

OLONGAPO ELECTRIC LIGHT AND POWER CORPORATION, PLAINTIFF-APPELLANT, VS. NATIONAL POWER CORPORATION AND THE MUNICIPALITY OF OLONGAPO, DEFENDANTS-APPELLEES.

G.R. No. L-24912. April 09, 1987

Ponente: PADILLA, J.

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PADILLA, J.:

This is an appeal from the decision of the then Court of First Instance of Manila, which dismissed the complaint filed in Civil Case No. 52992 of said court.

The facts of the case are, in brief, as follows:

On 27 September 1959, the Federal Government of the United States of America returned to the Republic of the Philippines the possession of what was then known as the Community of Olongapo, a portion of the United States Naval Base at Subic Bay, in the province of Zambales; and on 7 December 1959, the President of the Philippines, by Executive Order no. 366, converted the area into an independent municipality known as the Municipality of Olongapo. The Federal Government also turned over to the newly created municipality the electric power facilities used by the United States Navy in the area, including the transmission lines, poles, transformers, necessary appurtenances and auxiliary equipment existing thereon and agreed to furnish the municipality electric power to a maximum load of 3,000 kilowatts until 12:00 o'clock noon of 7 December 1962.

On 19 June 1960, the plaintiff-appellant, Olongapo Electric Light and Power Corporation, was granted a legislative franchise to install, operate and maintain an electric light, heat and power system in the municipality of Olongapo; and on 17 July 1960, it wrote the National Power Corporation (NPC, for short), offering to buy electric power and requesting information as to the terms and conditions thereof. The NPC wrote back asking how much power and energy the appellant would need. In order to ascertain the same, the appellant engaged the services of an engineer. In due time, a report was submitted to the NPC and, thereafter, the appellant was apprised of the terms and conditions under which the NPC would furnish power to it.

Conferences were then held between the representatives of the appellant and the NPC, after which, a contract was signed by them on 18 May 1961. Soon thereafter, the NPC started the extension of its transmission line from Dinalupihan, Bataan to Olongapo, Zambales. The NPC was also able to acquire a suitable site for a substation in Olongapo, with the help of the appellant.

On 23 November 1961, the Municipal Council of Olongapo passed Resolution no. 52, permitting the appellant to make use of or avail of its legislative franchise with the municipality of Olongapo. In view thereof, the appellant submitted a power distribution plan which was approved by the District Engineer of Zambales and the Municipal Council of Olongapo. The appellant then started negotiations with the individual members of the Municipal Council of Olongapo for the lease and eventual purchase of the municipality's distribution lines, and, on 17 July 1962, the Municipal Council, in Resolution no. 46, authorized the disposal of the existing electric distribution system to private parties through a public auction sale. The municipal officials also agreed, in principle, to lease to

the appellant the said electric distribution system for a period of one (1) year at a monthly rental of P5,000.00. However, before the lease contract could be formalized, the municipal mayor was replaced, and Resolution no. 46 was repealed by Resolution no. 57. Then, on 4 September 1962, Resolution no. 58 was approved wherein it was resolved that the Municipality of Olongapo would maintain and operate the electric and power system. Copies of the resolutions were sent to the appellant for its information.

Upon receipt of the copies of said resolutions, counsel for the appellant requested the Municipal Council of Olongapo to immediately implement their agreement to lease the said electric distribution system. A draft of a lease contract was attached thereto. Counsel also advised the municipal officials that, if nothing is heard from them on or before 15 October 1962, the appellant would proceed to erect its own poles and lay out wires for its distribution system.

The Municipality of Olongapo did not comply with the request of the appellant and, instead, it began to negotiate with the NPC for the purchase of electric power and energy. On 4 January 1963, the NPC and the Municipality of Olongapo executed a contract for the purchase and sale of electric power and energy. The NPC also advised the appellant that it was ready to supply power to the latter according to the terms of their agreement, but the appellant could not accept delivery as it had no distribution system in the municipality.

When the appellant learned of the contract entered into by and between the NPC and the Municipality of Olongapo, it filed a complaint in the then Court of First Instance of Manila against the NPC and the Municipality of Olongapo to declare said contract null and void, plus damages, for being contrary to law, morals, public policy and in violation of appellant's right as a holder of a legislative franchise or certificate of public convenience. Appellant also prayed for the issuance of a writ of preliminary injunction to restrain the NPC from delivering electric power and energy to its co-defendant.

After trial, the court found that the appellant has no cause of action against the defendants and dismissed the complaint. Thereupon, the appellant appealed directly to this Court.

We have carefully examined the records of the case and find no reason to set aside the findings of the learned trial judge, Hon. Federico C. Alikpala, which we quote hereunder with approval:

"Plaintiff contends that Exhibit 'C' is null and void because it was executed against the provisions of mandatory and prohibitory laws, more particularly Section 18 of the Public Service Law, which provides that 'it shall be unlawful for ... any municipality, province or other department of the Government of the Philippines to engage in any public service business without having first secured from the Commission a certificate of public convenience and necessity as provided for in this Act ...'

"Plaintiff's contention, in the opinion of the Court, is not well founded. What section 18 of the Public Service Law prohibits is the act of engaging in a public service business without first securing a certificate of public convenience. The law does not declare as unlawful the act of buying electric power and energy by a public utility operator. Said operator would only come under the penal sanction of the law from the moment it sells or disposes of the power to its customers, because it would then be engaging in the public service business. Consequently, the execution of Exhibit 'C' did not by itself constitute a violation of the provisions of Section 18 of the Public Service Law as it was merely a contract for the sale of electric power and energy.

"At any rate, even assuming that the execution of Exhibit 'C' may be considered already an act of engaging in a public service business, the question to be resolved is whether the prohibition contained in Section 18 of the Public Service Law is still in force insofar as municipalities are concerned.

"Originally, section 13 of the Public Service Act provides that the Public Service Commission shall have general supervision, jurisdiction and control over all public services with the exception of the following:

- Ice plants, cold storage plants or any public service operated by the Government of the United States in the Philippines, exclusively for its own use;
- Municipal warehouses;
- Animal drawn vehicles;
- Manila Railroad Company until the same shall be controlled by the Government of the Philippines.

It was, however, provided in said section that the Commission shall have limited jurisdiction over the following:

- Aircraft — to fix maximum passenger and freight rates;
- Radio companies or concerns — to fix their rates;
- Ships — to fix freight and passenger rates.

"In Section 14, the term 'public service' or 'public utility' as used in the Public Service Act, was defined as to include 'any electric light, heat, power system ... when owned, operated, managed or controlled for public use or service within the Philippines' by 'any municipality, province or other department of the Government of the Philippines.'

"Accordingly, before the Public Service Act was amended, a municipality must first secure a certificate of public convenience before operating a public service, otherwise it would be violating the provisions of Section 18 of said law.

"Section 13 and 14 of the Public Service Act, however, were first amended by Commonwealth Act No. 654, by consolidating in the first the provisions originally contained in the two sections, with modifications, and transferring and consolidating in Section 14, the public services which are excluded from the control of the Public Service Commission by Commonwealth Act No. 654 were those 'owned or operated by any instrumentality of the National Government or by any government-owned or controlled corporation.'

"Upon the effectivity of Commonwealth Act No. 654, the Commission lost all its authority over public services owned or operated by any instrumentality of the National Government or government-owned or controlled corporation, not only in the fixing of rates but also in requiring them to secure certificate of public convenience before commencing operation. Accordingly, section 18 of the Public Service Act was modified by implication by Commonwealth Act No. 654 in the sense that it was no longer unlawful for any instrumentality of the National or government-owned or controlled corporation to operate a public service even if it has no certificate of public convenience granted by the Public Service Commission.

"The Public Service Law was subsequently amended by Republic Act No. 2677, which took effect on June 19, 1960, with respect to Section 13(a), by inserting a proviso therein which reads:

"That public services owned or operated by government entities or government owned or controlled corporation shall be regulated by the Commission in the same way as privately owned public services, but certificates of public convenience or certificates of public convenience and necessity shall not be required of such entities, or corporations.'

and section 14 by eliminating paragraph (a) which refers to the ice and refrigeration plants and other public services operated in the Philippines by the Government of the United States for its exclusive use, thereby changing the letters indicating the paragraphs therein such that paragraph (f) became paragraph (e) and by adding to the end thereof the clause . . . 'except with respect to the fixing of rates.'

"Accordingly, the amendment of the Public Service Act by Republic Act No. 2677, again placed public services operated by government entities and government owned or controlled corporations under the jurisdiction of the Public Service Commission, with the qualification, however, that they are not required to secure certificate of

public convenience before commencing operations.

"Moreover, the execution of Exhibit 'C' became a necessity and the public interest was thereby served and promoted, in view of the inability of the plaintiff to take delivery of the power it contracted with the NPC due to its failure to install a distribution system. As early as September 11, 1962, the plaintiff knew that the Municipality of Olongapo did not like to lease and/or sell its electric distribution system and yet it did not take immediate steps to install one of its own. Had the said contract not been executed and the United States Navy stopped supplying electricity, the inhabitants of Olongapo would suffer from the consequences thereof.

"Another circumstance which militates against plaintiff's principal cause of action is article 1421 of the Civil Code, which provides that —

'The defense of illegality of contracts is not available to third persons whose interests are not directly affected.'
(Italics supplied)

The plaintiff was not a party to Exhibit 'C' nor an assignee or representative of the parties thereto. Neither was it directly affected by the execution of the contract because the NPC was ready and in a position to supply the plaintiff and the Municipality of Olongapo the specific quantity of power contracted by each. The mere fact that it would no longer be profitable for the plaintiff to operate an electric light system in Olongapo, in view of the decision of the Municipal Government of said municipality to engage also in the same business, did not give the former the right to ask for the annulment of the contract between the latter and the NPC. Besides, the franchise granted to the plaintiff by Republic Act No. 2992 to install, operate and maintain an electric light system in Olongapo, was not exclusive. Neither did NPC promise, much less agree with the plaintiff that it would not enter into a contract with another for the sale of power for use in Olongapo. As a matter of fact, under its charter, the NPC is authorized to sell electrical power and energy directly to the general public. Under these circumstances, the plaintiff has no legal standing to question the validity of Exhibit 'C'." [1]

Besides, in the analogous case of PLDT vs. City of Davao, [2] where the Philippine Long Distance Telephone Company (PLDT) sought to restrain the City of Davao from fulfilling its contract with ITT Philippines, Inc. for the installation by the latter of Davao City's telephone system and to compel the Public Service Commissioner to require Davao City to first obtain a certificate of public convenience, this Court said:

"Petitioner would further argue that the Davao City's entry as another and new telephone operator in the area covered by petitioner's franchise would violate its vested rights as prior operator. We need only point out in this regard that the law granting petitioner's franchise expressly provided that the rights thereunder conferred are not exclusive. Section 14 of Act No. 3436 states:

'Sec. 14. The rights herein granted shall not be exclusive and the rights and power to grant any corporation, association, or person other than the grantee franchise for the telephone or electrical transmission of messages or signals shall not be impaired or affected by the granting of this franchise.'

"A municipal corporation is not prevented from constructing and operating a competing plant, although a franchise had been granted a private company for a similar public utility, provided the franchise is not exclusive. (McQuillin, Municipal Corporations, 3[rd] Ed., Sec. 35.13, Vol. 12, pp. 607-608.)

"Furthermore, petitioner cannot invoke, in this instance, the prior operator rule, for the same requires for its application that the old operator offers to meet the increase in the demand the moment it arises and not when another operator, even a new one, had made an offer to serve the public needs.

"Regarding the issue of whether Davao City has first to secure a certificate of public convenience and necessity, the Public Service Act exempts from said requirement all government entities:

'Section 13. (a) The Commission shall have jurisdiction, supervision, and control over all public services and their franchises, equipment, and their properties, and in the exercise of its authority, it shall have the necessary powers and the aid of the public force: Provided, That public service owned or operated by government entities or government-owned or controlled corporations shall be regulated by the Commission in the same way as privately-owned public services, but certificates of public convenience or certificates of public convenience and necessity shall not be required of such entities or corporations. xxx.'

'Section 14. The following are exempted from the provisions of the preceding section:

"(e) Public service owned or operated by any instrumentality of the National Government or by any government-owned or controlled corporations, except with respect to the fixing of rates."

It cannot be seriously denied that Davao City is a Government entity."

We also find no valid reason to disturb the conclusion of the trial court that it had no jurisdiction to issue the writ of preliminary injunction sought by the appellant. It is a well settled rule in this jurisdiction that the jurisdiction of courts of first instance, now regional trial courts, to control or restrain acts by means of a writ of injunction is limited to acts which are being committed or about to be committed within the territorial limits of their respective provinces or districts.[3]

The argument of the appellant that the trial court has the authority to restrain the sale by the NPC of electric power to the Municipality of Olongapo since the sale is made in Manila, where the principal offices of the NPC are located, and that all the managerial acts of the General Manager, including the authority to order the enforcement of the sale and delivery of electric power and energy to Olongapo, Zambales, emanate from Manila, may be correct in so far as it concerns the sale and delivery of electric power and energy alone, following the Court's decision in *Dagupan Electric Corp. vs. Pano*,[4] where it was stated —

"The Court of First Instance of Rizal has jurisdiction over Civil Case No. Q-26502.

"The Dagupan Electric Corporation has its principal office in Quezon City where the business of the corporation is managed by the Board of Directors. Decisions of the said corporation are made in Quezon City. The employees of the Dagupan Electric Corporation in Dagupan City merely carry out the orders issued by the officials of said corporation in Quezon City. Hence the acts sought to be restrained are being committed in Quezon City."

It is to be noted, however, that the herein appellant not only prayed that the NPC be restrained from selling and delivering electric power and energy to the Municipality of Olongapo, but that the said municipality should also be enjoined from harassing appellant's employees and laborers from constructing, maintaining and operating its electric light, heat and power system and from continuing to operate and maintain the present plant, and from buying and receiving electric power and energy from the NPC pursuant to the contract entered into by said municipality and the NPC.

Thus, in its complaint, filed on 1 February 1963, the appellant, among others, prayed:

"1. That an order also issue immediately enjoining the defendant municipality, its officers and employees, particularly its Mayor, the Chief of Police and the entire police force from arresting, molesting or in any way interfering with the installation of electric posts or poles, the connection of primary and secondary wires and all other apparatus and/or electrical instruments necessary to serve the public of Olongapo; and also in receiving power from defendant National Power Corporation in accordance with its contract Annex 'B';

"2. That after trial said injunction be made permanent as against said defendant municipality, its officers and employees."[5]

This prayer was reiterated in appellant's Amended Complaint, as follows:

"1. That an order also issue immediately enjoining the defendant municipality, its officers, employees, particularly its Mayor, the Chief of Police and the entire police force from arresting, molesting or in any way interfering with the installation of electric posts or poles, the connection or primary and secondary wires and all other apparatus and/or electrical instruments necessary to serve the public of Olongapo; and also in buying and receiving electric power and energy from defendant National Power Corporation in accordance with its contract Annex 'B';

"2. That after trial said injunction be made permanent as against said defendant municipality, its officers and employees." [6]

In any event, the writ of preliminary injunction is an ancillary remedy with the sole object of preserving the status quo until the merits of the case can be determined. Since the merits of the case have already been determined against the appellant, the writ asked for has lost its purpose and effectivity. What it seeks to restrain no longer exists or threatens to exist.

Finding no error in the judgment appealed from, the same should be affirmed in its entirety.

WHEREFORE, the judgment appealed from should be, as it is hereby, affirmed, with costs against the appellant.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Paras, Bidin, and Cortes, JJ., concur.

[1] Record on Appeal, pp. 159-167

[2] G.R. No. L-23080, Nov. 20, 1965, 15 SCRA 75

[3] Acosta vs. Alvendia, 109 Phil. 1017; Samar Mining Co. vs. Arnado, 112 Phil. 678; Central Bank vs. Cajigal, 116 Phil. 1375; Hacbang vs. Leyte Autobus, 118 Phil. 110; Alhambra Cigar & Cigarette Mfg. Co. vs. Regional Administrator, 122 Phil. 355; Gonzales vs. Sec. of Public Works, 124 Phil. 886; People vs. Mencias, 124 Phil. 1436; Lo Chi vs. De Leon, 125 Phil. 564; Zamboanga General Utilities vs. Sec. of Agriculture, 127 Phil. 266; Cudiamat vs. Torres, 130 Phil. 720; NAWASA vs. Reyes, 130 Phil. 939; Palanan Lumber vs. Arranz, 131 Phil. 288; De la Cruz vs. Gabor, L-30774, Oct. 31, 1969, 30 SCRA 325; Dir. of Telecom. vs. Aligaen, L-31135, May 29, 1970, 33 SCRA 368; Dir. of Forestry vs. Ruiz, L-24882, April 30, 1971, 38 SCRA 559; Tan vs. Sarmiento, L-24971, June 20, 1975, 64 SCRA 364; City of Davao vs. De los Angeles, L-30719, May 26, 1977, 77 SCRA 129

[4] G.R. No. L-49510, Jan. 28, 1980, 95 SCRA 693, 711

[5] Record on Appeal, pp. 12-13

[6] Id., p. 79

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