

**PHILIPPINE GLOBAL COMMUNICATIONS, INC., PETITIONER, VS.
HONORABLE BENJAMIN RELOVA, IN HIS CAPACITY AS PRESIDING
JUDGE, COURT OF FIRST INSTANCE OF MANILA, BRANCH XI,
PHILIPPINE T...**

G.R. No. 52819. October 02, 1980

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

The competence of respondent Judge Benjamin Relova[1] to act on a matter, which, according to petitioner Philippine Global Communications, Inc., should be appropriated death with by the Board of Communications, is the issue that has to be resolved by the Court in this certiorari and prohibition proceeding. Petitioner filed on May 10, 1976 with the Board of Telecommunications an application for authority to establish a branch or station in Cebu City "for the purpose of rendering international telecommunications services from Cebu City to any point outside the Philippines where it is authorized to operated." [2] The Solicitor General and private respondents opposed such application. [3] Thereafter, on March 9, 1979, the Board of Communications rendered a decision, recognizing the right of petitioners under its legislative franchise to establish branches or stations anywhere in the Philippines, subject to its prior approval. [4] A joint motion for reconsideration, dated June 14, 1979, came from private respondents, followed as could be expected by an opposition from petitioner. [5] In a reply to such opposition, private respondents put in issue the jurisdiction of the Board of Communications, now the National Telecommunications Commission, to act on such application. Such motion is still pending. [6] On August 27, 1979, private respondents filed before respondent Judge an action for declaratory judgment to ascertain the scope and coverage of the legislative franchise of petitioner; it was ratified to Branch XI, presided by respondent Judge. [7]

There was a motion to dismiss by petitioner on the ground that the question raised in such suit pertained to the National Telecommunications Commission, the body with primary jurisdiction. [8] Private respondents in turn submitted their opposition, with a reply from petitioner and a rejoinder to such pleading from respondents. [9] Respondent Judge, in an order dated January 15, 1980, denied petitioner's motion to dismiss as in his opinion the ground relied is not indubitable. [10] Hence this certiorari and prohibition proceeding.

On March 6, 1980, two days after the certiorari proceeding was filed, this court issued the following resolution: "Considering the allegations contained, the issues raised and the arguments adduced in the petition for certiorari and prohibition with preliminary injunction with prayer for a restraining order, the Court Resolved (a) to require the respondents to file an [Answer] within ten (10) days from notice and not to move to dismiss the petition and (b) to [Issue a Temporary Restraining Order,] effective as of this date and continuing until other wise ordered by the Court." [11] Thereafter on April 21, 1980, a joint answer was filed by the respondents. It met the issue squarely. Their principal contention is that what confronts this court is not the question of primary jurisdiction as it challenged such jurisdiction of the National Telecommunications Commission. It made clear that from the very legislative franchise of petitioner Philippine Global Communications, Inc. the right to establish a branch or station

in Cebu city "for the purpose of rendering international telecommunications services" from such city to any point outside the Philippines is say the least, debatable. The matter is far from clear. Its franchise does not, in express terms, grant it. What is worse, to quote from its answer: "*** petitioner, being an 'international record carrier' is authorized to engage only in international communications service. Now, private respondents take the position that since Section 1 of Republic Act No. 4617; [the franchise in question] limits ingress and egress of [petitioner's] messages or signals only thru a 'Sole Gateway' (Manila) or only thru '[any point]' or single location in the Philippines, therefore: a.) [petitioner] cannot establish branches or distribution systems (direct connections to endusers) at any other point or locality within the country for the purpose of transmitting and receiving messages between the gateway (Manila) and these branches or stations located say, at Cebu or Davao. [For that is to constitute] domestic service within the context of [its] franchise; b.) [Petitioner] cannot even establish distribution systems in Manila other than its main office or gateway to transmit and receive messages to or from the end-users destined for external transmission; this phase of operation (between the main office at gateway to the distribution system or individual equipment installed in the end-users' offices in Manila) being 'domestic service'; c.) Assuming arguendo, that [petitioner] shall not charge any additional fee for the extra service mentioned in such paragraphs (a) and (b) (supra), this does not detract from the fact that the same still constitutes 'domestic service' since they are rendered from one point in the Philippines to another point within the same country." [12]

The issue is thus clear-cut and well-defined. Considering the question raised, is this a case appropriate for a suit for declaratory relief which fall within the competence of the Judiciary or is this a case calling for the applicability of the concept of primary jurisdiction thus necessitating an action by the administrative agency concerned before resort to a judicial remedy? To our mind, the answer is that a suit for declaratory relief lies and, therefore, the petition must be dismissed.

1. Reliance is placed by petitioners on *Quintos, Jr. v. National Stud Farm*. [13] It is undoubted that fidelity to the basic concept of exhausting administrative remedies calls for the equally fundamental principle of primary jurisdiction to be respected. Petitioner, however, could not dissipate the well founded doubt as to whether its legislative franchise justifies its plea to establish the branch or station in question. There is no need to repeat what has been set forth in the answer to the effect that there was such a limitation concerning the ingress and egress of its messages or signals only thru a "sole gateway" (Manila) or only thru any point or single location in the Philippines. Absent such clarity as to the scope and coverage of its franchise, a legal question arises which is more appropriate for the judiciary than for an administrative agency to resolve. The doctrine of primary jurisdiction calls for application when there is such competence to act on the part of an administrative body. Petitioner assumes that such is the case. That is to beg the question. There is merit, therefore, to the approach taken by private respondents to seek judicial remedy as to whether or not the legislative franchise could be so interpreted as to enable the National Telecommunications Commission to act on the matter. A jurisdictional question thus arises and calls for an answer.

2. The conclusion reached is reinforced by the nature of the assailed order of respondent Judge. It was merely a denial of a motion to dismiss the suit for declaratory relief for the reason that the ground relied upon "is not indubitable." There is thus the appearance and the reality of an unseemly haste in which the matter was brought to this court considering that the well-known doctrine that certiorari to be available as set forth in *Panaligan v. Adolfo*, [14] requires a showing of "a capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions." [15]

3. Nor does it avail petitioners that a motion for reconsideration by private respondents still pending before the National Telecommunications Commission. Reliance on the doctrine of ripeness for judicial review is not always

attended with success. Precisely, in *Arrow Transportation corp. v. Board of Transportation*,^[16] the mere fact that at the time the case was elevated to this Court, a motion for reconsideration was still pending with respondent Board did not suffice to preclude a ruling on the decisive question raised. A noted authority on Administrative Law, Professor Kenneth Culp Davis, was referred to as being "of the view that the resolution of what could be a debilitating uncertainty with the conceded ability of the judiciary to work out a solution of the problem posed is a potent argument for minimizing the emphasis laid on its technical aspect."^[17] An excerpt from *Radio Communications of the Philippines, Inc. v. Santiago*,^[18] is even more persuasive as to why the stage has been reached for the judiciary to act considering that the question raised is one of jurisdiction. Thus: "Except for constitutional officials who can trace their competence to act to the fundamental law itself, a public official must locate in the statute relied upon a grant of power before he can exercise it . It need not be express. It may be implied from the wording of the law. Absent such a requisite, however, no warrant exists for the assumption of authority. The act performed, if properly challenged, cannot meet the test of validity. It must be set aside. So it must be in these two petitions. That is to defer to a principle reiterated by this Court time and time again."^[19]

WHEREFORE, the petition for certiorari is dismissed for lack of merit. The restraining order issued on March 6, 1980 is hereby set aside. No pronouncement as to costs.

Barredo, Aquino, Guerrero, Abad Santos, and De Castro, JJ., concur.
Concepcion, Jr., J., on official leave.

[1] The private respondents are Philippine Telegraph and Telephone Corporation, Capitol Wireless, Inc. and Radio Communications of the Philippines, Inc.

[2] Petition, par. 4 (Facts).

[3] *Ibid.*, par. 5.

[4] *Ibid.*, par. 7.

[5] *Ibid.*, pars. 8 and 9.

[6] *Ibid.*, par. 10.

[7] *Ibid.*, par. 11. Republic Act No. 4617 (1965) is the legislative franchise of petitioner.

[8] *Ibid.*, par. 12.

[9] *Ibid.*, par. 13.

[10] *Ibid.*, par. 14.

[11] Resolution dated March 6, 1980.

[12] Joint Answer of Respondents, 3-4.

[13] L-37052, November 29, 1973, 54 SCRA 210.

[14] L-24100, September 30, 1975, 67 SCRA 176.

[15] *Ibid.*, 180. As pointed out in the latest decision in question *Fajardo v. Garcia*, L-38675 promulgated July 2, 1980, 14 more cases were decided since *Panaligan* starting from *Sanchez v. Zosa*, L-27043, Nov. 28, 1975, 68 SCRA 171 to *Commodity Financing Inc. v. Jimenez*, L-31384, June 29, 1979, 91 SCRA 57.

[16] L-39655, March 21, 1975, 63 SCRA 193.

[17] Ibid., 199.

[18] L-29247, August 21, 1974, 58 SCRA 493.

[19] Ibid., 496-497. It was then pointed out that thirteen cases prior to this decision starting from *Bautista v. Angeles* reported in 34 Phil. 580 (1916), the opinion coming from the illustrious Chief Justice Arellano, to *Villegas v. Subido*, L-26534, Nov. 28, 1969, 30 SCRA 498, may be cited in support of the above principle.

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