

THE ACTING DIRECTOR OR OFFICER-IN-CHARGE OF THE BUREAU OF TELECOMMUNICATIONS, THE ACTING REGIONAL SUPERINTENDENT, REGION NO. 2 OF THE BUREAU OF TELECOMMUNICATIONS AND THE ACTING...

G.R. No. L-34512. May 25, 1972

Ponente: FERNANDO, J.

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FERNANDO, J.:

Frustrated in their efforts to have respondent Judge, the Honorable Mariano V. Agcaoili of the Court of First Instance of Nueva Ecija, Branch VII, to set aside an order of preliminary injunction issued at the instance of the other respondent, Republic Telephone Company, Inc., restraining petitioners, the Acting Director or Officer-in-Charge of the Bureau of Telecommunications, the Acting Regional Superintendent, of its Region 2 and the Acting Station Manager thereof as well as their agents or representatives "from further operating and maintaining their telephone system in Cabanatuan City until further orders* * *",[1] this suit for certiorari and prohibition with preliminary injunction was filed with this Court on January 3, 1972. Such a writ was issued by respondent Judge in the course of an action for injunction filed in his case by respondent Republic Telephone Company, Inc. with petitioner-officials as respondents, alleging that in spite of the fact that ever since 1958 it has been maintaining and operating an efficient telephone system in Cabanatuan City, as the sole private operator in said area, necessitating extensive investments of close to P2 million, the Bureau of Telecommunications, of which the present petitioners are officers and agents, on March 3, 1969 initiated the establishment and construction of a telephone system in Cabanatuan City intended to serve for profit not only government offices but also the private sector, thus competing illegally with such telephone firm. Such a suit was filed by respondent Republic Telephone Company, Inc. with the respondent Judge on March 10, 1971.[2] There was an opposition[3] on the part of present petitioners as officials of the Bureau of Telecommunications, and thereafter a hearing duly heard before respondent Judge issued on August 3, 1971 an order for the writ of preliminary injunction, upon the posting by now respondent Republic Telephone Company Inc. a bond in the amount of P150,000.00.[4] Thereafter in an order of October 5, 1971,[5] as well as a later order of November 17, 1971,[6] respondent Judge denied a motion for the lifting of the writ of preliminary injunction as well as a motion to dismiss. In the present petition before this Court for certiorari and prohibition, the validity of such orders was assailed on jurisdictional grounds.

Three days after the filing of the petition, this Court adopted a resolution requiring respondent Judge as well as respondent Republic Telephone Company, Inc. to comment within ten days from notice. After the comment of respondent Republic Telephone Company, Inc. was received on January 21, 1972, this Court on January 27, 1972 resolved to require respondents to file an answer to the petition for certiorari and prohibition. The prayer for a writ of preliminary injunction however was not granted. Thereafter within such period, an answer was filed on behalf of respondent Republic Telephone Company, Inc.

Then respondent Republic Telephone Company, through counsel, Alberto Cacnio and Andres T. Velarde, on April 12, 1972 moved to dismiss the petition on the ground that it was moot and academic based on the following

allegations: "That as of this writing, this Honorable Court has not issued the injunction prayed for by petitioners; thus, the respondent Court has not been restrained from implementing the above orders, nor from hearing or assuming jurisdiction over or deciding said Civil Case No. 5321; That now, private respondent is in receipt of a Decision in Civil Case No. 5321 rendered by the respondent Court of First Instance of Nueva Ecija which disposes said case on the merits. Pertinent portion of its dispositive part reads as follows: * * * '[Wherefore] the writ of preliminary injunction previously issued by this Court on September 2, 1971 is hereby made permanent, and the respondents Director or Acting Director and/or Officer-in-Charge of the Bureau of Telecommunications, the Regional Superintendent of Region 2 of the Bureau of Telecommunications, the Exchange Manager and the Chief Operator of said Bureau at Cabanatuan City, their successors, and all agents and representatives acting in their behalf, are hereby permanently and perpetually enjoined and restrained, and directed to desist from maintaining and operating their local telephone system in Cabanatuan City, and from soliciting customers therein.'" [7] When required to comment on such motion to dismiss, petitioners on May 10, 1972 limited themselves to this point: "That the decision in Civil Case No. 5321 in the above-entitled case rendered by Respondent Honorable Mariano V. Agcaoili as presiding Judge of Branch VII, CFI, Nueva Ecija making the Writ of Preliminary Injunction permanent and copy of which decision was received by undersigned counsel on April 7, 1972, has not yet become final and executory, in view of the fact that on April 28, 1972 or within the 30-day period to perfect appeal, the petitioners filed with respondent Court a Motion for Reconsideration, * * *." [8] Its plea then was for the denial of such motion to dismiss.

Such a plea should go unheeded. The case has become moot and academic. There appears to be insufficient awareness on the part of petitioners of the legal implications of their alleged grievance, consisting of what they consider to be a rather adamant stand on the part of respondent Judge reflected in the orders complained of, which in their opinion are bereft of support in law. Such orders lack, however, the element of finality. Their fate is dependent on the final disposition of the main case before respondent Judge. It is not denied that respondent Judge, who in the meanwhile had been promoted to preside in one of the branches of the Manila Court of First Instance, decided the case on March 26, 1972. It is true there is a pending motion for reconsideration filed by petitioners. Whoever takes the place of respondent Judge has two courses open to him. If such motion for reconsideration were denied, then the remedy of appeal may be availed of by petitioners. If, on the other hand, such motion for reconsideration would be favorably acted on, then presumably the claim of petitioners, as respondents in such action before the lower court, would be sustained and the challenged orders will lapse into innocuous desuetude. There would appear to be no justification then to sustain the opposition of petitioners to the motion to dismiss, if only because its effect would be to further contribute to a clogged docket of this Tribunal, when there is no rhyme or reason for it.

WHEREFORE, the present petition is dismissed on the ground of its being moot and academic. No costs.

Reyes, J.B.L., Acting C.J., Makalintal, Zaldivar, Teehankee, Barredo, and Makasiar, JJ., concur.

Concepcion, C.J., on official leave.

Castro and Antonio, JJ., did not take part.

[1] Annex E, Petition.

[2] Ibid, Annex A.

[3] Ibid, Annex B.

[4] Ibid, Annex D.

[5] Ibid, Annex G.

[6] Ibid, Annex K.

[7] Motion to Dismiss, pars. 3 and 4.

[8] Comment, p. 1.

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