

**ZOOMZAT, INC., PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES,
ROMULO S. RODRIGUEZ, JR., AVELINO C. CANOSA, ROLANDO G.
CHAVEZ, CEFERINO C. GARCIA, DEMOCRITO C. LAGO, ANTONIO F.
L...**

G.R. NO. 135535. February 14, 2005

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Assailed in this petition for review on certiorari is the Resolution[1] dated June 17, 1998 of the Sandiganbayan in Crim. Case No. 22026 approving the withdrawal of the Information charging herein respondents, all members of the Sangguniang Panlungsod of Gingoog City, of violation of Section 3(e), R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and its Resolution[2] dated September 9, 1998, denying petitioner Zoomzat, Inc.'s motion for reconsideration.

The factual antecedents are as follows:

Petitioner Zoomzat, Inc. alleged that on December 20, 1991, the Sangguniang Panlungsod of Gingoog City passed Resolution No. 261[3] which resolved "to express the willingness of the City of Gingoog to allow Zoomzat to install and operate a cable TV system." Thereupon, petitioner applied for a mayor's permit but the same was not acted upon by the mayor's office.

Subsequently, or on April 6, 1993, respondents enacted Ordinance No. 19[4] which granted a franchise to Gingoog Spacelink Cable TV, Inc. to operate a cable television for a period of ten (10) years, subject to automatic renewal.

Hence, on July 30, 1993, petitioner filed a complaint with the Office of the Ombudsman against herein respondents for violation of Section 3(e), R.A. No. 3019. The complaint alleged that in enacting Ordinance No. 19, the respondents gave unwarranted benefits, advantage or preference to Spacelink, to the prejudice of petitioner who was a prior grantee-applicant by virtue of Resolution No. 261.

On December 20, 1994, Graft Investigation Officer I Virginia Tehano-Ang, recommended the indictment of the respondents under Section 3(e), R.A. No. 3019,[5] which recommendation was affirmed on review by Special Prosecution Officer II Rolando Ines.[6]

Accordingly, a criminal information for violation of Section 3(e), R.A. No. 3019, was filed against the respondents before the Sandiganbayan. The case was docketed as Crim. Case No. 22026.

However, upon directive by the Sandiganbayan to restudy the instant case, Special Prosecution Officer II Antonio Manzano recommended the dismissal of the case and the Information withdrawn for lack of probable cause.[7] On further investigation, Special Prosecution Officer III Victor Pascual also recommended that the case be dismissed for insufficiency of evidence.[8]

Consequently, on June 17, 1998, the Sandiganbayan issued the now assailed resolution approving the dismissal of the case and ordering the withdrawal of the Information against the respondents. On September 9, 1998, the Sandiganbayan denied petitioner's motion for reconsideration.

Hence, the instant petition.

Petitioner assails the findings of Special Prosecutor Pascual that under Executive Order No. 205,[9] it is the National Telecommunications Commission (NTC), and not the local government unit, that has the power and authority to allow or disallow the operation of cable television. It argues that while the NTC has the authority to grant the franchise to operate a cable television, this power is not exclusive because under the Local Government Code, the city council also has the power to grant permits, licenses and franchises in aid of the local government unit's regulatory or revenue raising powers.

Petitioner also contends that the grant of exclusive franchise to Spacelink for a period of ten (10) years subject to automatic renewal, contravenes Section 2 of Executive Order No. 205, which provides that "a certificate of authority to operate a CATV by the Commission shall be on a non-exclusive basis and for a period not to exceed 15 years." Thus, in awarding an exclusive franchise, the petitioner asserts that respondents gave Spacelink undue or unwarranted advantage and preference because it stifled business competition. It claims that, even assuming the lack of actual damage or injury, the fact remains that respondents extended undue favor and advantage to Spacelink, which makes them liable under Section 3(e) of R.A. No. 3019.

The petition is bereft of merit.

Respondents were charged with violation of Section 3(e), R.A. No. 3019, which states:

Section 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

...

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions. (Emphasis ours)

Thus, for one to be held liable under Section 3(e), R.A. No. 3019, he must be an officer or employee of offices or government corporations charged with the grant of licenses or permits or other concessions.

Executive Order No. 205 clearly provides that only the NTC could grant certificates of authority to cable television operators and issue the necessary implementing rules and regulations. Likewise, Executive Order No. 436,[10] vests with the NTC the regulation and supervision of cable television industry in the Philippines.

Our pronouncement in *Batangas CATV, Inc. v. Court of Appeals*,[11] is pertinent:

There is no law specifically authorizing the LGUs to grant franchises to operate CATV system. Whatever authority the LGUs had before, the same had been withdrawn when President Marcos issued P.D. No. 1512 "terminating all franchises, permits or certificates for the operation of CATV system previously granted by local governments." Today, pursuant to Section 3 of E.O. No. 436, "only persons, associations, partnerships, corporations or cooperatives granted a Provisional Authority or Certificate of Authority by the NTC may install, operate and maintain a cable television system or render cable television service within a service area."

It is clear that in the absence of constitutional or legislative authorization, municipalities have no power to

grant franchises. Consequently, the protection of the constitutional provision as to impairment of the obligation of a contract does not extend to privileges, franchises and grants given by a municipality in excess of its powers, or ultra vires.

It is undisputed that respondents were not employees of NTC. Instead, they were charged in their official capacity as members of the Sangguniang Panlungsod of Gingoog City. As such, they cannot be charged with violation of Section 3(e), R.A. No. 3019 for enacting Ordinance No. 19 which granted Spacelink a franchise to operate a cable television.

Petitioner, however, insists that while the NTC is the licensing and regulatory body, nonetheless, the actual operations of cable television entails other activities, which may be regulated by the local government unit pursuant to the general welfare clause or subject to its revenue generating powers.

Again, this issue has been discussed in *Batangas CATV, Inc. v. Court of Appeals*,^[12] thus:

But, lest we be misunderstood, nothing herein should be interpreted as to strip LGUs of their general power to prescribe regulations under the general welfare clause of the Local Government Code. It must be emphasized that when E.O. No. 436 decrees that the “regulatory power” shall be vested “solely” in the NTC, it pertains to the “regulatory power” over those matters, which are peculiarly within the NTC’s competence ...

There is no dispute that respondent Sangguniang Panlungsod, like other local legislative bodies, has been empowered to enact ordinances and approve resolutions under the general welfare clause of B.P. Blg. 337, the Local Government Code of 1983. That it continues to possess such power is clear under the new law, R.A. No. 7160 (the Local Government Code of 1991).

Indeed, under the general welfare clause of the Local Government Code, the local government unit can regulate the operation of cable television but only when it encroaches on public properties, such as the use of public streets, rights of ways, the founding of structures, and the parceling of large regions.^[13] Beyond these parameters, its acts, such as the grant of the franchise to Spacelink, would be ultra vires.

Plainly, the Sangguniang Panlungsod of Gingoog City overstepped the bounds of its authority when it usurped the powers of the NTC with the enactment of Ordinance No. 19. Being a void legislative act, Ordinance No. 19 did not confer any right nor vest any privilege to Spacelink. As such, petitioner could not claim to have been prejudiced or suffered injury thereby. Incidentally, petitioner’s claim of undue injury becomes even more baseless with the finding that Spacelink did not commence to operate despite the grant to it of a franchise under Ordinance No. 19.

In addition, petitioner could not impute manifest partiality, evident bad faith or gross inexcusable negligence on the part of the respondents when they enacted Ordinance No. 19. A perfunctory reading of Resolution No. 261 shows that the Sangguniang Panlungsod did not grant a franchise to it but merely expressed its willingness to allow the petitioner to install and operate a cable television. Had respondents intended otherwise, they would have couched the resolution in more concrete, specific and categorical terms. In contrast, Ordinance No. 19 clearly and unequivocally granted a franchise to Spacelink, specifically stating therein its terms and conditions. Not being a bona fide franchise holder, petitioner could not claim prior right on the strength of Resolution No. 261.

WHEREFORE, in view of the foregoing, the petition is DENIED. The assailed Resolution of the Sandiganbayan dated June 17, 1998, approving the withdrawal of the Information against the respondents and the dismissal of Crim. Case No. 22026, for violation of Section 3(e), R.A. No. 3019, and the Resolution dated September 9, 1998, denying reconsideration thereof, are AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Carpio and Azcuna, JJ., concur.

[1] Approved by Justice Minita Chico-Nazario (now Justice of the Supreme Court), and Justices Edilberto G. Sandoval and Anacleto D. Badoy, Jr.; Rollo, p. 33.

[2] Rollo, p. 34.

[3] Id., p. 57.

[4] Id., pp. 58-59.

[5] Id., pp. 35-38.

[6] Id., pp. 39-42.

[7] Id., pp. 43-48.

[8] Id., pp. 52-56.

[9] REGULATING THE OPERATION OF CABLE ANTENNA TELEVISION (CATV) SYSTEMS IN THE PHILIPPINES, AND FOR OTHER PURPOSES.

[10] PRESCRIBING POLICY GUIDELINES TO GOVERN THE OPERATIONS OF CABLE TELEVISION IN THE PHILIPPINES.

[11] G.R. No. 138810, 29 September 2004.

[12] Supra.

[13] Batangas CATV, Inc. v. Court of Appeals, supra.

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