

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY,
PETITIONER, VS. CITY OF DAVAO AND THE PUBLIC SERVICE
COMMISSION, RESPONDENTS, ITT PHILIPPINES, INC. INTERVENOR.**

G. R. No. L-23080. September 20, 1965

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Philippine Long Distance Telephone Co., Inc. filed on 23, 1964 this suit for prohibition and mandamus against the City of Davao and the Public Service Commission. Petitioner seeks to enjoin Davao City from fulfilling its contract with ITT Philippines, Inc. for the installation of Davao City's telephone system. It further seeks to compel the Public Service Commission to require that Davao City first obtain a certificate of public convenience and necessity.

The Public Service Commission filed its answer on July 15, 1964, Davao City on August 11, 1964. ITT Philippines, Inc. filed a motion to intervene, which was granted, and an answer in intervention on August 7, 1964. Petitioner replied to the answer in intervention on October 15, 1964.

Petitioner twice applied for preliminary injunction but same was denied.

The record shows that on August 7, 1963 and December 27, 1963 the Davao City Council passed Resolutions Nos. 664 and 2015, respectively, authorizing the establishment and maintenance of a city-wide telephone system, owned, maintained and operated by Davao City.

Pursuant thereto Davao City entered into a contract with ITT Philippines, Inc. on February 26, 1964, under the terms of which ITT Philippines, Inc. agreed to install and deliver the telephone system for the consideration of P3,587,000.00. A down payment of P717,000.00 was paid on May 29, 1964, from which date ITT Philippines, Inc. was given 18 months, or until November 29, 1966, to deliver the telephone system. Practically all the materials for the project have arrived and the process of construction of the aforesaid telephone system is now well in its advanced stage. Petitioner maintains that, unless restrained, the projected installation of a telephone system for Davao City would result not only in unlawful expenditure of public funds but prejudice to the rights of petitioner as prior owner and operator since 1931 of a city-wide telephone system in the City of Davao.

Petitioner would therefore rest on two contentions (1) Davao City has no power to establish and operate a telephone system; and (2) Davao City has first to

obtain a certificate of public convenience and necessity from the Public Service Commission.

Davao City's Charter, Commonwealth Act 51, in Section 14(ee) provides:

"Sec. 14. General powers and duties of the Council.—Except as otherwise provided by law, and subject to the conditions and limitations thereof, the City Council shall have the following Legislative powers:

"(ee) To enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity, and the promotion of the morality, peace, good order, comfort, convenience and general welfare of the city and its inhabitants, and such others as may be necessary to carry into effect and discharge the powers and duties conferred by this charter; and to fix penalties for the violation of ordinances which shall not exceed a two hundred-peso fine or six months imprisonment, or both such fine and imprisonment, for a single offense."

Resolution No. 664 of Davao City's Council stated as reasons for the establishment of the new telephone system:

"Whereas, numerous changes in the economic aspects of the City of Davao during these last ten (10) years have brought about an urgent necessity, not only for the improvement of the present telephone service, but also, the immediate expansion of facilities in order to accommodate the ever-increasing demands for telephone connection by the Davao public;

"Whereas, the National Government, recognizing these demands and considering the inability of the Philippine Long Distance Telephone Company to meet these requirements in places where it has a franchise to operate, has taken the necessary steps for the establishment of a nationwide telephone network and that, as a matter of fact, it has just signed with the International Telegraph & Telephone Company of the Philippines a contract for P11,880,000.00 to put up the project;

"Whereas, said project of the National Government for a nationwide telephone network includes, among other things, the establishment of a 1000-line automatic telephone system in Davao City;

"Whereas, it will be to the advantage of the people and government of the City of Davao if the automatic telephone system proposed for the City of Davao should be owned and operated by the City Government of Davao, not only because of its profitable nature, but because of the need of expanding it to a minimum of 3000 lines which is actually the immediate requirement in order to satisfy long-standing requests for telephone connections, and also, in order that the City can include provisions for the establishment of microwave telephone system for the Districts of Calinan, Tugbok, Mintal, Daliao, Toril, Talomo, Panacan, Tibungco, Bunawan and Lasang and pave the way for better control of peace and order and emergencies arising from the occurrence of fire and epidemics;"

It is admitted that petitioner's existing telephone system in Davao City covers only the poblacion. Its plans for expansion do not appear to include the 10 districts near the poblacion. While petitioner hopes to provide 40,000 additional lines throughout the country by 1969, the country's need as of May 31, 1964 was already for 58,000 additional lines (Annex 2 to Answer in Intervention) .

Petitioner does not question the immediate need for 3,000 additional lines in Davao City. It has not supplied and—from all that appears in the record—there is no immediate plan to supply such need adequately. Account must be taken of the fact within judicial notice that Davao City, with an area of 942 square miles^[1] (1,507.2 square kilometers), is one of the biggest cities, if not the biggest city, in the world.^[2] It is also the main port and

commercial center of Southern Mindanao.

Clearly, therefore, Davao City was responding to the pressing necessity in adopting the resolutions to establish a telephone system that can fully serve and benefit the people in its territory. Such resolutions, in the light of the foregoing set-up, constitute a lawful exercise of Davao City's power under Section 14 (ee) of its Charter to legislate for the general welfare of the city and its inhabitants.

The power of a municipal corporation to establish and maintain a public utility, not under a specific and express provision of its charter, but under the general welfare clause therein, should the same be deemed conducive to the health, comfort and convenience of the inhabitants, has long been recognized in American jurisprudence.³ The Supreme Court of Georgia, in 1918, said in *Saunders vs. Mayor of Arlington*, 147 Ga. 581, 94 SE 1022, 1022-24:

"The controlling question in the case is whether the mayor and council of the town of Arlington, under the general welfare clause of its charter, can install and operate an ice plant and cold-storage system, and whether bonds can be issued and validated for that purpose. * * *

* * * * *

"Express provision is made in the charter for the erection, installation, and maintenance of a system of waterworks and an electric light plant within said town. Acts 1905, p. 608, sec. 2 et seq. The charter also provides, under the general welfare clause, that the town may issue bonds, in addition to the bonds already provided for, etc., in a certain amount, whenever the mayor and board of aldermen 'shall deem it proper and expedient so to do for the purpose of making any public improvement or improvements for the benefit of said town. Does this provision of the charter authorize the issuance of bonds for, and the erection and maintenance of, an ice plant and cold-storage system by the town? It is suggested that the town of Arlington had express authority given to it by the legislature to establish a waterworks and electric light system, etc., and that, together with the general authority conferred of making any other improvements within said town' (Acts 1913, p. 492 sec. 1), included the power to establish the ice plant and cold-storage system. Construing the two paragraphs of the charter together, we are of the opinion that the legislative intent was to confer the power to establish and maintain an ice plant and cold-storage system. * * *

* * * * *

"It was held in *Heilbron vs. Cuthbert*, 96 Ga. 312, 314, 23 S.E. 206, that under a general welfare clause which empowered the mayor and council to 'contract and be contracted with; sue and be sued; * * * and * * * and do all things for the benefit of the city, and all things not in violation of the Constitution and laws of this state,' the mayor and council could, upon complying with the requisite constitutional and legal provisions, contract a debt for the construction and maintenance of waterworks and an electric light plant, and could issue bonds for this purpose. * * *

* * * * *

"* * * It can hardly be doubted that the installation of an ice plant and cold-storage system for the benefit of

the citizens of the town is a public improvement, and one which, would promote the health and comfort of the citizens as much as those specifically enumerated in the act. It would mean the furnishing of pure ice to its citizens, under sanitary conditions and (regulations, free from disease germs, etc.; and the same may be said of the cold-storage system for the preservation of perishable articles of food. These things certainly tend to the preservation of health, convenience, and comfort of the citizen; and we see no good reason why, in the exercise of the police power of the state, this right cannot be and has not been conferred by the Legislative on the municipality of Arlington by the grants in its charter. * * *"[4]

Petitioner would, however, argue that Davao City's telephone system cannot be justified under general welfare clause provisions because said telephone system is commercial in nature and therefore not the proper subject of the exercise of police power.

Suffice it to state as to this that, firstly, Section 14 (ee) of Davao City's Charter speaks of "the furtherance of the prosperity" and "the promotion of the . . . comfort, convenience, and the general welfare of the City and inhabitants". If, as stated in Resolution No. 664, the City Government stands to profit from the telephone system, the same is in accordance with, rather than opposed to, the aforementioned general welfare clause.

Secondly, an adequate local telephone service is no longer a mere convenience, but is indispensable to the social life, business communications, transactions, law enforcement, fire alarms, etc., of the City.⁵ As already observed, the proposed telephone system in Davao City would include 10 districts, thereby enhancing the promotion of peace and order in said districts as well as facilitating the control of fire, flood, and other emergencies therein.

After this case was submitted for decision, Congress enacted the Revised Charter of Davao City, Republic Act 4354, effective June 19, 1965. Section 16(aa-1) thereof states:

"Sec. 16. Legislative powers.—The City council shall have the following legislative powers:

"(aa-1) To provide for the establishment and maintenance of a telephone system, and, subject to the provisions of the Public Service Act, to fix the charges for the use of said service."

Arguing on the basis of the above legislation, intervenor ITT Philippines, Inc. moved to dismiss this case, for having allegedly become moot. On the other hand, petitioner opposed said motion on the ground that the validity of the challenged Resolutions Nos. 664 and 2015 of the Davao City Council depends on the existence of Davao City's authority to establish and maintain a telephone system as of the time of the passage of said resolutions, on August 7, 1963 and December 27, 1963, respectively, and not thereafter. Anent this point, Davao City had the Power and authority to establish and maintain the telephone system ordained under said resolutions, as of the time of their passage, in view of the special facts and circumstances existing in Davao City which brought the same within the scope of the general welfare clause in Davao City's charter, as above discussed. We therefore find no reason to pass upon the question of whether Republic Act 4354, particularly Section 16(aa-1) thereof, had or had no curative effect on Resolutions Nos. 664 and 2015.

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, 3rd 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, has made the offer to serve the public needs. [6]

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. * * *

"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.

Wherefore, the petition is hereby denied, without costs. So ordered.

Bengzon, C. J., Bautista Angelo, Conception, Dizon, Makalintal and Zaldivar, JJ., concur.

Petition denied.

[1]See Collier's Encyclopedia, 1964 Ed., Vol. 7, p. 737.

[2] Approximately, London has 700 square miles; Tokyo, 625 sq. mi.; Brasilia, 400 sq. mi.; and New York, 321 sq. mi., Cf. Collier's Encyclopedia, 1964 Ed.

[3] The general welfare clause in our laws is of American origin. See Sections 2238, 2625 (jj), Revised Administrative Code, taken from Sections 2184, 2611 of old Administrative Code.

[4] It can be discerned from the above ruling that of specific powers in the Charter of a municipal corporation not preclude exercise of other powers not so enumerated but plied from the general welfare clause.

[5] Pensacola Tel. Co. vs. Western U. Tel. Co., 96 U.S. 1, 24 h. a. 708; Fink vs. City of Clarendon, 282 S.W. 912.

[6]Fernando vs. Gallardo, 93 Phil., 708; Raymundo Trans. Co. Inc. vs. Cerda, 99 Phil., 99; Saulog Transit, Inc. vs.

Medina, L- 7329, May 30, 1956; Medina vs. Saulog Transit, Inc., L-7244, J 28, 1956; Estate of F.P. Buan vs. La Mallorca, L-8729, Feb. 1957; Isidro vs. Ocampo, 105 Phil. 911; Manila Yellow Taxicab Co., Inc. vs. Castelo, 108 Phil., 394.

RESOLUTION

October 30, 1965

BENGZON, J.P., J.:

The Philippine Legislature granted Philippine Long Distance Telephone Co., Inc. a special franchise to establish and operate a telephone system throughout the country. It wisely provided therein that the rights thereby granted shall not be exclusive.

Answering the clamor of the inhabitants of Davao City, Davao City Council provided for a city-owned and operated telephone system.[1] Congress itself thereafter expressly authorized the establishment of such a telephone system therein. [2]

The Executive, finding the legislation wisely taken, approved the same.

The Court, interpreting the broad powers granted to Davao City Council to legislate for the general welfare, gave meaning and reality to the Resolutions and laws abovementioned, in its decision in this case promulgated September 20, 1965.

Petitioner filed a 53-page motion for reconsideration of said decision, presenting five propositions.

The first proposition of movant is that Davao City's telephone system is proprietary in nature and, therefore, cannot be undertaken under the general welfare clause. At the outset it is well to remember that as stated in *Mendoza vs- De Leon*, 33 Phil. 508, 515:

"It often happens that the same agent or agency has both a governmental and a corporate character. Such, for instance, are a municipal water system designed both for protection against fire (a governmental function) and to supply water to the inhabitants for profit (a corporate function) (*Omaha Water Co. vs. Omaha*, 12 L.R.A., 736; 77 C.C.A., 267, 147 Fed. 1; *Judson vs. Borough of Winsted*, 80 Conn., 384; 15 L.R.A., N.S., 91); a municipal light plant both for lighting the streets (a governmental function) and for furnishing light to the inhabitants at a profit (a corporate function) (*Fisher vs. New Bern*, 140 N.C., 506; *W Am. St. Rep.*, 857)".

The same case recognized that: "The preservation of the health and peace of its inhabitants and fire protection afforded the property owner, are governmental functions". (Ibid, at 511-512.) Davao City's telephone system is designed to perform such functions; to secure and regulate the peace and order situation of one of the world's biggest cities; to safeguard the health and lives of its inhabitants; to afford reliable equipment for the fighting and control of fires, floods and epidemics; to assure these objectives by providing speedy and direct contact between Davao City's outlying districts and its poblacion or seat of government. Such ends are undoubtedly within the purview of the general welfare clause.

The facts that in thereby promoting the general welfare of its inhabitants, the means adopted by the city would likewise serve the public in a proprietary manner is no argument that the city is powerless to adopt said measure. For as stated, it frequently happens that from the same act both governmental and corporate functions arise. An interpretation that would totally limit the general welfare clause to such governmental functions only as are

without proprietary aspects would thereby often cripple local governments in the face of the very evils that said clause intended them to remedy.

A restrictive view of the general welfare clause is not favored. The policy of Congress in this regard has been expressly stated in Section 12 of Republic Act 2264, the Local Autonomy Act:

"The general welfare clause shall be liberally interpreted in case doubt so as to give more power to local governments in promoting this economic condition, social welfare and material progress of the people in the community."

The view of the movant that the scope of police power, transiend of the general welfare clause, has been by traditional delineations is not quite accurate. Police power has not received a full and complete definition; it is elastic and must be responsive to various social utions; it is not confined within the narrow circumscription of precedents resting on past conditions; it must follow legal progress of a democratic way of life. Accordingly, the Court wisely said in *Churchill vs. Rafferty* 32 Phil. 580, 603-605:

"In *Champer vs. Greencastle* (138 Ind., 339), it was said: 'The police power of the State, so far, has not received a full and complete definition.' * * *

* * * * *

"In *People vs. Brazee* ([Mich., 1914], 149 N.W., 1053), it was said: 'it [the police power] has for its object the improvement of social and economic conditions affecting the community at large and collectively with a view to bring about "the greatest good of the greatest number." Courts have consistently and wisely declined to set any fixed limitations upon subjects calling for the exercise of this power. It is elastic and is exercised from time to time as varying social conditions demand correction.'

* * * * *

"Finally, the Supreme Court of the United States has said in *Noble State Bank vs. Haskell* (219 U.S. [1911], 575): 'It may be said in a general way that the police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to the public welfare.'

"It was said in *Com. vs. Alger* (7 Cush., 53, 85), per Shaw, C.J. that: 'It is much easier to perceive and realize the existence and sources of this police power than to mark its boundaries, or to prescribe limits to its exercise.' * * *"

CORPUS JURIS SECUNDUM states:

"* * * The police power of a municipal corporation must be responsive, in the interest of common welfare, to

the changing conditions and developing needs of growing communities, and is not confined within the narrow circumscription of precedents resting on past conditions. That which may at one time be regarded as not with; n such power may, at another time, by reason of changed conditions, be recognized as a legitimate exercise for the exercise of the power. Also, that which may be regarded as within the police power of one municipal corporation may not be so regarde as to another. * * *[3]

Speaking thru Mr. Justice Malcolm, this Court explicitly said in *U.S. vs. Salaveria*, 39 Phil 102, 109:

"* * * the general welfare clause, delegates in statutory the police power to a municipality. As above stated, this clause has been given wide application by municipal authorities and has in its relation to the particular circumstances of the case been liberally construed by the courts. Such, it is well to recall, is the progressive view of Philippine jurisprudence."

Advancing its second proposition, movant would find in the specific power of Davao City to regulate telephone service (Sec. 14 [aa] of its Charter) an implied denial of power to operate the same. *People vs. Esguerra*, 81 Phil. 33, is the authority relied for this. Said case ruled that specific power to regulate implies withholding of power to prohibit. The reason therein given is that by prohibiting, nothing would be left to regulate thereby rendering the power to regulate superfluous and nugatory. It is therefore different where, as in this case, there is not suppression or prohibition but, on the contrary, creation or giving existence to something that may be regulated. *People vs. Esguerra*, supra, is no authority against the latter.

Still movant would press the argument that at any rate the general welfare clause does not enlarge, but merely makes effectual, the specific powers granted. Suffice it to say that in *U.S. vs. Salaveria*, supra, at pp. 109-110, we ruled otherwise:

"The general welfare clause has two branches. One branch attaches itself to the main trunk of municipal authority, and relates to such ordinances and regulations as may be necessary to carry into effect and discharge the powers and duties conferred upon the municipal council by law. With this class we are not here urectly concerned. The second branch of the clause is much more dependent of the specific functions of the council which are enumerated by law. It authorizes such ordinances 'as shall seem sssary and proper to provide for the health and safety, pro-e prosperity, improve the morals, peace, good order, comfort, j convenience of the municipality and the inhabitants thereof, 1 for the protection of property therein.'"

The general welfare clause suffices in proper cases to authorize public improvements serving governmental functions (*Saunders vs. Mayor of Arlington*, 147 Ga. 581, 94 SE 1022). Contrary to movant's view, presence of the words "any public improvement" in the general welfare clause is not indispensable for the purpose. Authorization in the clause, similar to that in Davao City's Charter, to act for the "safety, benefit, convenience and advantage" of the city (*Frederick vs. Augusta*, 5 Ga. 561) or "to do all things for the benefit of the city", (*Heilbron vs. Cuthbert*, 96 Ga. 312, 23 SE 206) was found sufficient for the purpose. As to the case of *Hyatt vs. Williams*, 148 Cal. 585, 84 P 41, cited by movant as authoritative, the same did not involve a general welfare clause.

In its third proposition movant alleges that the interpretation we followed would rewrite the general welfare clause in all cities and municipalities into reservoirs of unlimited powers, superior even to that of the State under the Constitution. As to this it must again be emphasized that our decision was made in light of the special factual set-up obtaining in this case. For one thing, the size of Davao City alone renders its situation unique and apart from our other cities and municipalities. For another, as already pointed out the scope of police power varies according to different conditions and what is within the police power of the municipal corporation may not be, so

regarded as to another. No "far-reaching" effects need, therefore, be feared by movant. Finally, we see no point in the contention that the State under the Constitution would have lesser powers than we bold Davao City to have, for there is no doubt that under Section 6 of Article XIII of the Constitution, the State may also, in the interest of national welfare, establish and operate means of communications. [4]

Fourth of movant's propositions is that it has already installed facilities to take care of Davao City's telephone needs. It is still admitted, however, that movant's telephone system and its plan of expansion do not cover the outlying districts of the city. It cannot therefore be claimed that movant has provided for the aforementioned needs or shown an immediate plan to supply them adequately.

The fifth proposition is that any enabling provision in Davao City's Charter for the operation of a telephone system is not enough; that a special legislative franchise is still required. Since Congress has recently enacted Republic Act 4354 expressly providing that Davao City has power to operate and maintain a telephone system, movant now takes the extreme view that still another legislation, by way of a special franchise, is required. ' Such a view would render the enabling provisions in Davao City's Charter useless. It should be noted that such enabling provisions are granted as among the legislative 'powers of the Davao City Council. Accordingly, there has been a delegation to said Council of the legislative power to issue a franchise in favor of the City.

The Philippine Commission's Act No. 667, invoked by movant, is an instance of delegation of power to grant franchise. It provides that any person authorized to engage in operating a telephone service has to obtain a franchise from the municipal council of the municipality through which its lines will pass. Davao City does not have to follow the procedure in Act No. 667, for, as stated, it has been empowered under its charter to directly grant the franchise to itself. A contrary view would be absurd: Davao City would have to file with its City Council an application for a franchise after said Council had authorized it to operate the telephone system. Finally, movant states that the competition between Davao City's telephone system and its own would be economically wasteful. Sometimes, however, it is good for the public service to provide room for a little competition. The fact that movant's own Charter, Act No. 136, provides in Section 14 that its right to operate a

telephone system shall not be exclusive and reserves the power to grant any other corporation, association or person franchise to operate a telephone system, shows that public policy is not always in favor of monopoly in public utilities. In *Benitez vs. Santos*, and *Lopez vs. Santos*, 107 Phil., 167 this Court had occasion to remark: "A monopolistic trend with its concomitant evils can only serve to prejudice public interest, stifling as it does enthusiasm and initiative on the part of those eager to learn. Prior experience, while itself useful, cannot create a vested right which could endanger the economy". Republic Act 4354, in effect authorizing competition in the telephone service in Davao City, conclusively shows the sense of Congress that under the prevailing conditions in Davao City, the same will best inure to the public welfare therein. The public interest and welfare should be paramount.

Wherefore, the motion for reconsideration is denied. So ordered.

Bengzon, C.J., Bautista Angela, Dizon, Makalintal, and Zaldivar, JJ., concur.

Concepcion, J., concurs in the result. Motion denied.

[1] Resolutions Nos. 664 and 2015, August 1, 1963 and December 27, 1963, respectively.

[2] Republic Act 4354, effective June 19, 1965.

[3] 62 C.J.S. 275.

[4] See *City of Baguio vs. National Waterworks & Sewerage Authority*, 106 Phil., 144.

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