

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

G.R. No. 60548. November 10, 1986

Ponente: FERIA, J.

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FERIA, J.:

In this petition for review on certiorari, the Philippine Global Communications, Inc., seeks to set aside the decision dated April 27, 1982 rendered by respondent Judge Benjamin Relova of Branch XI of the then Court of First Instance of Manila in Civil Case No. R-82-3721 entitled "In the Matter of the Petition for the Declaratory Judgment Regarding the Construction of the R.A. Nos. 4617 and 4630", the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered declaring respondent Philippine Global Communications, Inc. without authority to establish, maintain and operate, apart from its single principal station in Makati, any other branch or station within the Philippines.

"In view of the foregoing resolution on the main petition, the counterclaim interposed by respondent must be, as it is hereby, DISMISSED."

At this juncture, it may not be amiss to invite attention to our decision in the case of Metropolitan Waterworks and Sewerage System vs. The Court of Appeals and City of Dagupan, G.R. No. L-54526 promulgated on August 25, 1986, which pointed out the common error of joining the court or judge who rendered the decision appealed from as a party respondent in an appeal by certiorari to this Court under Rule 45 of the Rules of Court; when correctly the only parties in an appeal by certiorari are the appellant as petitioner and the appellee as respondent; and it is in the special civil action of certiorari under Section 5 of Rule 65 of the Rules of Court where the court or judge is required to be joined as a party defendant or respondent.

The antecedent facts in this case are briefly as follows:

On May 10, 1976, petitioner filed with the Board of Communications (BOC), now the National Telecommunications Commission, an application for authority to establish a branch station in Cebu City for the purpose of rendering international telecommunication services from Cebu City to any point outside the Philippines where it is authorized to operate. Said application was opposed by private respondents.

Meanwhile, on March 24, 1977, while petitioner's application was pending, the BOC issued Memorandum Circular No. 77-13 designating the Metropolitan Manila area as the sole "gateway" (point of entrance into or exit from) for communications in the Philippines and defining what constitutes "domestic record operations".

On January 16, 1979, the BOC granted petitioner pro-visional authority to establish a station in Cebu City "subject to the condition that as soon as domestic carriers shall have upgraded their facilities, applicant shall cease its operation and interface with domestic carriers". Then, on May 24, 1979, the BOC granted petitioner final

authority to establish a "branch/station" in Cebu City and, subject to its prior approval, anywhere in the Philippines. Respondents filed a joint motion for reconsideration of said decision.

On August 27, 1979, pending resolution of the joint motion for reconsideration, private respondents filed with the lower court a petition for declaratory judgment regarding the proper construction of petitioner's franchise, R.A. No. 4617. Petitioner moved to dismiss the petition but said motion was denied. Petitioner then assailed the afore-said order on the ground of lack of jurisdiction, but this Court sustained the lower court and held that the suit for declaratory relief fell within the competence of the Judiciary and did not require prior action by the administrative agency concerned under the concept of primary jurisdiction. (G.R. No. L-52819, October 2, 1980, 100 SCRA 254)

After the issues were joined, the parties at the pre-trial conference agreed to submit the case for decision on the bases of their respective pleadings and memoranda because the issues involved are legal. On April 27, 1982, the lower court rendered the judgment above quoted. Hence, this petition.

The legal issues raised in this petition are as follows: (1) Whether or not petitioner is authorized under its legislative franchise, Republic Act No. 4617, to establish stations or substations in places or points outside Metropolitan Manila; and (2) Whether or not the establishment of such stations or substations constitutes "domestic service" within the terms of petitioner's legislative franchise.

In its Second Supplemental Memorandum filed on July 16, 1984, petitioner belatedly claims that the declaratory judgment was improperly made, as it was based on the pleadings alone, although the declaratory relief petition presented genuine issues of fact that required trial. Considering, however, the above-stated agreement of the parties to submit the case for decision on the basis of their respective pleadings and memoranda (petitioner's brief, p. 14 and respondents' brief, p. 12), the lower court could not be faulted for rendering judgment accordingly.

However, we rule that the lower court erred in rendering the decision appealed from, inasmuch as the same is contrary to the provisions of petitioner's legislative franchise (R.A. No. 4617) as well as the contemporaneous construction placed upon it by the governmental agency charged with its enforcement and the opinion of the former Secretary of Justice.

Section 1 of petitioner's franchise provides:

"Section 1. - There is hereby granted to the RCA Communications Inc., hereinafter referred to as the Grantee, the right and privilege of constructing, maintaining and operating communications systems by radio, wire, satellites, and other means now known to science or which in the future may be developed for the reception and transmission of messages between any point in the Philippines to points exterior thereto, including airplanes, airships or vessels, even though such airplanes, airships or vessels may be located within the territorial limits of the Philippines."

RCA Communications, Inc. was subsequently renamed Philippine Global Communications, Inc., herein petitioner.

It is always timely to reiterate that: "the first and fundamental duty of courts, in our judgment, is to apply the law. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them." (Lizarraga Hermanos vs. Yap Tico, 24 Phil. 504, 513; Republic Flour Mills, Inc. vs. Commissioner of Customs, 39 SCRA 269)

Moreover, legislative intent must be ascertained from a consideration of the statute as a whole. As the Court reiterated in the case of Aisporna vs. Court of Appeals:

"x x x The particular words, clauses and phrases should not be studied as detached and isolated expressions,

but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce harmonious whole. (Araneta vs. Concepcion, 99 Phil. 709; Tamayo vs. Gsell, 35 Phil. 953; Lopez vs. El Hogar Filipino, 47 Phil. 249; Chartered Bank vs. Imperial, 48 Phil. 931) A statute must be so construed as to harmonize and give effect to all its provisions whenever possible. (People vs. Polmon, 86 Phil. 350)" (113 SCRA 459, 466; April 12, 1982)

The lower court held that the word "any" in the above-quoted Section 1 of the law means a single point within the Philippines where petitioner at its choice, subject to approval by the proper governmental agency, can establish and maintain a reception and communication station or system. It also held that the establishment, maintenance and operation of franchise or stations anywhere in the Philippines or even within Metropolitan Manila outside or apart from petitioner's principal or main station in Makati constitute "domestic communication service" in violation of Section 17 of said law.

However, a reading of other sections of the law aside from Sections 1 and 17 cited by the lower court would lead to no other conclusion than that said law authorizes petitioner to construct, maintain and operate, apart from its principal station in Makati, other stations or branches within the Philippines for purposes of its international communications operations.

Section 3 of the law provides that "for the purpose of carrying out the privilege granted herein, the grantee may establish stations in such places in the Philippines as the grantee may select and the Secretary of Public Works and Communications may approve. x x x"

Section 4(a) provides that "the Secretary of Public Works and Communications shall have the power to allot to the grantee the frequencies and wave lengths to be used thereunder and determine the stations to and from which each such frequency and wave lengths may be used, and issue to the grantee a license for such use."

Section 6 provides that "a special right is reserved to the Government of the Republic of the Philippines, in time of war, insurrection, or domestic trouble, to take over and operate the said stations upon the order and direction of any authorized department of the Government of the Philippines, such department to compensate the grantee for the use of said stations during the period when they shall be so operated by the said Government."

Section 9 provides that "the grantee shall hold the national, provincial, and municipal governments of the Philippines, harmless from all claims, accounts, demands, or actions arising out of accidents or injuries, whether the property or to persons, caused by the construction or operation of the stations of the grantee."

With respect to the principle of contemporaneous construction of a statute by the executive officers of the government whose duty it is to execute it, it is well to reiterate that:

"x x x As far back as In re Allen, (2 Phil. 630) a 1903 decision, Justice McDonough, as ponente, cited this excerpt from the leading American case of *Pennoyer v. McConnaughy*, decided in 1891: 'The principle that the contemporaneous construction of a statute by the executive officers of the government, whose duty it is to execute it, is entitled to great respect, and should ordinarily control the construction of the statute by the courts, is so firmly embedded in our jurisprudence that no authorities need be cited to support it.' (Ibid, 640. *Pennoyer v. McConnaughy* is cited in 140 US 1. The excerpt is on p. 23 thereof. Cf. *Government v. Municipality of Binalonan*, 32 Phil. 634 [1915]) There was a paraphrase by Justice Malcolm of such a pronouncement in *Molina v. Rafferty*, (37 Phil. 545) a 1918 decision: 'Courts will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it, and unless such interpretation is clearly erroneous will ordinarily be controlled thereby.' (Ibid, 555) Since then, such a doctrine has been reiterated in numerous decisions. (Cases cited)" (*Philippine Association of Free Labor Unions [PAFLU] vs. Bureau of Labor Relations*, August 21, 1976, 72 SCRA 396, 402)

In its decision of May 24, 1979 granting petitioner final authority to establish a branch/station in Cebu City, the BOC construed the legislative franchise of petitioner, as follows:

"It was the earlier contention of this Board when it issued Memorandum Circular No. 77-13 (see incl. 1 of said Circular) that no international record carrier could establish stations in any point of the country, for purposes of carrying out its international record operations except in Metropolitan Manila Area. However, a careful review and deliberation on the stand taken by the applicant herein as discussed in position paper it submitted to the Board on February 21, 1978 and a cursory review of the individual franchises of each international carrier as well as of an earlier opinion expressed by the Secretary of Justice to the Chairman of the defunct Radio Control Board has convinced the board that by virtue of applicant's franchise, Memorandum Circular No. 77-13 is not violated by authorizing applicant to establish a branch station in Cebu City solely for its international record operations. In view thereof and in the interest of continued efficient, adequate and satisfactory services, the Board of Communications hereby makes final the provisional authority granted to applicant herein on January 16, 1979 not only on the grounds stated in said Order but also for reasons that subject to the approval of this Board, applicant may establish branch stations in any point within the country for the purpose of receiving and transmitting messages to countries outside the Philippines where it is authorized to render international telecommunications services in accordance with its franchise and Memorandum Circular No. 77-13. Metropolitan Manila remains to be the 'sole' gateway; hence, all messages received and transmitted in the course of a carrier's international record carrier operation, must be coursed through said gateway."

The earlier opinion of the Secretary of Justice referred to in said decision was the opinion rendered by Secretary of Justice Pedro Tuason on June 17, 1954 (Opinion No. 146), on the interpretation to be given to the clause found in Section 1 of the original franchise granted to the predecessor-in-interest of Globe-Mackay Cable and Radio Corporation (Act No. 3495 approved on December 8, 1928, as amended by Act No. 3692 and Republic Act No. 4630). Globe-Mackay Cable and Radio Corporation was originally one of the respondents in the Petition for Declaratory Judgment, but it was subsequently dropped as a party respondent. The clause in question reads:

"The sending of commercial wireless telegraphic messages from points within the Philippine Islands to points exterior thereto, including airplanes, airships, and vessels, even though such airplanes, airships, or vessels be located within the territorial limits of the Philippine Islands, and the receiving of commercial wireless messages from such exterior points."

This clause is similar to that found in Section 1 of Republic Act No. 4630, approved on June 19, 1965, which is identical to Section 1 of Republic Act No. 4617 except as to the name of the grantee.

The opinion of the Secretary of Justice states:

"x x x In Opinion No. 76 the view taken was that a message, to fall within the purview of the franchise, once sent by a transmitter within the Philippines, cannot be received by any station within the Philippines even for the purpose of retransmitting such message to points outside the Philippines. I believe that the interpretation given to the above-quoted clause was too strict and does not conform with the spirit of said provision. I take the view that the franchise has reference to the destination of the message and not to the manner of transmittal. Not as to whether it should be sent to the point of destination directly or through relays. The reservation in favor of the Philippine Government under section 4 of the franchise of 'all wireless communications between points of stations within the Philippine Islands' is clearly intended to refer only to domestic communications.

"It should be understood, however, that no extra fees or tolls could be collected for the transmittal of messages from a relay station to the principal station in Manila. For to do so would make it a domestic service and would bring such service in competition with the domestic radio and telegraph service of the Bureau of Posts."

The above-quoted opinion was reiterated and reaffirmed by the Undersecretary of Justice on November 28, 1973,

in answer to the query of the Acting Chairman of the Foreign Trade Zone Authority as to whether or not Globe-Mackay Cable and Radio Corporation is "authorized under its franchise to set a relay station inside the Foreign Trade Zone in Mariveles, Bataan, which will receive interstate communications for onward transmission by its main station in Manila."

The above-stated opinions of the Secretary of Justice and Undersecretary of Justice are material because Republic Acts Nos. 4630 and 4617 are in *pari materia*. As the Court has reiterated:

"Statutes are said to be in *pari materia* when they relate to the same person or thing, or to the same class of persons or things, or have the same purpose or object. (Sutherland Statutory Construction, Vol. 11, pp. 535-536) When statutes are in *pari materia*, the rule of statutory construction dictates that they should be construed together. (Black on Interpretation of Laws, Sec. 106) x x x" (City of Naga vs. Agna, May 31, 1976, 71 SCRA 176, 184)

Finally, on October 25, 1983, the National Telecommunications Commission, with the approval of the Ministry of Transportation and Communications, issued Memorandum Circular No. 08-8-83 which adopted guidelines in the implementation of the government policy of designating Metropolitan Manila as the international gateway for purposes of domestic and international communications operations. Among the provisions of said Memorandum Circular which are pertinent to the case at bar are the following:

"1.1 The International Record Carriers (IRCs) shall continue to own, construct and expand, as may be required by the service, their own stations, inside plant, branches and terminals within the Metro Manila Area necessary for them to conduct their business of providing international telecommunications service in the country in accordance with their respective franchise and as authorized by the appropriate government regulatory agency.

xxx xxx xxx

"2.1 The IRCs shall not maintain public offices outside the gateway. They may, however, be allowed to establish customer terminals with the necessary marketing and technical support outside Metro Manila. x x x"

xxx xxx xxx

"2.3 International telecommunications requirements of non-equipped or walk-in customers shall be served thru the public offices of the domestic record carrier/s (DRCs). All existing public offices of IRCs may continue operating until such time as the DRC(s) can provide the facilities required by the IRCs or an Inter-connect Agreement between the IRC(s) and DRC(s) shall have been duly approved by NTC."

The last-quoted provision confirms that the existing public offices of International Record Carriers were duly authorized by their respective legislative franchises.

WHEREFORE, the decision appealed from is reversed and judgment is hereby rendered declaring petitioner with authority to establish, maintain and operate, in accordance with its franchise and Memorandum Circular No. 08-8-83, any other branch or station within the Philippines apart from its single principal station in Makati, Metro Manila.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., Cruz, and Paras, JJ., concur. Feliciano, J., on official leave.

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