

THE DIRECTOR OR OFFICER-IN-CHARGE OF THE BUREAU OF TELECOMMUNICATIONS, LEON CERVANTES, IN HIS CAPACITY AS REGIONAL SUPERINTENDENT OF REGION IV, BUREAU OF TELECOMMUNICATIONS, ILO...

G.R. No. L-31135. May 29, 1970

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

On August 1, 1969, herein respondent Jose M.F. Belo filed with the Court of First Instance of Capiz, presided over by respondent Judge Jose A. Aligaen, a verified petition captioned "Injunction with Preliminary Injunction" (Civil Case No. V-3192), naming as respondents therein the Director of the Bureau of Telecommunications, Leon Cervantes, the Regional Superintendent of Region IV of the Bureau of Telecommunications with station in Iloilo City, and their agents and/or representatives acting in their behalf, and Vivencio Alagbay, Chief Operator of the Bureau of Telecommunications in Roxas City. The petitioner alleged that he, Belo, was the grantee of a Congressional franchise, Republic Act No. 2957, as amended, to establish, maintain and operate a telephone system in Roxas City and in the province of Capiz, which franchise was confirmed and given effect by the order, dated June 26, 1961, of the Public Service Commission; that pursuant to said franchise he had put up in Roxas City, since July, 1961, at a cost of P417,041.27, an automatic telephone system which had been operating and rendering good service with 410 telephones and sufficient reserves for additional lines when needed; that the Bureau of Telecommunications, through therein respondents, was starting to establish, maintain and operate in the same geographical area of Roxas City another local telephone system which would directly compete with, and seriously prejudice, the telephone system that he was already operating and would render ineffective his franchise; that the Bureau of Telecommunications was not authorized to establish an additional local telephone system in places where there was no demand for it, as in Roxas City, and that no prior inquiry was ever made by the authorities concerned if there was any need for another telephone system in Roxas City; that therein respondents had never attempted to negotiate with him for the use of his facilities in conjunction with the national hook-up of a telephone system; that the telephone system that he was operating was already connected with the Philippine Long Distance Telephone Company which is a national system; and that he would suffer serious and irreparable loss and injury if therein respondents would go ahead with the establishment of a new telephone system. Belo then prayed the Court of First Instance of Capiz that due to the urgency of the matter a writ of preliminary injunction be issued ex parte, enjoining therein respondents from establishing another local telephone system in Roxas City; that after hearing, the writ be made permanent; and that damages be assessed against therein respondents in their personal and individual capacities.

On the same day, August 1, 1969, Judge Jose A. Aligaen of the Court of First Instance of Capiz, entered an order authorizing the issuance of the writ of preliminary injunction prayed for upon Belo's posting a bond of P5,000, and, accordingly, a writ of preliminary injunction was issued, restraining therein respondents, their agents and representatives, from further committing and continuing the acts complained of, and from constructing another

telephone system in Roxas City.[1]

On August 5, 1969, Belo filed with the Court of First Instance of Capiz, an urgent motion to declare Vivencio Alagbay and his agents in contempt of court because in spite of the injunction they continued the work of installing the new telephone system in Roxas City. This motion was amended on August 9, 1969, to include the Director of the Bureau of Telecommunications and Leon Cervantes, the Regional Director of the Bureau, to be cited for contempt. On August 9, 1969 Vivencio Alagbay filed his opposition to the motion, alleging that as a mere employee of the Bureau of Telecommunications he had nothing to do with the construction of the telephone exchange, and that it was the International Telegraph and Telephone Philippines, Inc. (ITT for short) over which he had no supervision and control, that was working on the project. On the same date, the respondents in the court below filed a joint motion for dissolution of the writ of injunction, offering at the same time to put up a counterbond in the sum of P20,000, to which motion Belo filed his opposition, then respondents below filed their reply to the opposition and Belo filed his rejoinder to the reply.

The Solicitor General, upon request of the Director of the Bureau of Telecommunications, filed, on August 27, 1969, an answer to the petition for injunction of Belo, denying the material allegations thereof and setting up special and affirmative defenses, to wit: (1) that the trial court did not have jurisdiction over the case, it being a suit against the Government which had not given its consent to be sued; (2) that the court had no jurisdiction to issue the writ of injunction against the Director of the Bureau of Telecommunications whose official residence was beyond the territorial jurisdiction of the court; (3) that the Bureau of Telecommunications had authority to operate its own telecommunications network in the whole country pursuant to Section 1930 of the Revised Administrative Code, without need of a legislative franchise; (4) that the Bureau of Telecommunications was not prohibited from expanding its telephone system and that its operations were not limited to noncommercial activities; (5) that the Bureau of Telecommunications had entered into an agreement with ITT for the supply and installation of expanded telecommunications network project, which, when completed, would cover not only telephone services but also data processing computer, telegraphic transfers, etc. which services have not been made available by Belo; (6) that it was the ITT, and not the Bureau of Telecommunications, that was actually constructing the telecommunications system in Roxas City; (7) that Belo's franchise, as per Section 12 of Republic Act No. 2957, is not exclusive; (8) that there being 67,800 residents in Roxas City out of which only a total of 410 are being served, the facilities of Belo are inadequate or inefficient. Respondents below alleged as counterclaim that the writ of preliminary injunction was improvidently issued and was causing a damage of P10,000 for every day of delay in the completion of the project.

On September 1, 1969, the City Fiscal of Roxas City, not knowing that an answer had already been filed by the Solicitor General, filed a motion to dismiss upon the grounds of: (1) lack of jurisdiction over the persons of therein respondents, the subject matter of the action, and the nature of the action; and (2) failure to state a cause of action.

After hearing on the motion to declare Vivencio Alagbay in contempt, the lower court, in its order of September 3, 1969, held Vivencio Alagbay and the men working under him, even if they be working under the guise of being workers of the ITT, liable for contempt of court, but the court did not impose any penalty on them because they had stopped working and only declared that they would be arrested and confined in jail should they resume the work of erecting telephone poles and connecting telephone cables and wires. At the same time the lower court denied the motion for the dissolution of the injunction.[2]

Belo moved, on September 11, 1969, to reconsider the order of September 3, 1969, praying that appropriate penalty be imposed on Alagbay and the men working under him. Petitioner Alagbay also filed a motion for the reconsideration of said order.

In the meantime, on September 10, 1969, the respondents in the court below filed a motion for preliminary hearing on the affirmative defenses alleged in their answer, as well as the motion to dismiss. On September 15, 1969, Belo filed his reply to the answer, and his answer to the counterclaim.

In an order, dated October 1, 1969, the Court of First Instance of Capiz denied the motions filed by Alagbay and Belo for the reconsideration of the order of September 3, 1969. In a separate order also of the same date, the court denied the motion to dismiss the petition and set the pre-trial of the case for October 23, 1969.[3]

Seeking to annul and set aside the various orders issued by the Court of First Instance of Capiz, namely, those dated August 1, 1961, granting the motion for the issuance of a writ of preliminary injunction, and the writ of preliminary injunction issued pursuant thereto; the order dated September 3, 1969 holding Alagbay and the men working under him in contempt of court; and the orders issued on October 1, 1969 denying Alagbay's motion for reconsideration and the motion to dismiss filed by the respondents below and setting the pre-trial of the case for October 23, 1969, the instant petition for a writ of certiorari and prohibition with preliminary injunction was filed with this Court by herein petitioners, the Director or Officer-in-charge of the Bureau of Telecommunications, Leon Cervantes and Vivencio Alagbay, on October 27, 1969, praying that pending the determination of the case on the merits, a writ of preliminary injunction be issued, exparte and without bond, restraining herein respondent Judge Jose Aligaen, who presides the Court of First Instance of Capiz, from enforcing the above-cited orders, and from taking cognizance of Civil Case No. V-3192 of said court until further orders from this Court.

By resolution, dated October 30, 1969, this Court issued the writ of preliminary injunction prayed for, and required herein respondents to file their answer.

Herein respondent Jose M.F. Belo filed his answer, making certain admissions and denials of the allegations in the petition for certiorari and prohibition, and rebutted the grounds alleged in support of the petition.

Before this Court herein petitioners now contend that:

- (a) Respondent court has no jurisdiction to hear and determine the case because it involves a suit against the Government which has not given its consent to be sued;
- (b) Respondent court has no jurisdiction, power and authority to issue writs of certiorari, prohibition, mandamus and injunction requiring the execution of acts by, or controlling the acts of, national officials with residences and offices beyond its territorial jurisdiction;
- (c) Respondent court acted with grave abuse of discretion amounting to lack of jurisdiction in issuing ex parte the orders and writ of injunction complained of despite the fact that respondent Belo's complaint states no cause of action and, therefore, he is not entitled to the main relief; and it follows that he is not entitled to the writ of preliminary injunction;
- (d) Respondent court acted with grave abuse of discretion amounting to lack of jurisdiction in refusing to dissolve the exparte writ of preliminary injunction despite petitioners' offer to put up a counterbond.

1. Petitioners argue that the Bureau of Telecommunications is an entity of the Government of the Republic of the Philippines, created pursuant to Executive Order No. 94, series of 1947, and charged with the governmental function of operating and maintaining a telecommunications network in the entire length and breadth of the country, and the action against the Director of the Bureau of Telecommunications and his subordinates was tantamount to a suit against the Government which cannot be done without the consent of the Government.[4]

On the other hand, respondent Belo argues that even if petitioners are officers of the Government their act of establishing a local telephone system in Roxas City is without authority of law, and violates his rights, hence the action for the redress of injuries that he suffered or would suffer is not a suit against the State.[5]

We sustain the stand of respondent Belo. We hold that the suit commenced by said respondent against herein petitioners cannot be considered as a suit against the State.

Decisive in the resolution of the issues raised by petitioners in the present case are the provisions of the franchise granted to respondent Belo, and the powers and functions of the Bureau of Telecommunications. The franchise, Republic Act No. 2957, granted to Belo "the right and privilege to construct, maintain, and operate in the Province of Capiz and Roxas City, a telephone system to carry on the business of electrical transmission of conversations and signals in said province and city,"[6] but the rights granted therein" shall not be exclusive"[7]; that the "Philippine Government shall have the privilege, without compensation, of using the poles of the grantee to attach one ten-pin crossarm, and to install, maintain and operate wires of its telegraph system thereon: Provided, however, that the Bureau of Telecommunications shall have the right to place additional crossarms and wires on the poles of the grantee by paying a compensation, the rate of which is to be agreed upon by the Director of Telecommunications and the grantee"[8]; and that "it is expressly provided that in the event the Philippine Government should desire to maintain and operate for itself the system and enterprise herein authorized, the grantee shall surrender his franchise and will turn over to the Government said system and all serviceable equipment therein, at cost, less reasonable depreciation."[9]

The powers and duties of the Bureau of Telecommunications, on the other hand, as provided in Executive Order No. 94 of July 1, 1947, insofar as relevant to the instant case are as follows:

"Sec. 79. The Bureau of Telecommunications shall exercise the following powers and duties:

'(a) To operate and maintain existing wire-telegraph and radiotelegraph offices, stations, and facilities, and those to be established to restore the pre-war telecommunication service under the Bureau of Posts, as well as such additional offices or stations as may hereafter be established to provide telecommunications service in places requiring such service;

'(b) To investigate, consolidate, negotiate for, operate and maintain wire-telephone or radio telecommunication service throughout the Philippines by utilizing such existing facilities in cities, towns, and provinces as may be found feasible and under such terms and conditions or arrangements with the present owners or operators thereof as may be agreed upon to the satisfaction of all concerned.' "

From the above-quoted provisions, it is clear that the Bureau of Telecommunications is empowered to establish telecommunication service in places where such service does not exist, but in places where such service already exists it may only negotiate for, operate and maintain a telecommunication system by utilizing such existing facilities in cities, towns and provinces under such terms, conditions or arrangements as may be agreed upon with their owners or operators.

It is not denied that respondent Belo had already established, since July 1961, an automatic telephone system in Roxas City. Respondent Belo was operating the telephone system when the Bureau of Telecommunications, through petitioners, took steps to establish another local telephone system without having made any negotiation with respondent Belo for the utilization of the existing facilities being used by said respondent under terms, conditions and arrangements that would be satisfactory to all concerned - which acts gave rise to the filing by respondent Belo of Civil Case No. V-3192 for injunction in the Court of First Instance of Capiz on August 1, 1969. The officers of the Bureau of Telecommunications, therefore, attempted to establish a local telephone system in Roxas City in violation of law and the rights of respondent Belo. Inasmuch as the State authorizes only legal acts by its officers, unauthorized acts of government officials or officers are not acts of the State, and an action against the officials or officers by one whose rights have been invaded or violated by such acts, for the protection of his rights, is not a suit against the State within the rule of immunity of the State from suit.[10] In the same tenor, it has been said that an action at law or suit in equity against a State officer or the director of a State

department on the ground that, while claiming to act for the State, he violates or invades the personal and property rights of the plaintiff, under an unconstitutional act or under an assumption of authority which he does not have, is not a suit against the State within the constitutional provision that the State may not be sued without its consent. [11]

2. In support of their contention that respondent court did not have jurisdiction to issue the writ of injunction in question, herein petitioners argue that the office of petitioner Director of the Bureau of Telecommunications is in Manila, and that of petitioner Regional Superintendent of Region IV is in Uoilo City, both of which places are outside the territorial jurisdiction of respondent court, hence their actions could not be controlled or enjoined by respondent Court.[12]

Respondent Belo, on the contrary, contends that the Court of First Instance has power to issue the writ of injunction under Sec. 44, of the Judiciary Act of 1948; that the respondents in the lower court (now petitioners in this Court) were joined as such respondents because they were necessary to a complete determination of the questions involved and were the ones responsible for the project of establishing a new telephone system in Roxas City; that their acts, violative of herein respondent Belo's rights, were committed or being pursued in Roxas City which is within the territorial jurisdiction of the court.[13]

We find merit in the contention of respondent Belo. The ruling in the cases relied upon by petitioners, namely: *Acosta v. Alvendia*, supra; *Samar Mining Co. v. Arnado*, supra; *Alhambra Cigar and Cigarette Co. v. The National Administrator of Regional Office No. 2*, supra, is to the effect that the court of first instance has no jurisdiction to restrain by injunction acts committed outside the territorial boundaries of their respective provinces or districts. In *Acosta v. Alvendia*, this Court held that, pursuant to Sec. 44(h) of the Judiciary Act and Sec. 2, Rule 60 of the Rules of Court,[14] courts of first instance have jurisdiction to control or restrain acts committed or about to be committed within the territorial boundaries of their respective provinces and districts by means of the writ of injunction. In the instant case, the acts relative to the establishment of a local telephone system by petitioners were being done within the territorial boundaries of the province or district of respondent court, and so said court had jurisdiction to restrain them by injunction. It does not matter that some of the respondents in the trial court, against whom the injunctive order was issued, had their official residences outside the territorial jurisdiction of the trial court. In the case of *Gonzales v. Secretary of Public Works, et al.*, [15] wherein the only question raised was whether the Court of First Instance of Davao had jurisdiction to entertain a case the main purpose of which was to prevent the enforcement of a decision of the Secretary of Public Works who was in Manila, this Court held that, inasmuch as the acts sought to be restrained were to be performed within the territorial boundaries of the province of Davao, the Court of First Instance of Davao had jurisdiction to hear and decide the case, and to issue the necessary injunctive order. This *Gonzales* case was an action for certiorari and prohibition with preliminary injunction and/or preliminary mandatory injunction to prevent the demolition of *Gonzales'* dam in Davao in compliance with the order of the Secretary of Public Works.

It follows, therefore, that since the acts to be restrained were being done in Roxas City, or within the territorial jurisdiction of respondent court, the latter had jurisdiction to restrain said acts even if the office of respondent Director of the Bureau of Telecommunications is in Manila, and that of respondent Regional Superintendent of Region IV is, in Iloilo City.

3. Petitioners also maintain that respondent Belo's petition for injunction before respondent court states no cause of action, and respondent court committed a grave abuse of discretion in issuing the orders and the writ of preliminary injunction now in question.[16]

The contention of petitioners has no merit. A cause of action is "an act or omission of one party in violation of the

legal right or rights of the other; and its essential elements are legal right of the plaintiff, correlative obligation of the defendant, and act or omission of the defendant in violation of said legal right." [17] The petition filed with the respondent lower court clearly alleges: (1) the legal right of respondent Belo to establish and operate a telephone system in Roxas City as authorized by a legislative franchise and the certificate of public convenience issued by the Public Service Commission, and his having actually established the telephone system and operating the same; (2) the violation of respondent Belo's right by the unauthorized or illegal acts of the petitioners in taking steps to install another telephone system in Roxas City without previously having negotiated or entered into any arrangement with respondent Belo as required by law; and (3) the injury that would be caused to respondent Belo by the acts of petitioners. Certainly the petitioners herein — more so because they are officials or officers of the government — have a correlative obligation to respect the right of respondent Belo, or to act in accordance with law. The allegations in the petition, which was under oath, served as a basis for respondent court to exercise its sound discretion whether or not to issue the writ of preliminary injunction. We do not see in the actuation of respondent court any whimsical or capricious exercise of judgment when it issued the writ of preliminary injunction in question. In its order authorizing the issuance of the writ respondent court said:

"That it has not been shown that petitioner (Belo) is remiss in his operation under his franchise, and that the establishment, maintenance and operation of another local telephone system in the same geographical area of Roxas City will result in direct competition with petitioner which is contrary to the franchise granted to him; and that the continuance of the acts complained of would work serious and irreparable loss and injury to the petitioner (Belo) unless restrained."

We believe that respondent court had acted in accordance with the provisions of Section 3, Rule 58 of the Rules of Court. By its order it can be gathered that respondent court had found respondent Belo (petitioner below) entitled to the relief demanded, when it said "that the continuance of the acts complained of would work serious and irreparable loss and injury to the petitioner unless restrained." The respondent court considered it necessary to issue the writ because the continuance of the acts of installing the new telephone system by the respondents below (petitioners herein) would render the judgment in the petition for injunction ineffectual.

Petitioners herein anchor their contention that respondent court committed a grave abuse of discretion when it issued the writ of preliminary injunction because the Bureau of Telecommunications has the power to establish a telephone system in Roxas City, so that respondent court should not have restrained the Director of the Bureau and the men under him from pursuing the work of installing the telephone system. The power of the Bureau of Telecommunications to establish, operate and maintain a nationwide telephone system is conceded. But that power is subject to a limitation, and that limitation is, that in cities, towns or provinces where telephone systems are already in operation it should utilize such existing facilities under such terms and conditions or arrangements with the owners or operators of those systems as may be agreed upon to the satisfaction of all concerned. The Bureau of Telecommunications can even expropriate the local facilities if it becomes necessary to resort to this recourse. Thus, this Court, in the case of *Republic v. Philippine Long Distance Telephone Co.* [18] said:

"The Bureau of Telecommunications, under Section 79(b) of Executive Order No. 94, may operate and maintain wire telephone or radio telephone communications throughout the Philippines by utilizing existing facilities in cities, towns and provinces under such terms and conditions or arrangement with present owners or operators as may be agreed upon to the satisfaction of all concerned; but there is nothing in this section that would exclude resort to condemnation proceedings where unreasonable or unjust terms and conditions are exacted, to the extent of crippling or seriously hampering the operation of said Bureau."

It is claimed by petitioners that the project of the Bureau of Telecommunications in Roxas City is a part of a nationwide telecommunications expansion project, as contemplated in Republic Act 2612, and that Roxas City had been chosen as the site of one of the telephone exchanges and of one of the base points in the turnkey

installation projects. It will be noted that the respondent court did not enjoin the Bureau of Telecommunications from working on its telephone exchange and turnkey installation project in Roxas City in relation to its alleged nationwide telecommunications expansion project. The respondent court only enjoined the petitioners herein "to desist and refrain from establishing, maintaining and operating another local telephone system in the geographical area of Roxas City...."[19] In other words, the petitioners could go on with the work on the installation of the national hook-up, but not to establish another local telephone system. The idea of respondent court, as gathered from its order authorizing the issuance of the writ, was to prevent the competition between the new telephone system and the system already operated by respondent Belo. Respondent Belo alleged in his petition before respondent lower court -- and the allegation is not denied - that the officials or authorities of the Bureau of Telecommunications had never attempted to negotiate with him for the use of the facilities of his local telephone system in conjunction with the Bureau's national hook-up project. It is plain, therefore, that petitioners herein did not act in accordance with law.

It is Our considered view that the powers and duties of the Bureau of Telecommunications in connection with the operation and maintenance of a nationwide telecommunications system are as provided, and delimited, in Section 79 of Executive Order No. 94, series of 1947. We believe that the provision of paragraph (b) of Section 79 of the Executive Order, which authorizes the Bureau of Telecommunications "to investigate, consolidate, negotiate for, operate and maintain wire telephone or radio telecommunication service throughout the Philippines by utilizing such existing facilities under such terms and conditions or arrangements with the present owners or operators as may be agreed upon " was intended to protect the operators of telephone systems already existing and duly authorized by law to operate. The Bureau of Telecommunications may take steps to improve the telephone service in any locality in the Philippines, but in so doing it must first enter into negotiation or arrangement with the operator or owner of the existing telephone system. We believe that the intention of the executive order, precisely, is to avoid a competition which would prove ruinous or disadvantageous to both the government and the private operator. When a private person or entity is granted a legislative franchise to operate a telephone system, or any public utility for that matter, the government has the correlative obligation to afford the grantee of the franchise all the chances or opportunity to operate profitably, as long as public convenience is properly served, rather than promote a competition with the grantee. We can not accept the view, as urged by herein petitioners, that the Bureau of Telecommunications can install and operate a telephone system in any place in the Philippines regardless of the rights and interests of existing private operators, especially if the existing operator is a grantee of a legislative franchise. That view is not in consonance with the provisions of paragraph (b) of Section 79 of Executive Order No. 94, series of 1947. Indeed, it should be the concern of the Bureau of Telecommunications and the Public Service Commission that telephone services in the country are efficient and satisfactory. But in promoting satisfactory service the rights and interests of prior operators should not be wantonly disregarded. If the Bureau of Telecommunications believes that it has to embark on a project of improving the telephone service in a particular place, it should negotiate or arrange with the existing operator as provided in paragraph (b) of Section 79 of Executive Order No. 94. If no satisfactory arrangement can be arrived at between the Bureau of Telecommunications and the existing operator, the Bureau of Telecommunications may resort to expropriation as suggested in the decision of this Court in the case of *Republic v. Philippine Long Distance Telephone Co.* supra. Or, if the government would decide to operate the telephone system to the exclusion of the grantee of the legislative franchise, the grantee may be required to surrender his franchise and turn over to the government the telephone system he is operating. We have noted that all legislative franchises for the operation of a telephone system contain a proviso similar to that of Section 18 of the franchise of respondent Belo (Rep. Act 2957), as follows:

"Sec. 18. It is expressly provided that in the event the Philippine Government should desire to maintain and operate for itself the system and enterprise herein authorized, the grantee shall surrender his franchise and will

turn over to the Government said system and all serviceable equipment therein, at cost, less reasonable depreciation."

It is urged by herein petitioners that the franchise granted to respondent Belo is not exclusive. This is true, but it does not follow that any person or entity — not even the Bureau of Telecommunications — can put up another telephone system in Roxas City in a manner not in accordance with law.

"Notwithstanding a franchise is not exclusive so as to prevent the grant of a similar franchise to another or to prevent competition on the part of a person or entity duly authorized in that regard, such a franchise has been regarded or characterized as exclusive against one who carries a competing operation without due authorization or in violation of the law governing the matter." [20]

"There is authority for the view, however, that the owner of a franchise which is not exclusive, in that it x x x does not prevent the grantor from granting a similar franchise to another or does not prevent lawful competition on the part of public authorities, is entitled to relief by injunction against competition which is illegal or is carried on by one not authorized in that regard, in the case either of actual or of threatened injury from the competition." [21]

And so in the case at bar, because the Director of the Bureau of Telecommunications, or any of the herein petitioners, had not negotiated or made arrangement with respondent Belo before taking steps to install a new local telephone system in Roxas City, as required in paragraph (b) of Section 79 of Executive Order No. 94, the respondent court had properly issued the writ of preliminary injunction enjoining said petitioners to "desist and refrain from establishing, maintaining and operating another local telephone system in Roxas City."

4. It is also the contention of the petitioners that respondent court committed a grave abuse of discretion when it refused to dissolve the writ of preliminary injunction in spite of petitioners' offer to put up a counterbond of P20,000, although the Government is exempt from filing a bond. Under the circumstances obtaining in this case, this contention has no merit.

The mere filing of a counterbond does not necessarily warrant the dissolution of the writ of preliminary injunction. Under Section 6 of Rule 58 of the Rules of Court, a preliminary injunction, if granted, may be dissolved "if it appears after hearing that although the plaintiff is entitled to the injunction, the continuance thereof, as the case may be, would cause great damage to the defendant while the plaintiff can be fully compensated for such damages as he may suffer, and the defendant files a bond in an amount fixed by the judge conditioned that he will pay all damages which the plaintiff may suffer by the dissolution of the injunction." Under this quoted

provision of the rules of court the court is called upon to exercise its discretion in determining or weighing the relative damages that may be suffered by the parties. If the damages that may be suffered by the defendant by the continuance of the injunction outweigh the damages that may be suffered by the plaintiff by the dissolution of the injunction, then the injunction should be dissolved. In the case at bar the respondent court, in refusing to dissolve the writ of preliminary injunction, took into consideration that "the petitioner (Belo) will suffer great and irreparable injury considering the tremendous investment of the petitioner, his time and gigantic efforts made to put up telephone service in Roxas City." [22] An injunction issued to stop an unauthorized act should not be dissolved by the mere filing of a counterbond, otherwise, the counterbond would become the vehicle of the commission or continuance of an unauthorized or illegal act which the injunction precisely is intended to prevent.

We hold, therefore, that respondent court did not commit a grave abuse of discretion when it refused to dissolve the writ of preliminary injunction it had issued.

Having thus declared that respondent court had jurisdiction to issue the writ of preliminary injunction in question,

and that it did not abuse its discretion in refusing to dissolve the said writ, it follows that it also acted with jurisdiction when it issued the orders of August 1,1969, of September 3,1969, and of October 1, 1969, which are questioned in these proceedings.[23]

IN VIEW OF THE FOREGOING, the writ of preliminary injunction issued by this Court on October 30,1969 is dissolved, and the instant petition for certiorari and prohibition is dismissed. The questioned writ of preliminary injunction and the orders issued by respondent court (Annexes B, C, M, Q, and Q-l of the Petition) are held valid. No pronouncement as to costs.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Fernando, Teehankee, Barredo and Villamor, JJ., concur.

Ruiz Castro, J., is on official leave of absence.

[1] Annexes B and C to petition, pp. 39, 41 of the record.

[2] Annex M to petition, pp. 71-78 of the record.

[3] Annexes Q and Q-l to petition, pp. 87 and 88 of the record.

[4] Citing Section 1930 et. seq., Revised Administrative Code; Republic v. Philippine Long Distance Telephone Co., O.R. No. L-IS841, January 27, 1969, 26 SCRA 620; Bureau of Telecommunications v. Public Service Commission, G.R. No. L-27412, October 28,1969, 29 SCRA 751; Mobil Phil. Exploration v. Customs Arrastre Service and Bureau of Customs, G.R. No. L-23139, December 17, 1966, 18 SCRA 1120.

[5] Citing 42 Am Jur 2d injunctions, Section 177; C. J.S. injunctions. Sec. 108; While Eagle Oil & Refining Co. v. Gunderson, 205 N.W. 614, 43 ALR 397, 402-403; Laureta and Nollado, Commentaries and Jurisprudence on Injunction, 1966 ed. pp. 112-113.

[6] Section 1 of Republic Act 2957.

[7] Section 12, *ibid*.

[8] Section 17, *ibid*, Italics supplied.

[9] Section 18, *Ibid*, italics supplied.

[10] Harris County Tax Assessor-Collector v. Reed, 210 S.W. 2d 852, 854; Texas Liquor Control Board v. Diners' Club, Inc., 347 S.W. 2d, 763, 766.

[11] Schwing, et al. v. Miles, et al., 11 N.E. 2d 944.

[12] Citing Acosta v. Alvendia, G.R. No. L-14598, Oct. 31, 1960; Samar Mining Co., Inc. v. Arnado, G.R. No. L-17709, June 30, 1961, 2 SCRA 782; Alhambra Cigar and Cigarette Co. v. National Administrator of Regional Office No. 2, G.R. No. L-20491, August 31, 1965, 14 SCRA 1019; People v. Mencias, G.R. No. L-19633, Nov. 28, 1966, 18 SCRA 807; Palanan Lumber & Plywood Co., Inc., et al. v. Arranz, G.R. No. L-27106, March 20, 1968, 22 SCRA 1186.

[13] Festejo v. Fernando, 94 Phil. 504; 43 Am Jur Public Officers, Section 277.

[14] Old Rules of Court; now Section 2 of Rule 58 of the new Rules of Court.

[15] G.R. No. L-21988, September 30, 1966, 18 SCRA 296.

[16] The order dated August 1, 1969 granting the motion for the issuance of the preliminary injunction (Annex B to petition); the order of September 3, 1969 holding petitioner Alagbay and his men in contempt of court and denying the motion to dissolve the writ of preliminary injunction (Annex M); and the two orders both dated October 1, 1969 denying the motion for reconsideration of the order of September 3, 1969 and the order denying the motion to dismiss (Annex Q and Q-l).

[17] *Maa Sugar Central Co. v. Barrios*, 79 Phil. 666. 667.

[18] G.R. No. L-18841, January 27, 1969, 26 SCRA 620. Italics supplied.

[19] Writ of preliminary injunction, Annex C to petition.

[20] 37 CJS, p. 173.

[21] 37 CJS, pp. 194-195.

[22] Order of September 3, 1969, Annex M to petition; page 78 of record.

[23] See footnote 16, ante.

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