

GMCR, INC.; SMART COMMUNICATIONS, INC.; INTERNATIONAL COMMUNICATIONS CORP.; ISLA COMMUNICATIONS CO., INC., PETITIONERS, VS. BELL TELECOMMUNICATION PHILIPPINES, INC.; THE NATIONA...

G.R. No. 126496. April 30, 1997

Ponente: HERMOSISIMA, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-126496/>

HERMOSISIMA, JR., J.:

Before us are consolidated petitions seeking the review and reversal of the decision[1] of the respondent Court of Appeals[2] declaring the National Telecommunications Commission (hereafter, NTC) to be a collegial body under Executive Order No. 546[3] and ordering the NTC to heretofore sit and act en banc, i.e., with the concurrence of at least two commissioners, for a valid dispensation of its quasi-judicial functions.

Established by evidence are the following facts:

On October 19, 1993, private respondent Bell Telecommunication Philippines, Inc. (hereafter, BellTel) filed with the NTC an Application for a Certificate of Public Convenience and Necessity to Procure, Install, Operate and Maintain Nationwide Integrated Telecommunications Services and to Charge Rates Therefor and with Further Request for the Issuance of Provisional Authority. This application was docketed as NTC Case No. 93-481. At the time of the filing of this application, private respondent BellTel had not been granted a legislative franchise to engage in the business of telecommunications service.

Since private respondent BellTel was, at that time, an unenfranchised applicant, it was excluded in the deliberations for service area assignments for local exchange carrier service[4]. Thus, only petitioners GMCR, Inc., Smart Communications, Inc., Isla Communications Co., Inc. and International Communications Corporation, among others, were beneficiaries of formal awards of service area assignments in April and May, 1994.

On March 25, 1994, Republic Act No. 7692 was enacted granting private respondent BellTel a congressional franchise which gave private respondent BellTel the right, privilege and authority to

“carry on the business of providing telecommunications services in and between provinces, cities, and municipalities in the Philippines and for this purpose, to establish, operate, manage, lease, maintain and purchase telecommunications systems, including mobile, cellular and wired or wireless telecommunications systems, fiber optics, satellite transmit and receive systems, and other telecommunications systems and their value-added services such as, but not limited to, transmission of voice, data, facsimile, control signals, audio and video, information service bureau, and all other telecommunications systems technologies as are at present available or be made available through technical advances or innovations in the future, or construct, acquire, lease and operate or manage transmitting and receiving stations and switching stations, both for local and international services, lines, cables or systems, as is, or are convenient or essential to efficiently carry out the purposes of this franchise.”[5]

On July 12, 1994, private respondent BellTel filed with the NTC a second Application[6] praying for the issuance

of a Certificate of Public Convenience and Necessity for the installation, operation and maintenance of a combined nationwide local toll (domestic and international) and tandem telephone exchanges and facilities using wire, wireless, microwave radio, satellites and fiber optic cable with Public Calling Offices (PCOs) and very small aperture antennas (VSATs) under an integrated system. This second application was docketed as NTC Case No. 94-229. In this second application, BellTel proposed to install 2,600,000 telephone lines in ten (10) years using the most modern and latest state-of-the-art facilities and equipment and to provide a 100% digital local exchange telephone network.

Private respondent BellTel moved to withdraw its earlier application docketed as NTC Case No. 93-481. In an Order dated July 11, 1994, this earlier application was ordered withdrawn, without prejudice.

The second application of private respondent BellTel which was docketed as NTC Case No. 94-229 was assigned to a Hearing Officer for reception of private respondent BellTel's evidence. Written opposition and other pertinent pleadings were filed by petitioners GMCR, Inc., Smart Communications, Inc., Isla Communications Co., Inc. and International Communications Corporation as oppositors. Other oppositors to private respondent BellTel's application were Capitol Wireless, Inc., Eastern Misamis Oriental Telephone Cooperative, Liberty Broadcasting Network, Inc., Midsayap Communication, Northern Telephone, PAPTELCO, Pilipino Telephone Corporation, Philippine Global Communications, Inc., Philippine Long Distance Telephone Company, Philippine Telegraph and Telephone Corporation, Radio Communications of the Philippines, Inc. and Extelcom and Telecommunications Office.

On December 20, 1994, private respondent BellTel completed the presentation of its evidence-in-chief. In the course of the proceedings, the witnesses of BellTel were cross-examined by the aforementioned oppositors. On December 21, 1994, BellTel filed its Formal Offer of Evidence together with all the technical, financial and legal documents in support of its application. Pursuant to its rules, the application was referred to the Common Carriers Authorization Department (CCAD) for study and recommendation.

On February 6, 1995, the CCAD, through Engr. Marle Rabena, submitted to Deputy Commissioner Fidelo Q. Dumlao, a Memorandum dated February 6, 1995[7] manifesting his findings and recommending that "based on technical documents submitted, BellTel's proposal is technically feasible." [8]

Subsequently, Mr. Raulito Suarez, the chief of the Rates and Regulatory Division of CCAD, conducted a financial evaluation of the project proposal of private respondent BellTel. On March 29, 1995, Mr. Suarez made the finding that BellTel has the financial capability to support its proposed project at least for the initial two (2) years.

Agreeing with the findings and recommendations of the CCAD, NTC Deputy Commissioners Fidelo Dumlao and Consuelo Perez adopted the same and expressly signified their approval thereto by making the following notation on the aforestated Memorandum of the CCAD dated February 6, 1995:

"With the finding of financial capability and technical feasibility, the application merits due/favorable consideration." [9]

Below this notation, Deputy Commissioners Fidelo Dumlao and Consuelo Perez affixed their signatures and the date, "4/6/95."

In view of these favorable recommendations by the CCAD and two members of the NTC, the Legal Department thereof prepared a working draft [10] of the order granting provisional authority to private respondent BellTel. The said working draft was initialed by Deputy Commissioners Fidelo Q. Dumlao and Consuelo Perez but was not signed by Commissioner Simeon Kintanar.

While ordinarily, a decision that is concurred in by two of the three members composing a quasi-judicial body is

entitled to promulgation, petitioners claim that pursuant to the prevailing policy and the corresponding procedure and practice in the NTC, the exclusive authority to sign, validate and promulgate any and all orders, resolutions and decisions of the NTC is lodged in the Chairman, in this case, Commissioner Simeon Kintanar, and, thus, since only Commissioner Simeon Kintanar is recognized by the NTC Secretariat as the sole authority to sign any and all orders, resolutions and decisions of the NTC, only his vote counts; Deputy Commissioners Dumlao and Perez have allegedly no voting power and both their concurrence which actually constitutes the majority is inutile without the assent of Commissioner Kintanar.

Anxious over the inaction of the NTC in the matter of its petition praying for the issuance of a provisional authority, private respondent BellTel filed on May 5, 1995 an Urgent Ex-Parte Motion to Resolve Application and for the Issuance of a Provisional Authority[11]. Reference was explicitly made to the findings of the CCAD and recommendations of Deputy Commissioners Dumlao and Perez that were all favorable to private respondent BellTel. Mention was also made of the aforementioned working draft of the order granting a provisional authority to BellTel, which draft was made by the Legal Department of the NTC and initialed by the said deputy commissioners.

No action was taken by the NTC on the aforecited motion. Thus, on May 12, 1995, private respondent BellTel filed a Second Urgent Ex-Parte Motion[12] reiterating its earlier prayer.

Petitioners-oppositors filed an Opposition[13] to the aforestated two motions of private respondent BellTel.

In an Order dated May 16, 1995, signed solely by Commissioner Simeon Kintanar, the NTC, instead of resolving the two pending motions of private respondent BellTel, set the said motions for a hearing on May 29, 1995. On May 29, 1995, however, no hearing was conducted as the same was reset on June 13, 1995.

On June 13, 1995, the day of the hearing, private respondent BellTel filed a Motion to Promulgate (Amending the Motion to Resolve)[14] In said motion, private respondent prayed for the promulgation of the working draft of the order granting a provisional authority to private respondent BellTel, on the ground that the said working draft had already been signed or initialed by Deputy Commissioners Dumlao and Perez who, together, constitute a majority out of the three commissioners composing the NTC. To support its prayer, private respondent BellTel asserted that the NTC was a collegial body and that as such, two favorable votes out of a maximum three votes by the members of the commission, are enough to validly promulgate an NTC decision.

On June 23, 1995, petitioners-oppositors filed their Joint Opposition[15] to the aforecited motion.

On July 4, 1995, the NTC denied the said motion in an Order solely signed by Commissioner Simeon Kintanar.

On July 17, 1995, private respondent BellTel filed with this court a Petition for Certiorari, Mandamus and Prohibition seeking the nullification of the aforestated Order dated July 4, 1995 denying the Motion to Promulgate.

On July 26, 1995, we issued a Resolution referring said petition to the respondent Court of Appeals for proper determination and resolution pursuant to Section 9, par. 1 of B.P. Blg. 129.

In the interim, the Solicitor General filed with the respondent appellate court a Manifestation In Lieu of Comment[16] in which the Solicitor General took a legal position adverse to that of the NTC. The Solicitor General, after a close examination of the laws creating the NTC and its predecessors and a studious analysis of certain Department of Transportation and Communications (DOTC) orders, NTC circulars, and Department of Justice (DOJ) legal opinions pertinent to the issue of collegiality of the NTC, made the following recommendations:

“WHEREFORE, the Solicitor General respectfully prays that this Honorable Court:

- (a) declare respondent National Telecommunications Commission as a collegial body;
- (b) restrain respondent Commissioner Simeon Kintanar from arrogating unto himself alone the powers of the said agency;
- (c) order NTC, acting as a collegial body, to resolve petitioner Bell Telecom’s application under NTC-94-229;
- (d) declare NTC Memorandum Circulars 1-1-93 and 3-1-93 as void; [and]
- (e) uphold the legality of DOTC Department Order 92-614.”[17]

On September 23, 1996, respondent Court of Appeals promulgated the herein assailed decision the dispositive portion of which reads as follows:

IN THE LIGHT OF ALL THE FOREGOING, judgment is hereby rendered as follows:

1. Petitioner’s petition for a writ of Certiorari and Prohibition is hereby granted. Accordingly, NTC Memorandum Circular No. 1-1-93, Annex ‘J’ of the Petition, Memorandum Circular No. 3-1-93, Annex ‘K’ of the Petition and the Order of Kintanar, Annex ‘L’ of the Petition, are hereby SET ASIDE for being contrary to law. The Respondents and all those acting for and in their behalf are hereby enjoined and prohibited from implementing or enforcing the same; [and]
2. Petitioner’s petition for mandamus is hereby GRANTED in that the Respondent NTC, composed of Kintanar and deputy commissioners Perez and Dumlao, are hereby directed to meet en banc and to consider and act on the draft Order, Annex ‘B’ of the Petition, within fifteen (15) days from the finality of this Decision. Without pronouncement as to costs.

SO ORDERED.”[18]

The herein assailed decision being unacceptable to petitioner Simeon Kintanar and petitioners GMCR, Inc., Smart Communications, Inc., Isla Communications Co., Inc. and International Communications Corporation as oppositors in the application of private respondent BellTel for a provisional authority, they filed with this court separate petitions for review.

Commissioner Kintanar’s petition, docketed as G.R. No. 126526, ascribes to the respondent appellate court the following assignment of errors:

- “1. The Court of Appeals, in setting aside NTC MC 1-1-93 and MC 3-1-93 and the Order of the Commission dated July 4, 1995, made a collateral attack on a law which was nowhere called for in the pleadings of the parties nor is authorized by the Rules of Court.
2. The Court of Appeals erred in assuming and imposing that the Commission is a collegial body simply by reason of the fact that other bodies which were a spin off from the defunct Public Service Commission were created as a collegial body. The law that created EO 546 erased the collegial character of the proceedings before the NTC.
3. The Court of Appeals’ decision contains serious contradiction; worse, it considered evidence not formally offered or incorporated into the records of the case; yet failed to consider evidence submitted by petitioner-appellant nor on the prejudicial issue on non-joinder of indispensable parties-

3.1 CA erred in assuming that the NTC is collegial by the fact that Charters of other regulatory agencies expressly made them collegial while this express provision was absent in NTC’s charter.

3.2 CA contradicts itself by holding that DOTC MC 92-614 prevails and [requires] collegiality.

3.3 The decisions by Undersecretary Lichauco signed by her and her 2 deputies are in no way indicative of collegiality and should not be considered as having any persuasive effect xxx.

3.4 The Court of Appeals erred in applying the Board of Communications Rules of Practice and Procedures.

4. The Court of Appeals erred when it granted mandamus, directing and in effect controlling Commissioner Kintanar and deputy Commissioners Dumlao and Perez, to meet en banc to consider and act on a 'draft Order' only which the Court itself recognized no longer had the approval of two (2) Commissioners while in the same token the Court of Appeals had set aside a duly promulgated Order of July 4, 1995 allegedly because it did not carry the approval of 2 commissioners.”[19]

On the other hand, petitioners-oppositors, in their petition docketed as G.R. No. 126496, assail the decision of respondent appellate court on the following grounds:

1. The Court of Appeals erred in not dismissing the instant Petition outright for its failure to implead indispensable parties, in violation of Section 5, Rule 65 and Sec. 3, Rule 7 of the Revised Rules of Court;

2. The Court of Appeals seriously erred in taking cognizance of and passing upon BellTel's Petition, which on its face is premature since the Order of July 4, 1996 assailed was not a final decision of the Commission;

3. Even assuming arguendo that the Court of Appeals can take cognizance of the Petition, the disposition in Decision therein which nullifies NTC Memorandum Circulars 1-1-93 and 3-1-93 itself constitutes a collateral attack on the said laws, the validity of which were never put in issue by any of the parties, contrary to the clear legal requirement that the validity of laws can be attacked only in direct proceedings instituted for that purpose;

4. It was in fact improper for the Court of Appeals to pass on the validity of NTC Circular No. 1-1-93 and Memorandum Circular No. 3-1-93 since the same was absolutely unnecessary for the resolution of the Petition;

5. Even assuming that the Court of Appeals correctly defined the prime issues as being that of collegiality, nonetheless the Court of Appeals committed a serious error of law in declaring the NTC as a collegial body despite the clear intent of E.O. No. 546 and the provisions of DOTC MC 95-640, and the obvious implications of pending bills in Congress on the reorganization of the NTC;

6. The Decision, in mandating that the NTC Commissioner and Deputy Commissioners sit to consider the draft-and only the draft-in rendering its Decision in BellTel's application constitutes an unwarranted, unauthorized and unlawful interference in and canalization of the discretionary functions of the Commission as a quasi-judicial entity; and

7. The Decision condones the illegal and unethical act of BellTel of surreptitiously securing a draft decision, and encourages and places premium on future similar illegal acts-all in violation of the ruling and the mandate of the Supreme Court in *In Re Jurado*: Adm. Matter No. 90-5-383 (July 12, 1990).[20]

On December 16, 1996, private respondent BellTel filed an Omnibus Motion[21] praying for, among others, the consolidation of G.R. Nos. 126496 and 126526.

On December 18, 1996, respondent BellTel filed its Comment.[22] On the same day, the NTC and Commissioner Kintanar filed a Manifestation/Motion[23] echoing the prayer for the consolidation of the G.R. Nos. 126496 and 126526.

On December 19, 1996, the Office of the Solicitor General filed a Manifestation/Motion[24] reiterating that its legal stance in this case is adverse to that of the NTC and praying that it be excluded from filing any comment in

behalf of the NTC.

In a Resolution dated February 5, 1997, we resolved, among others, to excuse the Solicitor General from filing any comment in behalf of the NTC, require the NTC to file its own comment in G.R. No. 126496 and to consolidate G.R. Nos. 126496 and 126526.

On March 6, 1997, the NTC and Commissioner Kintanar filed a Manifestation/Motion[25] praying that the latter's petition in G.R. No. 126526 be adopted as their comment in the consolidated cases.

Upon the joinder of issues in these consolidated cases, we perceive the fundamental issue to be that of the collegiality of the NTC as a quasi-judicial agency.

We find the consolidated petitions wanting of merit.

First. We hereby declare that the NTC is a collegial body requiring a majority vote out of the three members of the commission in order to validly decide a case or any incident therein. Corollarily, the vote alone of the chairman of the commission, as in this case, the vote of Commissioner Kintanar, absent the required concurring vote coming from the rest of the membership of the commission to at least arrive at a majority decision, is not sufficient to legally render an NTC order, resolution or decision.

Simply put, Commissioner Kintanar is not the National Telecommunications Commission. He alone does not speak for and in behalf of the NTC. The NTC acts through a three-man body, and the three members of the commission each has one vote to cast in every deliberation concerning a case or any incident therein that is subject to the jurisdiction of the NTC. When we consider the historical milieu in which the NTC evolved into the quasi-judicial agency it is now under Executive Order No. 146 which organized the NTC as a three-man commission and expose the illegality of all memorandum circulars negating the collegial nature of the NTC under Executive Order No. 146, we are left with only one logical conclusion: the NTC is a collegial body and was a collegial body even during the time when it was acting as a one-man regime.

We thus quote with approval the encompassing legal ruminations of the respondent Court of Appeals in disposing of the issue of the collegiality of the NTC:

"In resolving the issue, We recall that, on November 17, 1936, the National Assembly passed Commonwealth Act No. 146 which created the Public Service Commission (PSC). While providing that the PSC shall consist of a Public Service Commissioner and a Deputy Commissioner, the law made it clear that the PSC was not a collegial body by stating that the Deputy Commissioner could act only on matters delegated to him by the Public Service Commissioner. As amended by RA 2677, the Public Service Commission was transformed into and emerged as a collegial body, composed of one Public Service Commissioner and five (5) Associate Commissioners. The amendment provided that contested cases and all cases involving the fixing of rates shall be decided by the Commission en banc.

On September 24, 1972, then President Ferdinand E. Marcos signed, into law, Presidential Decree No. 1 adopting and approving the Integrated Reorganization Plan which, in turn, created the Board of Communications (BOC) in place of the PSC. This time, the new regulatory board was composed of three (3) officers exercising quasi-judicial functions:

'x x x The Board of Communications shall be composed of a full time Chairman who shall be of unquestioned integrity and recognized prominence in previous public and/or private employment; two full-time members who shall be competent on all aspects of communications, preferably one of whom shall be a lawyer and the other an economist x x x'

On January 25, 1978, the BOC promulgated its 'Rules of Procedure and Practice' in connection with

applications and proceedings before it.

On July 23, 1979, President Marcos issued Executive Order No. 546, creating the Ministries of Public Works, and of Transportation and Communications, merged the defunct Board of Communications and the Telecommunications Control Bureau into a single entity, the National Telecommunications Commission (NTC). The said law was issued by then President Marcos in the exercise of his legislative powers. Sec. 16 of E.O. 546 provides that --

‘x x x The Commission shall be composed of a Commissioner and two Deputy Commissioners, preferably one of whom shall be a lawyer and another an economist. x x x’

The aforementioned Executive Order took effect on September 24, 1979 x x x. However, the NTC did not promulgate any Rules of Procedure and Practice. Consequently, the then existing Rules of Procedure and Practice promulgated by the BOC was applied to proceedings in the NTC. In the meantime, the Decisions of the NTC were signed by the Chairman alone of the NTC which rendered the two (2) deputy Commissioners ‘non-participative’ in the task of decision-making. This prompted the then Minister of Transportation and Communication Jose P. Dans, Jr. to seek the legal opinion of the then Minister of Justice Ricardo C. Puno, as to whether the NTC was a collegial body or not. On January 11, 1984, Minister Puno sent a letter-opinion x x x to the effect that the NTC was not a collegial body but a single entity and thus the then practice of only the Chairman of the NTC signing the Decisions of the NTC was authorized by law. x x x

Admittedly, the opinion of the Secretary of Justice is entitled to great weight x x x. However, the same is not controlling or conclusive on the courts x x x. We find and declare, in the present recourse, that the Puno Opinion is not correct. Admittedly, EO 546 does not specifically state that the NTC was a collegial body. Neither does it provide that the NTC should meet En Banc in deciding a case or in exercising its adjudicatory or quasi-judicial functions. But the absence of such provisions does not militate against the collegial nature of the NTC under the context of Section 16 of EO 546 and under the Rules of Procedure and Practice applied by the NTC in its proceedings. Under [Rule 15] of said Rules, the BOC (now the NTC) sits En Banc:

‘x x x In every case heard by the Board en banc, the orders, rulings, decisions and resolutions disposing of the merits of the matter within its jurisdiction shall be reached with the concurrence of at least two regular members after deliberation and consultation and thereafter assigned to a member for the writing of the opinion. Any member dissenting from the order, ruling, decision or resolution shall state in writing the reason for his dissent.

In all other cases, a duly assigned Member shall issue all orders, rulings, decisions and resolutions pertinent to the case assigned to him. Copy of the decision on the merit of the case so assigned shall be furnished the Chairman of the Board.

x x x’

Inscrutably, a case before the BOC may be assigned to and heard by only a member thereof who is tasked to prepare and promulgate his Decision thereon, or heard, En Banc, by the full membership of the BOC in which case the concurrence of at least two (2) of the membership of the BOC is necessary for a valid Decision x x x. While it may be true that the aforesaid Rules of Procedure was promulgated before the effectivity of Executive Order No. 546, however, the Rules of Procedure of BOC governed the rules of practice and procedure before the NTC when it was established under Executive Order No. 546. This was enunciated by the Supreme Court in the case of ‘Philippine Consumers Foundation, Inc. versus National Telecommunications Commission, 131 SCRA 200’ when it declared that:

‘The Rules of Practice and Procedure promulgated on January 25, 1978 by the Board of Communications, the immediate predecessor of respondent NTC x x x govern the rules of practice and procedure before the BOC then, now respondent NTC.’ x x x

In the case of ‘Philippine Long Distance Telephone Company versus National Telecommunications, et al., 190 SCRA 717’, the Supreme Court applied and cited Rule 15 of the Rules of Procedure and Practice of BOC x x x.

Hence, under its Rules of Procedure and Practice, the Respondent NTC, as its predecessor, the BOC, had consistently been and remains a collegial body.

Respondents Kintanar’s and NTC’s pose that Respondent Kintanar, alone, is vested with authority to sign and promulgate a Decision of the NTC is antithetical to the nature of a commission as envisaged in Executive Order No. 546. It must be borne in mind that a Commission is defined as:

‘[a] body composed of several persons acting under lawful authority to perform some public service.’ (City of Louisville Municipal Housing Commission versus Public Housing Administration, 261 Southwestern Reporter, 2nd, page 286).

A Commission is also defined as a board or committee of officials appointed and empowered to perform certain acts or exercise certain jurisdiction of a public nature or service x x x (Black, Law Dictionary, page 246). There is persuasive authority that a ‘commission’ is synonymous with ‘board’ (State Ex. Rel. Johnson versus Independent School District No. 810, Wabash County, 109 Northwestern Reporter 2nd, page 596). Indeed, as can be easily discerned from the context of Section 16 of Executive Order No. 546, the Commission is composed of a Commissioner and two (2) deputy commissioners x x x not the commissioner, alone, as pontificated by Kintanar. The conjunctive word ‘and’ is not without any legal significance. It is not, by any chance, a surplusage in the law. It means ‘in addition to’ (McCaul Webster Elevator Company versus Adams, 167 Northwestern Reporter, 330, page 332). The word ‘and’, whether it is used to connect words, phrases or full sentence[s], must be accepted as binding together and as relating to one another x x x.

In interpreting a statute, every part thereof should be given effect on the theory that it was enacted as an integrated law and not as a combination of dissonant provisions. As the aphorism goes, ‘that the thing may rather have effect than be destroyed’ x x x. If it was the intention of President Marcos to constitute merely a single entity, a ‘one-man’ governmental body, instead of a commission or a three-man collegial body, he would not have constituted a commission and would not have specifically decreed that the Commission is composed of, not the commissioner alone, but of the commissioner and the two (2) deputy commissioners. Irrefragably, then, the NTC is a commission composed not only of Kintanar, but Perez and Dumlao as well, acting together in the performance of their adjudicatory or quasi-judicial functions, conformably with the Rules of Procedure and Practice promulgated by the BOC and applicable to the NTC.

The barefaced fact that x x x of Executive Order 546 used the word ‘deputy’ to designate the two (2) other members of the Commission does not militate against the collegiality of the NTC. x x x The collegiality of the NTC cannot be disparaged by the mere nominal designation of the membership thereof. Indeed, We are convinced that such nominal designations are without functional implications and are designed merely for the purpose of administrative structure or hierarchy of the personnel of the NTC. x x x

In hindsight, even Secretary Garcia was in accord with the collegiality of the NTC when he promulgated and issued Department Order No. 92-614 x x x. Even then Commissioner Mariano Benedicto openly expressed his vehement opposition to the Department Order of Secretary Garcia and opted to seek refuge in the opinion of the then Minister of Justice Puno x x x. It was only when Commissioner Benedicto resigned and Respondent Kintanar was designated to replace Commissioner Benedicto that Secretary Garcia flip-flapped [sic], and suddenly found it expedient to recall his Department Order No. 92-614 and authorize Kintanar to decide, all by himself, all cases pending with the NTC in frontal violation of the Rules of Procedure and Practice before the NTC, more specifically Rule 15 thereof x x x

x x x

The Respondents cannot find solace in House Bill No. 10558 to buttress their argument x x x because under the House Bill, the NTC is transformed into a collegial body. Indeed, We find Respondents' pose tenuous. For, it can likewise be argued, with justification, that House Bill No. 10558 indeed confirms the existing collegial nature of the NTC by so expressly reaffirming the same.

x x x

In sum, then, We find and so declare that NTC Circular No. 1-1-93 x x x Memorandum Circular No. 3-1-93 x x x and the Order of Kintanar x x x declaring the NTC as a single entity or non-collegial entity, are contrary to law and thus null and void and should be, as they are hereby, set aside.”[26]

Second. Petitioners take us to task with their vigorous contention that respondent appellate court's act of nullifying NTC Memorandum Circular No. 1-1-93 issued by then Commissioner Mariano Benedicto, Jr. and NTC Memorandum Circular No. 3-1-93 issued also by then Commissioner Benedicto on January 6, 1993, was a collateral attack against the aforecited circulars and an unnecessary and abusive exercise of the court's power to nullify administrative regulations.

It must be remembered by petitioners, however, that administrative regulations derive their validity from the statute that they were, in the first place, intended to implement. Memorandum Circulars 1-1-93 and 3-1-93 are on their face null and void ab initio for being unabashedly contrary to law. They were nullified by respondent Court of Appeals because they are absolutely illegal and, as such, are without any force and effect. The fact that implementation of these illegal regulations has resulted in the institutionalization of the one-man rule in the NTC, is not and can never be a ratification of such an illegal practice. At the least, these illegal regulations are an erroneous interpretation of E.O. No. 546 and in the context of and its predecessor laws. At the most, these illegal regulations are attempts to validate the one-man rule in the NTC as executed by persons with the selfish interest of maintaining their illusory hold of power.

Since the questioned memorandum circulars are inherently and patently null and void for being totally violative of the spirit and letter of E.O. No. 546 that constitutes the NTC as a collegial body, no court may shirk from its duty of striking down such illegal regulations.

Third. In its certiorari action before the respondent Court of Appeals, private respondent BellTel was proceeding against the NTC and Commissioner Kintanar for the former's adherence and defense of its one-man rule as enforced by the latter. Thus, only the NTC and Commissioner Kintanar may be considered as indispensable parties. After all, it is they whom private respondent BellTel seek to be chastised and corrected by the court for having acted in grave abuse of their discretion amounting to lack or excess of jurisdiction.

The oppositors in NTC Case No. 94-229 are not absolutely necessary for the final determination of the issue of grave abuse of discretion on the part of the NTC and of Commissioner Kintanar in his capacity as chairman of NTC because the task of defending them primarily lies in the Office of the Solicitor General. Furthermore, were the court to find that certiorari lies against the NTC and Commissioner Kintanar, the oppositors' cause could not be significantly affected by such ruling because the issue of grave abuse of discretion goes not into the merits of the case in which the oppositors are interested but into the issue of collegiality that requires, regardless of the merits of a case, that the same be decided on the basis of a majority vote of at least two members of the commission.

The issue in this case is, it bears repeating, not the merits of the application of private respondent BellTel for a provisional authority to operate what promises to be the most technologically advanced telephone service in the country. This court is not in any way concerned with whether or not private respondent BellTel's project proposal is technically feasible or financially viable, and this court should not, in fact, delve into these matters which are

patently outside of its review jurisdiction. All that respondent Court of Appeals passed upon was the question of whether or not the NTC and Commissioner Kintanar committed grave abuse of discretion, and so we must review and ascertain the correctness of the findings of the respondent appellate court on this score, and this score alone.

Thus, the claim of petitioners that there is here a case of non-joinder of indispensable parties in the persons of all of the oppositors in NTC Case No. 94-229, is untenable.

Fourth. Petitioners, in apparent paranoia, argue that what the respondent appellate court has actually ordered, was that the NTC sit and meet en banc and forthwith grant private respondent BellTel's application for a provisional authority. Petitioners, however, have obviously over-read the second part of the dispositive portion of the herein assailed decision rendered by respondent Court of Appeals.

There is no dispute that jurisprudence is settled as to the propriety of mandamus in causing a quasi-judicial agency to exercise its discretion in a case already ripe for adjudication and long-awaiting the proper disposition. As to how this discretion is to be exercised, however, is a realm outside the office of the special civil action of mandamus. It is elementary legal knowledge, after all, that mandamus does not lie to control discretion.

When the respondent Court of Appeals directed Commissioners Kintanar, Dumlao and Perez to meet en banc and to consider and act on the working draft of the order granting provisional authority to BellTel, said court was simply ordering the NTC to sit and meet en banc as a collegial body, and the subject of the deliberation of the three-man commission would be the said working draft which embodies one course of action that may be taken on private respondent BellTel's application for a provisional authority. The respondent Court of Appeals, however, did not order the NTC to forthwith grant said application. This is understandable since every commissioner of the three-man NTC has a vote each to cast in disposing of private respondent BellTel's application and the respondent appellate court would not pre-empt the exercise by the members of the commission of their individual discretion in private respondent BellTel's case.

Respondent appellate court intends, however, for the NTC to promptly proceed with the consideration of private respondent BellTel's application for provisional authority, for the same has been ripe for decision since December, 1994. With the marked propensity of Commissioner Kintanar to delay action on the said application and his insistent arrogation of sole power to promulgate any and all NTC decisions, respondent Court of Appeals' order for the NTC to sit and meet en banc to consider private respondent BellTel's application for a provisional authority, attains deep significance.

Fifth. The accusation of petitioners that the working draft of the order granting provisional authority to private respondent BellTel, was obtained by the latter through illegal means, is a serious charge. However, not a single piece of evidence has been proffered by petitioners to prove this charge.

Private respondent BellTel makes no secret of the source of the said working draft. In private respondent BellTel's Urgent Ex-Parte Motion to Resolve Application and For Issuance of Provisional Authority, it is alleged that said working draft was prepared by Atty. Basilio Bolante of the Legal Department of the NTC.[27] Said working draft was initialed by the CCAD Head, Engr. Edgardo Cabarios and by Deputy Commissioners Dumlao and Perez.[28] The working draft is attached to the records of NTC Case No. 94-229 which may be borrowed by any person for any stated purpose.[29]

Significantly, no one among the aforementioned persons has renounced the working draft or declared it to be spurious. More importantly, petitioners have utterly failed to offer proof of any illegality in the preparation or procurement of said working draft.

The more critical point that matters most, however, is that we cannot be diverted from the principal issue in this

case concerning the collegiality of the NTC. In the ultimate, the issue of the procurement of the working draft is more apropos for a criminal or administrative investigation than in the instant proceedings largely addressed to the resolution of a purely legal question.

WHEREFORE, premises considered, the instant consolidated petitions are hereby DISMISSED for lack of merit.

Costs against petitioners.

SO ORDERED.

Bellosillo, Vitug, and Kapunan, JJ., concur.

Padilla (Chairman), no part; in view of interests in GMRC, Inc.

[1] In CA-G.R. SP No. 37978, promulgated on September 23, 1996 and penned by Associate Justice Romeo J. Callejo, Sr. and concurred in by Associate Justices Pedro A. Ramirez and Pacita Canizares-Nye.

[2] Fifth Division.

[3] Issued by then President Ferdinand Marcos on July 23, 1979 in the exercise of his legislative powers. E.O. No. 546 created the Ministry of Public Works and the Ministry of Transportation and Communications and merged the defunct Board of Communications and the Telecommunications Control Bureau into one body, the National Telecommunications Commission (NTC).

[4] The government launched what it now refers to as the Philippine Telephone Program whereby the government agreed to grant additional licenses for the operation of international gateway facilities and cellular mobile telephone services, on the condition that these licensees would, in turn, install the required local exchange lines in limited service areas assigned to each operator, to meet the unserved demand within a period of five (5) years or less. This program is embodied in Executive Order No. 109 enacted on July 12, 1993 which provided the "Policy to Improve the Provision of Local Exchange Carrier Service" and in NTC Memorandum Circular 11-9-93 promulgated on September 17, 1993, which circular contained the "Implementing Guidelines on the Provisions of E.O. No. 109."

[5] As quoted in the Application dated July 5, 1994, p. 1; Rollo, p. 241.

[6] Application supra; Rollo, pp. 241-247.

[7] Rollo, pp. 138-142.

[8] Memorandum dated February 6, 1995, p. 5; Rollo, p. 142.

[9] Ibid.

[10] Rollo, pp. 143-158.

[11] Rollo, pp. 135-137.

[12] Rollo, pp. 159-161.

[13] Dated May 25, 1995; Rollo; pp. 163-177.

[14] Rollo, pp. 177-180.

[15] Rollo, pp. 181-196.

[16] Dated August 11, 1995; Rollo, pp. 253-272.

[17] Manifestation in Lieu of Comment, p. 19; Rollo, p. 271.

[18] Decision, p. 35; Rollo, p. 97.

[19] Petition in G.R. No. 126526, pp. 18-19.

[20] Petition in G.R. No. 126496, pp. 27-29.

[21] Rollo, pp. 428-429.

[22] Id., pp. 452-498.

[23] Id., pp. 515-518.

[24] Id., pp. 554-555.

[25] Rollo, pp. 583-585.

[26] Decision, pp. 13-32; Rollo, pp. 75-94.

[27] Rollo, p. 130.

[28] Rollo, p. 142.

[29] Comment, p. 45; Rollo, p. 496.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.