

**U. BAÑEZ ELECTRIC LIGHT COMPANY (UBELCO),
PLAINTIFF-APPELLANT, VS. ABRA ELECTRIC COOPERATIVE, INC.
(ABRECO) AND/OR JEREMIAS ZAPATA, NATIONAL POWER CORP.
(NPC) AND NATIONAL ELECT...**

G.R. No. 59480. December 08, 1982

Ponente: PLANA, J.

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PLANA, J.:

Appeal from the dismissal of the complaint in Civil Case No. 718 of the Court of First Instance of Abra for failure to state a cause of action. The appeal had originally been brought to the Court of Appeals but was subsequently certified to this Court on the ground that it raises purely questions of law.

It appears that in June 1973, UBELCO filed a complaint in the court a quo alleging that it is the holder of a Congressional franchise for electric and power system in the Municipality of Bangued, Province of Abra, granted under Republic Act No. 4143; that under the said Act, when defendant NPC shall have established its lines in the areas adjacent to or over the territory covered by plaintiff's franchise, the NPC "may make available its power and heat only after negotiations with and through U. Bañez Electric Light Company, or with the authority and consent of the grantee"; that the defendant NPC is now in a position to service the several municipalities in the Province of Abra, including Bangued, but for one reason or another, and notwithstanding repeated requests made by the plaintiff, NPC has unlawfully failed and refused to enter into a power service contract with the plaintiff to its great damage and prejudice; that defendant ABRECO, with the encouragement of and in connivance with defendant NEA, has illegally attempted to establish, operate and maintain an electric system within the municipality of Bangued without a valid franchise and without authority from the Public Service Commission, as required by law, drawing power from defendant NPC without negotiating with or obtaining the consent of the plaintiff, in violation of Republic Act No. 4143; that the municipality of Bangued, Abra has no right to grant an electric franchise to defendant ABRECO because said act is ultra vires and because of the existence of plaintiff's franchise and also because there is no necessity to allow two electric systems to operate within the same municipality; that defendants ABRECO and NEA are attempting to construct, maintain and operate an electric system within the municipality of Bangued, in violation of the rights of plaintiff, and unless said defendants are enjoined, the plaintiff would suffer grave and irreparable damage and in-jury; and that plaintiff has no other plain, speedy and adequate remedy in the ordinary course of law. Plaintiff then prayed:

1. That pending trial a writ of preliminary injunction be issued restraining defendant ABRECO from constructing, maintaining and operating an electric system within Bangued, Abra; prohibiting defendant NPC from entering into any form of power service contract with ABRECO; and after trial, the aforesaid writ be made permanent;
2. That the power and electric franchise granted by the Municipal Council of Bangued, Abra to defendant ABRECO be declared illegal and void;
3. That the National Power Corporation be ordered to enter into a power service contract with the plaintiff; and

4. That plaintiff be awarded damages and attorney's fees.

After filing their joint answer, defendants ABRECO and NEA moved to dismiss. So did defendant NPC. The common grounds relied upon are: (1) failure of the complaint to state a cause of action, and (2) lack of jurisdiction over the nature of the action.

Upon a consideration of the above motions and the opposition thereto, the court a quo issued an order dated September 3, 1973 dismissing the complaint for failure to state a cause of action. This is the order now assailed in this appeal, which raises one basic issue: whether on the basis of the allegations of the complaint, a sufficient cause of action has been pleaded against the defendants.

According to appellant, in resolving the motion to dismiss, the lower court disregarded some allegations deemed admitted by the motion, while taking into account facts and circumstances not deemed admitted because they were not alleged in the complaint.

A motion to dismiss on the ground of failure to state a cause of action hypothetically admits the truth of the facts alleged in the complaint. When the facts alleged in the complaint show that the defendant has committed acts constituting a delict or wrong by which he violates the rights of the plaintiff, causing him loss or injury, there is sufficient allegation of a cause of action. Otherwise, there is none.

The hypothetical admission is however limited to the relevant and material facts well pleaded in the complaint and inferences fairly deducible therefrom. The admission does not extend to conclusions or interpretations of law; nor does it cover allegations of fact the falsity of which is subject to judicial notice. [Mathay vs. Consolidated Bank and Trust Company, 58 SCRA 559; De Dios vs. Bristol Laboratories (Phils.) Inc., 55 SCRA 349.]

Nevertheless, in resolving a motion to dismiss, the court is not restricted to the consideration of the facts alleged in the complaint and inferences fairly deducible therefrom. The court may consider other facts within the range of judicial notice, as well as relevant laws and jurisprudence which of course the courts are bound to take into account.

Now, the Congressional franchise of the appellant-Republic Act No. 4143 enacted in 1964 - provides that subject to the provisions of the Constitution -

"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 negotiations with and through U. Bañez Electric Light Company, or with the authority and consent of the grantee." (Section 2).

Subsequently however or on July 28, 1969, Republic Act No. 6038 was enacted creating the NEA and granting to electric cooperatives exemption from taxes and fees. It further provides that -

"The National Power Corporation shall except with respect to the National Government, give preference in the sale of its power and energy to cooperatives, and shall otherwise provide the maximum support and assistance to cooperatives of which it is capable, including assistance in developing dependable and reliable arrangements for their supplies of bulk power, either from it-self or from other sources. In pursuance of the foregoing policy, the National Power Corporation shall not, except upon prior written agreement approved by the cooperative's board, compete in the sale of power and energy which, without regard to the location of the point of delivery thereof, will be utilized and consumed within any area franchised to a cooperative."

"No franchise for service shall be granted to any other person within any area or portion for which a cooperative holds a franchise unless and except to the extent that (1) the cooperative's board consents thereto by resolution duly adopted or (2) the Public Service Commission determines that the cooperative is unable

within a reasonable time, or is unwilling, to supply service therein..." [Section 41, paragraphs (b) and (c). RA 6038 was The NEA Charter on September 3, 1973 when the questioned order of the court a quo was issued.]

Hand in hand with the creation of NEA, the charter of NPC was revised on September 10, 1971 (RA 6395), empower-ing NPC "to sell electric power in bulk to (1) industrial enterprises, (2) city, municipal or provincial systems and other government institutions, (3) electric cooperatives, (4) franchise holders, and (5) real estate subdivisions." [Section 3 (g)] The said Act mandates that in its relations with electric cooperatives, the NPC shall be governed by the provisions of the NEA Charter. (Section 15.)

Thus, in the light of the statutory mandate that in the sale of electric power, the NPC shall give preference to electric cooperatives over all other buyers except the national government, and provide electric cooperatives with the maximum support and assistance it is capable of giving - considered in relation with the Constitutional provision against monopoly in the field of public utilities (Art. XIV, Sec. 5) - there is good reason to hold that the 1964 UBELCO franchise (which after all is subject to amendment, alteration or repeal when public interest so requires) was modified pro tanto by the cited provisions of the NEA and NPC Charters; and accordingly, as held by the court a quo in sustaining the motion to dismiss, the NPC can supply ABRECO directly with electric power as mandated by RA 6038 and RA 6395 without negotiating with and acting through or seeking the consent/authorization of UBELCO.

So viewed, the complaint does not sufficiently state a cause of action against the appellees, and the same was pro-perly dismissed on that basis. The lower court, contrary to the impression of appellant, acted correctly in considering as hypothetically admitted only the facts alleged in the complaint, in applying relevant constitutional and statutory provisions to the facts deemed established by the filing of the motion to dismiss, and in disregarding averments of legal conclusions such as the allegations that the franchise granted by the Municipal Council of Bangued, Abra, to ABRECO pursuant to Act 667 is ultra vires and void; that the NPC has entered into a power contract with ABRECO in violation of law; and that the NPC has refused to supply UBELCO with electric power in violation of and contrary to law. (See appellant's brief, 18-21.)

The usual test of the sufficiency of the facts alleged in a complaint, to constitute a cause of action, is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the complaint.

In the instant case, on the basis of the facts deemed established as distinguished from the averments of legal conclusions in the complaint, NPC can not be restrained from entering into a power contract with ABRECO and compelled to conclude a power contract with UBELCO, which are the principal reliefs prayed for in the complaint. Moreover, it is admitted that NPC and ABRECO have already concluded a power contract. It is too late to restrain them from entering into such agreement.

WHEREFORE, the appealed Order of dismissal is affirmed. Costs against the appellant.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Vasquez, Relova, and Gutierrez, Jr., JJ., concur.

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