commission*²⁰ that if what is assailed is the validity or constitutionality of a rule or regulation issued by an administrative agency in the performance of its quasi-legislative functions, then the regular courts have jurisdiction to pass upon the same. The determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the Constitution is within the jurisdiction of the regular courts.

Contrary to the contention of the petitioners, a writ of prohibition is likewise unavailing in this case. Under Section 2, Rule 65 of the Rules of Court, when the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition for prohibition in

²⁰

Supra note 18 at 158-159.

the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require. We elucidated in *Holy Spirit Homeowners Association, Inc. v. Defensor*²¹ that:

Prohibition is an extraordinary writ directed against any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, ordering said entity or person to desist from further proceedings when said proceedings are without or in excess of said entity's or person's jurisdiction, or are accompanied with grave abuse of discretion, and there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. **Prohibition lies against judicial or ministerial functions, but not against legislative or quasi-legislative functions.** x x x. (Emphasis ours.)

Plainly, there are no proceedings before any tribunal, corporation, board, officer or person to be enjoined in this case. On the contrary, what petitioners seek to invalidate are administrative issuances issued in the exercise of the NTC's quasi-legislative functions.

The Court cannot subscribe to the petitioners' argument that the issuance of the assailed NTC memorandum circulars involved the exercise of a quasi-judicial power given their proposition that the determination of what is subversive or rebellious is not a legislative function but a judicial act. According to *Destileria Limtuaco & Co., Inc. v. Advertising Board of the Philippines*²²:

A respondent is said to be exercising judicial function by which he has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties. Quasi-judicial function is a term which applies to the action and discretion of public administrative officers or bodies, which are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature. x x x.

Here, the issuance by the NTC of the assailed memorandum circulars did not derive from the performance of a judicial or quasi-judicial function. Said issuances were not borne out of an adjudication of the legal rights of contending parties, but involved the exercise of the NTC's power to issue rules and regulations pursuant to paragraphs (e) and (g) of Section 15 of Executive Order No. 546.

Thus, the Court of Appeals was correct in holding that the proper recourse that should have been taken by the petitioners was to question the

²¹ 529 Phil. 573, 587 (2006).


²² 593 Phil. 99, 105 (2008).

constitutionality of the assailed NTC memorandum circulars before the RTC through an ordinary action for their nullification.

In view of the foregoing, the Court refrains from touching on the constitutional issues raised by the petitioners, which should be threshed out in an appropriate proceeding filed before the proper court.

WHEREFORE, the Court of Appeals Decision dated May 30, 2007 and Resolution dated October 3, 2007 in CA-G.R. SP No. 93529 are hereby **AFFIRMED**. No costs.” Brion, J., on leave. Reyes, J., no part. Jardeleza, J., on official leave. (48)

Very truly yours,


ENRIQUETA E. VIDAL
Clerk of Court

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