

ALGER ELECTRIC, INC., PETITIONER, VS. COURT OF APPEALS AND NORTHERN CEMENT CORPORATION, RESPONDENTS.

G.R. NO. L-34298. February 28, 1985

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In accordance with Republic Act No. 3826, petitioner Alger Electric, Inc., was granted a legislative franchise for a period of fifty (50) years from June 22, 1963 with the right, privilege, and authority to construct, maintain and operate an electric light, heat, and power system for the generation and/or distribution of electric light, heat, and/or power for sale within the municipalities of Sto. Tomas, Damortis and Rosario, province of La Union, and in the municipality of Sison, province of Pangasinan.

On August 16, 1968, respondent Northern Cement Corporation (Northern) and the National Power Corporation (NPC) executed a contract for NPC to directly supply electric power to Northern's cement plant located in Labayog, Sison, Pangasinan. As a result, the petitioner filed a petition for prohibition with preliminary injunction against Northern and NPC in the Court of First Instance of Manila. The petition alleged that the contract was patently illegal in view of Section 2, Republic Act No. 3826 which provides:

"Section 2. In the event that the National Power Corporation should have established its lines in the areas adjacent to or near the territory covered by this franchise, the National Power Corporation may make available its powers and heat only after registration with and through the Alger Electric, Inc., or with the authority and consent of the grantee."

The petitioner prayed that the August 16, 1968 contract between Northern and NPC be declared null and void and that pending the resolution of the case, a writ of preliminary injunction be immediately issued, enjoining the respondents, their managers, attorneys, agents and/or representatives acting for and in their behalf from enforcing said contract. The petitioner questions direct sale of power to Northern by NPC. It wants the distribution to be effected through it or by it. The case was docketed as Civil Case No. 74748.

The writ of preliminary injunction prayed for was denied by the court in two (2) separate orders. After Northern had filed its answer and after the petitioner had formally offered all its testimonial and documentary evidence, Northern filed a motion to dismiss and/or for summary judgment on the following grounds: (a) the petition did not state a cause of action due to its failure to allege and make out a proper case of prohibition or any similar special civil action; (b) the Court of First Instance of Manila had no jurisdiction over the subject matter of the action because the specific act sought to be restrained by a writ of prohibition was to be performed outside of its territorial jurisdiction; (c) Section 2 of the petitioner's legislative franchise is unconstitutional; and (d) the legislative franchise contains no specific prohibition against Northern's obtaining electric power directly from the National Power Corporation.

For its part, the petitioner filed an urgent motion for leave to amend complaint and to admit attached amended complaint. The amendments sought were: (1) the change of the word "petitioner" to plaintiff and the word

"respondent" to defendant; (2) the omission of the designation "Prohibition with Preliminary Injunction"; (3) the change of the word "Petition" to Amended Complaint; (4) omission of the allegation in paragraph 16 of the original pleading and the addition of an allegation as to the actual damages to be suffered by the petitioner; and (5) the addition of a new paragraph between paragraphs 14 and 15 of the previous pleading and paragraph 5 of the prayer.

Respondent Northern filed an opposition thereto reiterating its previous allegation that the court had no jurisdiction over the case and that the amended complaint substantially altered not only the theory and cause of action of the petitioner but also the very nature of the proceedings before the trial court.

After considering the two aforesaid motions as well as an opposition interposed by the petitioner to the respondent's motion, the trial court, "x x x in the light of the evidence on record and in proper advertence to the principles of liberality observed in our procedural statutes x x x", admitted the amended complaint and set the continuation of the trial of the case to January 6, 1970. A motion for reconsideration of this order was denied by the court, thus leading the respondent to file a petition for certiorari, prohibition, and mandamus with preliminary injunction in the Court of Appeals.

The appellate court sustained the position of respondent Northern and set aside the questioned October 24, 1969 order of the trial court. It also ordered the trial court to act on the respondent's motion to dismiss the case. The appellate court ruled that the Court of First Instance of Manila did not have jurisdiction over the original complaint considering that the act sought to be enjoined was to be performed in Sison, Pangasinan which is outside of the court's territorial jurisdiction. It, therefore, held that the original "petition" could no longer be amended otherwise it would be in violation of the legal prohibition of a complaint not amendable in order to confer jurisdiction on the court in which it is filed, if the cause of action originally set forth was not within the court's jurisdiction. This decision is now challenged in this petition.

A cursory look at the facts alleged in the original complaint reveals that the petitioner's cause of action revolves around the contract executed between the Northern Cement Corporation and the National Power Corporation. This contract was alleged to be in violation of Alger's legislative franchise, particularly Section 2 thereof. It prayed to have the contract annulled for being null and void ab initio.

To forestall the implementation of the contract, the petitioner further prayed for a writ of preliminary injunction, not a writ for prohibition as argued by the respondent. The writ of preliminary injunction prayed for was an ancillary remedy to enjoin the respondent and the National Power Corporation from enforcing the contract which was the subject matter of the petition. The fact that the original pleading was denominated as a petition for prohibition with preliminary injunction should not have deterred the court from considering it as a civil action for annulment of contract as indicated by the facts and allegations therein. The well-entrenched principle is that the "x x x nature of an action filed in court is determined by the facts alleged in the complaint as constituting the cause of action" (*De Tavera v. Philippine Tuberculosis Society, Inc.* 112 SCRA 243). In view of the foregoing, the trial court had jurisdiction from the inception of the case. Hence, it was well within the trial court's jurisdiction to admit the amended complaint considering that the amendments sought did not alter the cause of action of the original complaint.

The case was brought to the Court of Appeals on whether or not the original petition could be amended and the proceedings converted from a special civil action for prohibition into an ordinary civil action for annulment of contract. Now that the case is before us, we apply the rule enunciated in *Gayos v. Gayos* (67 SCRA 146) that it is a cherished rule of procedure for this Court to always strive to settle the entire controversy in a single proceeding leaving no root or branch to bear the seeds of future litigation. No useful purpose will be served if this case is

remanded to the trial court only to have its decision raised again to the Intermediate Appellate Court and from there to this Court.

The pivotal issue raised in the main case revolves around the interpretation to be given to Section 2 of Republic Act No. 3826, quoted earlier.

Respondent Northern argues:

xxx xxx xxx

"12. In any case, petitioner does not have a lawful, valid and sufficient cause of action to complain against, and seek the nullification of, the contract dated August 15, 1968, because Section 2 of Rep. Act No. 3826 which is the basis of petitioner's stated cause of action and which reads:

"Section 2. In the event that the National Power Corporation shall have established its lines in the areas adjacent to or over the territory covered by this franchise, the National Power Corporation may make available its power and heat only after negotiation with and through the Alger Electric, Inc., or with the authority and consent of the grantee.',

is null and void ab initio because:

"(a) The above-quoted section of Rep. Act No. 3826 is patently unconstitutional for being 'exclusive in character'.

"Sec. 8. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines * * *, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. * * *' (Art. XIV, Constitution of the Philippines;

"(b) The provisions of Sec. 2 of Rep. Act No. 3826 are completely foreign to the subject matter of said law which was clearly stated in its title as 'An Act Granting the Alger Electric, Inc., a Franchise for an Electric Light, Heat and Power System in the Municipalities of Sto. Tomas, Damortis and Rosario, Province of La Union, and Sison, Province of Pangasinan'. The insertion of Section 2 as a 'rider' in Rep. Act No. 3826 violated the constitutional injunction that 'No bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill' (Art. VI, Sec. 21 (1), Constitution of the Philippines).

"(c) The provisions of said Section 2 are inconsistent with, and repugnant to, the following provisions of the special law which created the National Power Corporation, to wit: -

"Sec. The powers, functions, rights and activities of the said corporation shall be the following:

"" *** **

"(g) To construct, operate and maintain power plants, auxiliary plants, dams, reservoirs, pipes, mains, transmission lines, power stations and substations, and other works for the purpose of developing hydraulic power from any river, creek, lake, spring and waterfall in the Philippines and supplying such power to the inhabitants thereof * * * to establish, develop, operate, maintain and administer power and lighting system for the use of the Government and the general public; to sell electric power and to fix the rates and provide for the collection of the charges for any service rendered: Provided, that the rates of charges shall not be subject to revision by the Public Service Commission.' (Com. Act No. 120, as amended."

It also points out that Alger was not and may never be in a position to supply the electric power requirements of Northern's cement plant in Sison, Pangasinan. In other words, its main function insofar as Northern is concerned would be to enforce a legal fiction that electric power from NPC must first pass symbolically, but not actually, through its lines before it may be used by the cement plant. Alger admits that it is a small and struggling corporation but claims that it will have the production capacity to supply the needs of Northern. At any rate, if

direct sale of power to Northern is effected, it wants this to be done only after negotiations with and through Alger.

Respondent Northern alleges that the provisions of Section 2 of Republic Act No. 3826 are foreign to the subject matter of the law as stated in its title "An Act Granting the Alger Electric, Inc., a Franchise for an Electric Light, Heat, and Power System in the Municipalities of Sto. Tomas, Damortis and Rosario, Province of La Union and Sison, Province of Pangasinan", and, therefore, violative of the provision against riders in legislative bills expressed in Article VI, Section 21(1) of the 1935 Constitution, now Article VIII, Section 19(1) of the Constitution as amended.

It also states that Section 2 of the franchise violates the constitutional mandate that no franchise for the operation of a public utility shall be exclusive in character (Article XIV, Section 8 of the 1935 Constitution, now Article XIV, Section 5 of the Constitution as amended).

We see no necessity of passing upon the constitutional issues raised by respondent Northern. This Court does not decide questions of a constitutional nature unless absolutely necessary to a decision of the case. If there exists some other ground based on statute or general law or other grounds of construction, we decide the case on a non-constitutional determination. (See *Burton v. United States*, 196 U.S. 283; *Siler v. Louisville & Nashville R. Co.* 213 U.S. 175; *Berea College v. Kentucky* 211 U.S. 45.)

We start with the established principle that the exclusive nature of any public franchise is not favored. We may interpret in favor of exclusiveness only when the statute grants it in express, clear, and unmistakable terms. In all grants by the government to private corporations, the interpretation of rights, privileges, or franchises is taken against the grantee. Whatever is not clearly and expressly granted is withheld. (See *Public Service Commission v. Havemeyer* 296 U.S. 506; *Piedmont Power and L. Co. v. Graham* 253 U.S. 193; *Pearsall v. Great Northern R. Co.* 161 U.S. 646).

We have interpreted monopolistic claims of corporations, which want to protect themselves through the exclusion of competitors and antagonistic parties, as necessarily yielding to the higher claims of public interest. (*Gokongwei, Jr. v. Securities and Exchange Commission, et al.*, 89 SCRA 336) This interpretation is even more called for when the exclusiveness is claimed on the basis of a public franchise.

Section 2 of Republic Act No. 3826 was obviously enacted to prevent the NPC from distributing or selling electric power where petitioner Alger is already selling or is able to sell its own self-generated electricity. In this case, Northern is a bulk purchaser of power. It had never purchased Alger's electricity before the suit was filed. It is not the usual consumer-residential or commercial for whom retail sales are ideal. Exclusivity is given by law with the understanding that the company enjoying it is self-sufficient and capable of supplying the needed service or product at moderate or reasonable prices. It would be against public interest where the firm granted a monopoly is merely an unnecessary conduit of electric power, jacking up prices as a superfluous middleman or an inefficient producer which cannot supply cheap electricity to power intensive industries. It is in the public interest when industries dependent on the heavy use of electricity are given reliable and direct power at the lowest costs thus enabling the sale of nationally marketed products at prices within the reach of the masses. Applying the above principles to the specific facts of this case, Northern cannot be said to have committed an act void ab initio when it concluded the questioned contract with NPC. Accordingly, the respondent corporation is not liable for damages to the petitioner.

WHEREFORE, the instant petition is DISMISSED for lack of merit.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, Relova, De la Fuente, and Alampay, JJ., concur.

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