

**RCA-COMMUNICATIONS, INC., PETITIONER AND APPELLANT, VS,
HON. RAFAEL M. CONTRERAS, ET AL., RESPONDENTS. JOSE F.
ALFONSO, ET AL., RESPONDENTS AND APPELLEES, PHILIPPINE
LONG DISTAN...**

G.R. No. L-12937. July 31, 1959

Ponente: LABRADOR, J.

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LABRADOR, J.:

Petitioner RCA- Communications, Inc. brought this action of prohibition in the Court of First Instance of Manila against the Radio Control Board, the Secretary of Public Works and Communications and the Philippine Long Distance Telephone Company alleging: That petitioner has a franchise granted by Act 3178, to operate wireless communications stations between the Philippines and foreign countries, while the respondent Philippine Long Distance Telephone Company, a franchise under Act 3436 to maintain and operate a telephone system throughout the Philippines and foreign countries; that since 1933 petitioner and respondent have been jointly operating a radiotelephone service between the Philippines, and various foreign countries in which the facilities and equipment of petitioner for transmitting messages to and receiving them from abroad, and those of respondent telephone company's local telephone service, are used jointly and an arrangement made for the division between them of the tolls received from such joint services, and such joint operation and arrangement have been duly authorized by certificates of public convenience issued by the Public Service Commission in accordance with respondent telephone company's franchise (Sections 2 and 8 of the Act No. 3426); that Philippine Long Distance Telephone Company proposes to terminate said arrangements with petitioner and to substitute its own equipment and facilities for those of petitioner, and for such purpose respondent telephone company on or about April 4, 1946, has filed with respondent Radio Control Board an application for a radio construction permit and for the allocation of frequencies, to which application petitioner herein has filed opposition on the ground that said Radio Control Board is without jurisdiction to issue permit, at least before the Public Service Commission has issued certificate of public necessity and convenience and without a previous approval of the construction and service by the President of the Philippines upon recommendation and approval of the Secretary of Public Works and Communications, as provided in respondent franchise; that the Radio Control Board and the Secretary of Public Works and Communications have no jurisdiction to authorize respondent telephone company to construct the radio transmitter station at Marilao for overseas operation or to authorize the proposed radio telephone communications service by the telephone company between the Philippine and foreign countries, because approval thereof is reserved expressly to the President of the Philippines and the Public Service Commission; that petitioner has no plain, speedy and adequate remedy in the ordinary course of law, and unless enjoined by the court respondents Radio Control Board and the Secretary of Public Works and Communications will proceed to an adjudication of the matter, to the loss and irreparable damage of petitioner.

The court below, Hon. Carmelino Alvendia, presiding, dismissed the petition upon motion of respondents and dissolved a writ of preliminary injunction it had previously issued, holding: That even under the theory sustained

by petitioner that the President of the Philippines must previously approve the location, installation or operation of any radio-telephonic equipment upon the recommendation of the Secretary of Public Works and Communications, it would still be necessary for the latter official to pass upon the advisability of recommending approval of any petition to the President of the Philippines, and, therefore, the Secretary of Public Works and Communications has the jurisdiction to take cognizance of the telephone company's application and that, therefore, petitioner has no cause of action.

In its first assignment, of error, it is claimed on petitioner-appellant's behalf that respondent telephone company's own franchise is made expressly subject to the provisions of the law establishing the Public Service Commission, and that the grantee of the franchise may not exercise any right or privilege without first having obtained a certificate of public convenience therefore. The argument assumes that the respondent telephone company has no authority under its franchise and its certificate of public necessity, to operate radio-telephonic facilities with foreign countries. The assumption is incorrect. The telephone company's franchise expressly authorizes it to maintain radio communications with other countries, thus:

"Sec. 2. The grantee may install, maintain and operate radio-telephone equipment to furnish an economical medium of telephonic communications * * * and between the Philippine Islands, vessels, and telephone system of other countries."

But even under the assumption that the telephone company has yet no right to establish service with other countries, either because its charter does not authorize it or because an express grant of authorization by the Public Service Commission is required, at least it can not be denied that the telephone company had the right to file and did file an application, which under the law must be passed upon and considered by the Secretary of Public Works and Communications, and this official certainly has the power or jurisdiction to consider the said application and pass upon it.

In its second assignment of error, petitioner-appellant argues that both petitioner-appellant and respondent telephone company are engaged in a point overseas telephone service by virtue of their respective franchises, the former under Act No. 3178, and the latter under Act No. 3426 and with the approval of the Public Service Commission, and that neither can engage in the other's business and compete with it, without the corresponding authorization of the Commission. Note that all the telephone company has done is to file an application. There is no allegation or insinuation even that the telephone company has already cancelled its contract or has refused to honor it. It may be true that the telephone company may have the ultimate intention to apply to the Public Service Commission for a cancellation or discontinuance of its agreement with petitioner. Therefore, there is as yet no breach of its contractual obligation with petitioner-appellant or violation of any possible rights of the latter. A cause of action arises only when any of the above are claimed or alleged to exist. It is apparent, therefore, that there exists no cause of action for which a remedy can be sought through the courts of justice.

The above also disposes of the third assignment of error, i. e., that the trial court erred in holding that the action is premature.

The appeal is hereby dismissed and the judgment appealed from, affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Monbemayor, Bautista Angelo, Concepcion, Endencia, and Barrera, JJ., concur.

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