

RAMON A. GONZALES, PETITIONER VS. PUBLIC SERVICE COMMISSION AND PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, RESPONDENTS.

G.R. No. L-34143. December 26, 1974

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This petition seeks to review the decision dated September 1, 1971 of the Public Service Commission in BC Case No. 70-3496 making permanent and effective immediately the provisional increase of rates authorized in its order dated August 14, 1970 on the ground that public interest would be served thereby, the revised rates are just and reasonable, and the rate of return on PLDT's invested capital will not exceed the rates authorized for public utilities, after the Commission determined

"that as of December 3, 1969 the PLDT has an invested capital (rate base) entitled to return in the amount of P537,170,252 consisting of net book value of property and equipment in service entitled to return in the amount of P529,230,033 and working capital equivalent to two months operating expenses of P7,940,219; that based on the authorized 12% rate of return on this invested capital plus operating expenses of P81,681,749, applicant should have a computed revenue by rate of P146,142,179; and that its actual revenue as normalized based on its proposed rates amounts to P145,771,268 resulting to a deficiency revenue of P370,911, which is .254% of the actual revenue and an actual return of 11.932% on its invested capital. In other words, applicant will not realize excess revenue from its proposed rates and its rate of return will not exceed the 12% rate of return allowed for public services.

"The Commission takes judicial cognizance of the increase of the exchange rate of P6.00 to US \$1.00 at the time the petition was filed to the prevailing increased rate of from P6.40 to P6.50 to US \$1.00. The Commission also granted relief to other public utility services like electric plants, bus and jeepney transportation, shipping and communication services in the form of reasonable increase rates and revenue to meet the increased costs of operations and maintenance, the increase in the minimum wage and other labor costs; increased costs of procurement of equipment, materials, and supplies especially imported items which have to be imported on the basis of increased floating rate of exchange."

During the pendency of this case, PLDT filed on February 27, 1973 with the Board of Communications (successor to the Public Service Commission) another application for an across-the-board increase of 40% of its present authorized rates docketed as BC Case No. 73--011.

In an order dated April 27, 1973, the Board of Communications provisionally authorized PLDT to charge a 35% across-the-board increase on its present authorized rates for local service, excluding charges for domestic and overseas long distance services, effective immediately "subject to the conditions that petitioner shall refund and/or credit to its subscribers any excess charge collected under this authority should the same be found not warranted upon final determination of the present application," stating that:

"On the urgency for issuance of a provisional authority to charge the proposed increase rates, petitioner

submitted communications from its creditors like the Export-Import Bank of the United States, which in effect suspended drawings by the Company from its credit pending restructuring of its loans; that the restructuring of its loans is conditioned on the revision of petitioner's rates 'sufficient to reasonably project internal cash flows above operating expenses which can meet all PLDT's debt service requirements for the 1972-1975 expansion program'; that the amortization schedule of the Company's long term loans calls for payment of P47,055,918.00 in 1973; P65,899,405.00 in 1974; P98,379,980.00 in 1975 and P93,325,315.00 in 1976; and that other creditors like the Continental Bank of Illinois and the Export Development Corporation of Canada has imposed similar conditions on its loans as those of the Export-Import Bank of the United States.

"The Technical Staff of the Board has analyzed the data and sworn audited financial statements together with the statement of invested capital submitted by the petitioner and finds it in accordance with the accepted procedure for the determination of the deficiency in revenue by rates and the rate of return of the Company. The statement shows the Company incurs a deficiency revenue by rates to actual revenue by rates of 19.1% equivalent to P44,181,336.00 on an invested capital of P919,074,892.00 consisting of P899,619,238.00 property and equipment in service and P19,455,654.00 two months' working capital; and that the ratio of deficiency revenue to invested capital is 4.81% without the proposed increased and .1% after considering the proposed increased rates. As shown by the Company the proposed 40% across the board increase will gain for petitioner a return of 11.9% on its invested capital based on the reproduction cost value of its property and equipment in service.

"The Technical Staff finds that the deficiency revenue by rates of 19.1% should amount to an increase of only 38.6% on local service rates to raise the required revenue level instead of the 40% increase applied for by the utility. On the basis of a 35% across the board increase, the Company will generate approximately P39,937,905 in additional revenue or a difference of P5,243,431 to meet fully the Company's claimed revenue requirements for increased operating costs and debt servicing of its foreign loans. The difference in revenue between the Staff findings and that requested by the applicant should be raised by the Company from other sources like additional equity contributions from its stockholders in order not to overburden its subscribers. The Staff therefore, believes that a provisional increase of 35% across the board on local service rates is just and reasonable and will give the Company sufficient revenue in addition to other funds which the Company should raise from additional investment by its stockholders."

Atty. Ramon A. Gonzales and the Mary Johnston Hospital, respectively, filed on May 17, 1973 and May 23, 1973 their petition to dismiss the application in BC Case No. 73-011 and to set aside the order dated April 27, 1973 on the ground that the Board of Communications has no jurisdiction over the subject matter of increased rates nor authority to amend the 1970 rates, since such issues are pending before the Supreme Court in the case at bar. The Mary Johnston Hospital added that the approval of the application for increased rates provisionally authorized in BC Case No. 73-011 would render moot and academic the petition in the instant case.

In an order dated June 22, 1973, the Board of Communications denied both motions and/or petitions to dismiss of Atty. Ramon A. Gonzales and the Mary Johnston Hospital, after which on July 14, 1973, the Mary Johnston Hospital filed its petition for review in BC Case No. 73-011 docketed as G.R. No. L-37142; and on August 6, 1973, Atty. Ramon A. Gonzales filed a similar petition docketed as G.R. No. L-37246.

After "considering the allegations contained, the issues raised, and the arguments adduced in the petition for certiorari and prohibition with preliminary injunction, as well as the comment of respondent Philippine Long Distance Telephone Company thereon, the Court Resolved to dismiss ... for lack of merit" both petitions of Mary Johnston Hospital and Atty. Ramon A. Gonzales, respectively, on August 23, 1973 (L-37142) and on November 26, 1973 (L-37246).

Entry of final judgment was made on September 3, 1973 in L-37142. After the dismissal of his petition in L-37246, Atty. Ramon A. Gonzales filed on November 28, 1973 a motion to withdraw his deposit for sheriff's

fees, which was granted in an order dated December 6, 1973, after which entry of final judgment therein was made on December 30, 1973.

Despite the dismissal of his petition in L-37246, entry of final judgment therein and his withdrawal of his deposit for sheriff's fees therein, Atty. Ramon A. Gonzales maintains the position that the case at bar has not been rendered thereby moot and academic.

This Court, in dismissing the petitions of the Mary Johnston Hospital and Atty. Ramon A. Gonzales in L-37142 and L-37246, in effect affirmed the order of respondent Board of Communications of April 27, 1973 provisionally authorizing PLDT a 35% across-the-board increase of its present authorized rates subject to the conditions stated therein. The provisional authority granted PLDT under the questioned order of April 27, 1973 of the respondent Board of Communications was based after a determination by the respondent Board of a 1973 rate base of over P900 million which is almost twice the 1970 rate base of about P537 million upon which was predicated the decision of the respondent Public Service Commission dated September 1, 1971 in BC Case No. 70-3496 which is sought to be reviewed in the present case.

The instant case has inevitably become moot and academic because since the promulgation of the order on April 27, 1973, PLDT has been enforcing the same and collecting the rates provisionally authorized thereunder.

At any rate, the provisional authority under the said order of April 27, 1973 does not foreclose the right of herein petitioner Atty. Ramon A. Gonzales to challenge the same, as the said temporary authority is expressly subject to the condition that petitioner PLDT shall refund or credit to its subscribers any excess charge collected thereunder should the same be found not warranted upon final determination of the said application. Thus, thereafter, the proper forum for Atty. Ramon A. Gonzales would be before the Board of Communications in BC Case No. 73-011.

The power of the Board of Communications, as successor to the defunct Public Service Commission, to amend, modify or revoke or establish rates in lieu of those set forth in the final decision is affirmed in Section 16(c) of the Public Service Act, as amended (PLDT vs. Medina, L-24340, July 18, 1967, 20 SCRA 659, 673-677), which rates shall immediately be operative (Section 33, Public Service Law, as amended), provided a new case is filed therefor under a separate docket in the Public Service Commission. The 1973 BC Case No. 73-011 is new and separate from the 1970 BC Case No. 70-3496. The order or decision of the former Public Service Commission and now the Board of Communications cannot be stayed by the institution of a petition for certiorari or other special remedies in the Supreme Court, unless the Supreme Court shall so direct (Section 37, Public Service Act, as amended), nor by an appeal (Section 4, Rule 44 of the Revised Rules of Court).

The facts and circumstances in the 1973 BC Case No. 73-011, which are vastly different from those of the 1970 BC Case No. 70-3496, are obviously decisive as to the just and reasonable rates to be charged in 1973 and thereafter and not those of 1970, thus rendering futile any further consideration of the 1970 BC Case No. 70-3496, which was commenced in the Public Service Commission on June 5, 1970, brought to this Court for review on October 18, 1971 and submitted for decision on September 21, 1972.

WHEREFORE, this case is hereby dismissed as moot and academic. Without costs.

Makalintal, C.J., Castro, Esguerra, and Muñoz Palma, JJ., concur.

Teehankee, J., took no part.

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