

SAMUEL BAUTISTA, PETITIONER, VS. NATIONAL TELECOMMUNICATIONS COMMISSION AND PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, RESPONDENTS.

G.R. No. 60987. August 31, 1982

Ponente: RELOVA, J.

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RELOVA, J.:

The Philippine Long Distance Telephone Company (PLDT for short) filed on March 22, 1982 an application for the approval of the Revised Schedule of the Subscriber Investment Plan before the National Telecommunications Commission, under Case No. 82-27. This was opposed by the herein petitioner alleging that he has a telephone connection with the PLDT and is an applicant for a business telephone at the 7th Floor, Gutierrez-David Building, Corner Scout Reyes St. and Panay Avenue, Quezon City; that the increase in the telephone subscriber investment plan will adversely affect him and others similarly situated; and that inasmuch as the applicant is financially sound because in 1981 it had an operating income of more than P500 million, aside from the fact that the Development Bank of the Philippines had invested P400 million with said telephone company, there is no necessity for the increase in the telephone subscriber investment plan.

The National Telecommunications Commission, thru its Commissioner, Ceferino S. Carreon, on April 14, 1982, issued an order which, among others, states:

"Finding prima facie that applicant's proposed revised rates for its Subscriber Self-Financing or Subscriber Investment Plan are just and reasonable and all within the limit provided in P.D. 217, and are in consonance with the public policies declared in said Decree, this Commission believes that, in the public interest, applicant's proposed revised SIP rates in the present case may be, as they are hereby MODIFIED and PROVISIONALLY APPROVED, as follows:

REVISED SIP SCHEDULE

Revised SIP Rates

Service Category

Metro Manila

Provincial

I. New Installations -

1. PBX/PABX Trunk

P6,000.00

P3,000.00

2. Business Phone:

Single line

3,500.00

2,000.00

Party line

2,000.00

1,500.00

3. Residential Phone:

Single line

2,000.00

1,500.00

Party line

1,000.00

1,000.00

4. Leased Line

3,500.00

3,500.00

5. Tie Trunk or tie

line

2,500.00

2,500.00

6. Outside local

2,500.00

2,500.00

II. Transfers -

1. PBX/PABX

P1,500.00

P1,200.00

2. Business Phone:

Single Line

800.00

600.00

Party line

600.00

500.00

3. Residential Phone:

Single line

600.00

500.00

Party line

500.00

300.00

4. Leased line

800.00

800.00

5. Tie trunk or tie line

800.00

800.00

6. Outside local

800.00

800.00

"The foregoing modified revised rates shall be subject to same terms and conditions of applicant's Subscriber Investment Plan as originally approved, its amendments thereto and which are not inconsistent with this Order.

"This Order takes effect immediately and may be revoked, revised or amended as the Commission shall deem fit."

As a consequence, petitioner Samuel Bautista filed this Petition for Certiorari to set aside the order dated April 14, 1982 of the National Telecommunications Commission provisionally approving the PLDT's revised subscriber investment plan.

It is the position of the herein petitioner that while the National Telecommunications Commission has the authority and jurisdiction to hear the application of the PLDT for the increase in the subscriber investment plan, neither PD 217 nor the Public Service Law authorized said Commission to grant provisional approval of an application for the increase in the subscriber investment plan; that under PD 217, the telephone company cannot charge more than fifty percent (50%) of the cost of the installed telephone line; that under Section 16(c) of the Public Service Act, it is only with respect to rates proposed by public services that the National Telecommunications Commission can approve provisionally; and, that since the Public Service Law or PD 217 has not authorized respondent Commission to grant provisional approval in an application to increase the amount of subscriber investment plan, the order dated April 14, 1982, is illegal, null and void from the very beginning.

Likewise, the Solicitor General, representing the Republic of the Philippines, opposed the application on the ground that the rates are excessive and un-reasonable; and the low income and middle class group cannot afford to have telephone connections, "which will thus, run counter to the policy of the State of encouraging the spreading out of the ownership of public utilities as embodied in PD 217;" and, that since applicant is financially sound there is no need to increase the rates under the subscriber investment plan.

On the other hand, respondent claimed that the order provisionally approving PLDT's proposed investment schedule with modifications or reduction was issued by the respondent commission upon its finding that:

"x x x the proposed revised rates for its (PLDT's) rates Subscriber Self-Financing or Subscriber Investment Plan are just and reasonable and all within the limits provided in P.D. 217, and are in consonance with the public policies declared in said Decree' (Pp-2-3, NTC Order of April 14, 1982, Annex B, Petition). As issued, the said order is subject to the same terms and conditions of PLDT's Subscriber Investment Plan as originally approved by the NTC; and pursuant to these same terms and conditions the amounts chargeable for subscriber investments in the provisional approval order of April 14, 1982 are in exchange for preferred shares, with assured earnings of 10% per annum, convertible to common shares after a defined 1-year period at the option of the subscriber, and transferable at any time to third persons, said shares being regularly listed at the Makati, Manila and Metropolitan Stock Exchanges.

"Through the SIP, PLDT has become one of the companies with the broadest base of ownership in the country. From the introduction of the SIP in the year 1973 when PLDT had only 15,817 shareholders, the number of shareholders of PLDT has risen as of December 31, 1981 to 226,817 shareholders of whom 211,756 were Filipinos owning 93% of the outstanding capital stock, 5,567 were Americans owning 3% of the outstanding capital stock and 9,494 were of other nationalities owning 4% of the outstanding capital stock."

Section 16(c) of Commonwealth Act No. 146, as amended, known as the Public Service Law provides:

"To fix and determine individual or joint rates, tolls, charges, classifications, or schedules thereof, as well as commutation, mileage, kilometerage, and other special rates which shall be imposed, observed and followed thereafter by any public service: Provided, That the Commission may, in its discretion, approve rates proposed by public services provisionally and without necessity of any hearing. x x x"

The application filed by the PLDT with the National Telecommunications Commission, under Case No. 82-27, is not a fixing and/or determining of rate which the commission may have approved provisionally and without the necessity of any hearing. It is a request for the approval of its proposed revised subscriber investment plan.

In Presidential Decree No. 217, promulgated on June 16, 1973, the State adopted the basic policies of the telephone industry which, among others, are: (1) the attainment of efficient telephone service for as wide an area as possible at the lowest reasonable cost to the subscriber; (2) the capital requirements of telephone utilities obtained from ownership funds shall be raised from a broad base of investors, involving as large a number of individual investors as may be possible; and (3) in any subscriber self-financing plan, the amount of subscriber self-financing will, in no case, exceed fifty per centum (50%) of the cost of the installed telephone line, as may be determined from time to time by the regulatory bodies of the state.

Thus, there was the necessity of a hearing by the Commission before it should have acted on the application of the PLDT so that the public could air its opposition, particularly the herein petitioner and the Solicitor General, representing the government. They should be given the opportunity to substantiate their objection that the rates under the subscriber investment plan are excessive and unreasonable and, as a consequence, the low income and middle class group cannot afford to have telephone connections; and, that there is no need to increase the rate because the applicant is financially sound.

ACCORDINGLY, instant petition is granted and the provisional approval granted by the National Telecommunications Commission in its order, dated April 14, 1982, is hereby set aside.

SO ORDERED.

Fernando, C.J., Teehankee, Aquino, Concepcion, Jr., Guerrero, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez, and Gutierrez, Jr., JJ., concur.

Abad Santos, J., vote to grant the petition and I wish to add that the PLDT which is reported to have made over 100 million pesos in profits in past six months but with its service so poor that even the First Lady has taken

notice should think of improved service before increase profits.
Barredo and Makasiar, JJ., on leave.

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