

**ERDULFO C. BOISER, DOING BUSINESS UNDER THE NAME AND
STYLE PREMIERE AUTOMATIC TELEPHONE NETWORK,
PETITIONER, VS. COURT OF APPEALS, PHILIPPINE LONG DISTANCE
TELEPHONE CO., CONRAD...**

G.R. No. 61438. June 24, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari and prohibition, with a prayer for preliminary injunction or restraining order, to set aside the July 26, 1982 resolution of the respondent Court of Appeals which enjoined the enforcement of a March 2, 1979 restraining order of the Court of First Instance of Cebu. The resolution of the Court of Appeals, in effect, allows the disconnection of telephone communications between Tagbilaran, Bohol and Mandaue, Cebu thus cutting telephone communications with the rest of the country and the world, for the duration of the restraining order.

The petitioner has been operating a telephone system in Tagbilaran City and other municipalities in the province of Bohol since April 15, 1965, doing business under the name and style of Premiere Automatic Telephone Network. Sometime in August, 1965, the Petitioner and private respondent Philippine Long Distance Telephone Company (PLDT) entered into a contract denominated as "Interconnecting Agreement" whereby PLDT bound itself to provide Premiere with long distance and overseas facilities through the use of the PLDT relay station in Mandaue City, Province of Cebu. The arrangement enabled subscribers of Premiere in Bohol to make or receive long distance and overseas calls to and from any part of the Philippines and other countries of the world. Petitioner on the other hand had the obligation to preserve and maintain the facilities provided by respondent PLDT, provide relay switching services and qualified radio operators, and otherwise maintain the required standards in the operation of facilities under the agreement.

On February 27, 1979, without any prior notice to the petitioner, respondent PLDT issued a "circuit authorization order" to its co-respondents, PLDT employees Roman Juezan and Wilson Morrell to terminate the connection of PLDT's relay station with the facilities of the petitioner's telephone system in the province of Bohol. Petitioner avers that this order was in gross violation of the aforementioned "Interconnecting Agreement." To avert serious consequences to the public and private sectors resulting from any disruption of the petitioner's telephone network and, of course, to the long distance and overseas aspects of its business, the petitioner was compelled to seek judicial relief. It instituted Civil Case No. 17867 with the then Court of First Instance of Cebu now a Regional Trial Court, for injunction and damages.

On March 2, 1979, the Court of First Instance of Cebu issued a temporary restraining order against respondent PLDT and directed the preservation of the status quo between the parties.

On August 2, 1979, or five (5) months after the issuance of the temporary restraining order, the private respondents filed a motion to dissolve or lift the restraining order. Thereafter, the petitioner and the private

respondents submitted the merits of the main case to a hearing and agreed to consider jointly in said trial on the merits the motion to dissolve or lift temporary restraining order including the propriety of the issuance of the writ of preliminary injunction.

The hearing on the merits progressed and petitioner was already in the process of winding up its evidence in Civil Case No. 17867 before the Court of First Instance, Cebu when on July 20, 1982, or nearly three (3) years after the filing of their motion to dissolve or lift temporary restraining order, the private respondents elevated the case to the respondent Court of Appeals by filing the petition for certiorari, CA-G.R. No. 14554-SP.

The petition filed with the Court of Appeals had for its object the setting aside of the CFI restraining order which enjoined PLDT and the other respondents from disconnecting the Mandaue-Tagbilaran telephone connections. The ground alleged in the petition was:

"RESPONDENT JUDGE HAS NO AUTHORITY TO ISSUE THE RESTRAINING ORDER, DATED MARCH 2, 1979, CONSIDERING THAT THE ISSUE OR SUBJECT-MATTER OF THE COMPLAINT FOR WHICH THE SAID ORDER WAS ISSUED PROPERLY DEVOLVES WITHIN THE JURISDICTION OF THE NATIONAL TELECOMMUNICATIONS COMMISSION AND NOT WITH THE REGULAR COURTS."

As earlier mentioned, the respondent Court of Appeals issued its July 26, 1982 resolution which reads:

Without necessarily giving due course to the petition, respondents are directed to file their Comments (not a motion to dismiss), sufficient in form and substance to constitute an answer, within ten (10) days from notice of this resolution.

Meanwhile, the respondents are restrained from enforcing the Order of March 2, 1979, until further orders from Us.

The hearing of the application for the issuance of a writ of preliminary injunction is hereby set on August 10, 1982, . . .

Subsequently, the hearing was re-set by the respondent Court of Appeals for September 6, 1982. The petitioner countered by filing this petition.

The petitioner states that the Court of Appeals, now Intermediate Appellate Court, should dismiss CA-G.R. No. 14554-SP on the following grounds:

That the respondent Court of Appeals has no jurisdiction or has committed a grave abuse of discretion amounting to lack or in excess of jurisdiction in taking cognizance of CA-G.R. No. 14554-SP; and

That the petition CA-G.R. No. 14554-SP, before respondent Court of Appeals (now Intermediate Appellate Court) is premature and has no legal and factual basis.

The jurisdictional issue raised by Premiere in this petition is tied up to the jurisdictional issue raised by PLDT in its petition filed with the Court of Appeals.

According to PLDT, the principal issue in dispute is the propriety or validity of the "Circuit Authorization Order" it issued to its own employees co-respondents Ramon Juezan and Wilson Morrell regarding the use of its own relay station by petitioner Boiser. PLDT emphasizes, and this is the main thrust of its case both here and below, that the order which cut off the Tagbilaran-Mandaue phone connections is an internal transaction and business of PLDT, and that it relates to a purely technical matter pertaining basically to the operation of the communications network of a public utility corporation. According to PLDT, the CFI of Cebu has arrogated upon itself the authority of supervising or overseeing the operations of PLDT at its Cebu relay station.

Respondent PLDT maintains that the National Telecommunications Commission is the body with jurisdiction to hear and decide controversies arising from the operation of telephone systems or the interconnection of communications facilities, not the Court of First Instance.

Petitioner Boiser or Premiere, in turn, contends in the petition before this Court that the CFI of Cebu acted within its jurisdiction and there being no grave abuse of discretion, the challenge to its interlocutory order should not have been entertained by the Court of Appeals.

In seeking the dissolution or lifting of the March 2, 1979 CFI restraining order, PLDT stated that the disconnection it effected was authorized by:

- (1) The interconnecting agreement between PLDT and Premiere Automatic Telephone Network, and
- (2) The decision of the Board of Communications dated July 29, 1977 in BOC Case No. 76-53.

Paragraph 13 of the Interconnecting and Operating Agreement between PLDT and Premiere provides:

Violation of any of the conditions or terms of this Agreement or of the Interconnecting and Traffic Agreement attached hereto shall constitute sufficient cause for the cancellation of this Agreement and the severance of connection on thirty (30) days advance notice given in writing by either party unless such violation creates manifest hazard to life, property or to facilities of transmission and reception in which event severance may be made without notice.

Section 2 of the Interconnecting and Traffic Agreement mentioned in the above Paragraph 13, in turn, provides:

Sec. 2. If either company defaults in the payment of any amounts hereunder or violates any other provision of this Agreement, and if such default or violation continues for thirty (30) days after written notice thereof, the other company may terminate this Agreement forthwith by written notice.

It may be noted that the above provision mentions a default or violation continuing for thirty days after written notice and the termination of the agreement by another written notice.

There is nothing in the provision about the period when such written notice should be given by the party wishing to terminate. Such period can be found in paragraph 13 of the Interconnecting Agreement quoted earlier. Therefore, even granting that there was default on the part of the petitioner, the 30-day requisite notice should have been followed. Whether or not the requirement was followed calls for the presentation of evidence before the proper tribunal.

The second authority for disconnection cited by the private respondents is the decision in BOC Case No. 76-53. The decision deals with members of PAPTELCO, of which petitioner is one who have outstanding accounts with PLDT. The BOC decision refers to outstanding accounts of PAPTELCO members representing PLDT's unremitted shares for domestic long distance and overseas calls. The pertinent provision of the decision is Sec. 3(f) which states that:

"In addition to the penalty clause imposed under the preceding paragraph, if any PAPTELCO member neglects or fails to comply with obligations under this Agreement, its service may be disconnected by PLDT after sixty (60) days written notice to said PAPTELCO member, unless its delinquency shall have been fully paid or made current."

It appears clear from the aforecited provision that 60 days prior notice must be given before disconnection may be effected.

There is, therefore, more than ample basis for the Cebu CFI, now Cebu Regional Trial Court, to assume

jurisdiction and to continue trying Civil Case No. 17867.

The case before the trial court is for injunction arising from breach of contract. Premiere asks for compliance with the terms of the contract and for the payment of P100,000.00 exemplary and moral damages in addition to attorney's fees.

PLDT has cited in full the authority and powers given by Presidential Decree No. 1 to the Board of Communications, now National Telecommunications Commission. There is nothing in the Commission's powers which authorizes it to adjudicate breach of contract cases, much less to award moral and exemplary damages. The two authorities cited by the private respondents in the bid to dissolve the CFI restraining order do not appear adequate to disregard the thirty (30) day prior notice provided by the Interconnecting Agreement. But even if they were, this question is one which should be clarified in the civil case for breach of contract.

Clearly, therefore, what the petitioner is questioning is an order which does not merely involve "a purely internal transaction of a telecommunications company" but one which would necessarily affect rights guaranteed it by the contract allegedly violated.

We ruled in *RCPI v. Board of Communications* (80 SCRA 471) :

"We agree with petitioner RCPI. In one case We have ruled that the Public Service Commission and its successor in interest, the Board of Communications, 'being a creature of the legislature and not a court, can exercise only such jurisdiction and powers as are expressly or by necessary implication, conferred upon it by statute'. (*Filipino Bus Co. vs. Phil Railway Co.*, 57 Phil. 860.) The functions of the Public Service Commission are limited and administrative in nature and it has only jurisdiction and power as are expressly or by necessary implication conferred upon it by Statute. (*Batangas Laguna Tayabas Bus Co. vs. Public Service Commission*, L-25994 and L-26004-26046, August 31, 1966, 17 SCRA 1111.) As successor in interest of the Public Service Commission, the Board of Communications exercises the same powers, jurisdiction and functions as that provided for in the Public Service Act for the Public Service Commission. . . ."

The Board of Communications has been renamed National Telecommunications Commission. The NTC has no jurisdiction, and the PLDT has made no showing of any, not even by necessary implication, to decide an issue involving breach of contract. And as we stated in *RCPI v. Board of Communications*, "if in the two cases before us, complainants Diego Morales and Pacifico Inocencio allegedly suffered injury due to petitioner's breach of contractual obligation, . . . the proper forum for them to ventilate their grievances for possible recovery of damages against petitioner should be in the courts and not in the respondent Board of Communications." Jurisdiction is conferred only by the Constitution or the law. (*Pimentel v. Comelec*, 101 SCRA 769). It cannot be conferred by the will of the parties. (*Salandanan v. Tizon*, 62 SCRA 388). The jurisdiction of the court is determined by the allegations in the complaint. (*Lat. v. PLDT*, 67 SCRA 425.)

The petitioner alleges in its second ground for this petition that the case before the Court of Appeals is premature and has no legal or factual basis.

The private respondents explain that they elevated the case to the Court of Appeals because the Cebu CFI had taken an unreasonably long time to resolve the motion to lift its restraining order. PLDT argues that further delays would be prejudicial and, therefore, the restraining order issued by the Court of Appeals is proper.

The Court of First Instance of Cebu issued its restraining order on March 2, 1979. The motion to lift the order was filed five months later on August 2, 1979. The motion was properly filed with the trial court, but the lack of urgency in its filing and the failure of the private respondents to immediately and vigorously press for the lifting of the restraining order militate against a finding of grave abuse sufficient to justify a writ of certiorari. The petitioners point out that from the filing of the motion to lift restraining order on August 2, 1979 up to the filing of

the petition for certiorari with the Court of Appeals on July 20, 1982, almost three years lapsed and in all that time, there was no request, motion, nor hint for the trial court to resolve the pending motion to lift the restraining order.

As stated in *Butuan Bay Wood Export Corporation v. Court of Appeals* (97 SCRA 297, 305):

"Indeed, before a petition for certiorari can be brought against an order of a lower court, all available remedies must be exhausted. (*Plaza v. Mencias*, No. L-18253, October 31, 1962, 6 SCRA 563.) Likewise, in a host of case (*Aquino v. Estenzo*, L-20791, May 19, 1965, citing *Herrera v. Barreto*, 25 Phil. 345; *Uy Chu v. Imperial*, 44 Phil. 27; *Amante v. Sison*, 60 Phil. 949; *Manzanares v. Court of First Instance*, 61 Phil. 850; *Vicencio v. Sison*, 62 Phil. 300, 306; *Manila Post Publishing Co. v. Sanchez*, 81 Phil. 614; *Alvarez v. Ibañez*, 83 Phil. 104; *Nicolas v. Castillo*, 97 Phil. 336; *Collector of Internal Revenue v. Reyes*, 100 Phil. 822; *Ricafort v. Fernan*, 101 Phil. 575; *Cueto v. Ortiz*, L-11555, May 31, 1960; *Pagkakaisa Samahang Manggagawa sa San Miguel Brewery v. Enriquez*, L-12999, July 26, 1960; *Santos v. Cardenola*, L-18412, July 31, 1962; *Sy It v. Tiangco*, L-18376, Feb. 27, 1962; *Plaza v. Mencias*, L-18253, Oct. 31, 1962), We ruled that before a petition for certiorari in a higher court, the attention of the lower court should first be called to its supposed error and its correction should be sought. If this is not done, the petition for certiorari should be denied. The reason for this rule is that issues which Courts of First Instance are bound to decide should not summarily be taken from them and submitted to an appellate court without first giving such lower courts the opportunity to dispose of the same with due deliberation."

Quite the contrary, the private respondents submitted to a trial on the merits and formally agreed that, in addition to the merits, the motion to dissolve or lift temporary restraining order and the propriety of the writ of preliminary injunction would be considered and resolved in the trial of the case. The private respondents agreed that evidence submitted during trial would include evidence on the pending motion. In fact, the petitioner was already in the process of winding up its evidence before the Court of First Instance when the private respondents filed their petition with the Court of Appeals.

Private respondents' handling of their case dispels any suspicion of unreasonable delay on the part of the Court of First Instance to resolve such motion.

The private respondents aver that there are special circumstances which warrant immediate and direct action of an appellate court. The alleged circumstances include the failure of respondent PLDT to make full use of its own relay station and the alleged refusal of the petitioner to pay for its use thereby grievously affecting the expansion and modernization program of the respondent PLDT.

Special circumstances may indeed warrant immediate intervention of a higher court even while the lower court is deliberating on the action to take on a pending matter. (*Matute v. Court of Appeals*, 26 SCRA 768; *De Gala-Sison v. Maddela*, 67 SCRA 478). The private respondents, however, have failed to make a showing of such special or exceptional circumstances. We fail to see how closing one relay station serving the province of Bohol would hasten PLDT's program of national expansion. There are various other legal remedies, administrative and judicial, available to handle the alleged non-payment by Premiere of PLDT's share in long distance and overseas calls. The case before the Court of Appeals is not the proper remedy for enforcing collections from Premiere under the circumstances of this case. And more important, matters dependent on the presentation of evidence are best handled at the trial court level.

The private respondents overlook the fact that telephone and telecommunications services are affected by a high degree of public interest. It is not Premiere alone which will suffer from the appellate injunction but the people of Bohol. And as far as we can gather from the records, the consumers have been paying for the services given them. They are not at fault in this controversy between Premiere and PLDT.

In Republic Telephone Co. v. Philippine Long Distance Telephone Co. (25 SCRA 80), we sustained the "legalization" of unauthorized services maintained by PLDT for fifteen (15) years instead of ordering the discontinuance of the telephone system found operating illegally. The reason—public interest would thus be better served.

In Republic v. Philippine Long Distance Telephone Co. (26 SCRA 620) we restated the rule that the Republic, acting for and in behalf of the Government Telephone System, and the PLDT cannot be coerced to enter into an interconnecting contract, where the two could not agree on terms. We ruled, however, that while the Republic may not compel PLDT to celebrate a contract with it, the Republic may, in the exercise of the sovereign power of eminent domain, require PLDT to permit interconnection with the Government Telephone System, as the needs of the government service may require, subject to payment of just compensation. The justification was, again, the general interest or public interest.

In Cababa v. Remigio (8 SCRA 50), we sustained the acts of the Public Service Commission under the principle that while an already established public utility operator must be protected in his investments, the first consideration is still the protection of public interests and convenience. The question which ultimately determines issues raised by or against public utilities is—What action is for the best interests of the public?

In the petition now before us, we do not grapple with such issues as legalization of illegal services or compelling unwilling parties to enter into interconnection of services. We simply rule that pending final determination of the case before the trial court, the appellate court should refrain from acting on the petition now before it and from issuing orders that would punish the people of Bohol because Premiere and PLDT cannot see eye to eye.

The basic policies for the telephone industry embodied in Presidential Decree No. 217 are premised on the principle that telephone service is a crucial element in the conduct of business activity, efficient telephone services contribute directly to national development, and telephone services must be made available at reasonable cost to as many subscribers as possible. Both law and policy considerations call for the issuance of the prayed for writs.

WHEREFORE, the petition for writs of certiorari and prohibition is GRANTED. The questioned resolution of the Court of Appeals is SET ASIDE and our restraining order issued on August 25, 1982 is made PERMANENT. The Intermediate Appellate Court is directed to dismiss the petition in CA-G.R. No. 14554.

SO ORDERED.

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

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