

PHILIPPINE CONSUMERS FOUNDATION, INC., PETITIONERS, VS. NATIONAL TELECOMMUNICATIONS COMMISSION AND PHILIPPINE LONG DISTANCE TELEPHONE CO., RESPONDENTS.

G.R. No. 63318. August 18, 1984

Ponente: MAKASIAR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-63318/>

MAKASIAR, J.:

I

On March 2, 1983, petitioner filed the instant petition praying, among others, that the decision of respondent NTC dated November 22, 1982 and the order dated January 14, 1983 be annulled and set aside on the grounds therein stated (pp. 2-19, rec.).

After the petitioner, the private respondent, and the Solicitor General for public respondent NTC filed their respective comments and memoranda (pp. 47-53, 96-106, 109-116, 127-142, 147-164, 206-221, rec.), on November 25, 1983, the decision sought to be reconsidered was promulgated, annulling and setting aside the challenged decision and order, respectively dated November 22, 1982 and January 14, 1983 (pp. 225-232, rec.).

Said decision is not unanimous as it bears the concurrence of only 9 members of this Court, while 3 members took no part and 1 member reserved his vote (p. 232, rec.).

In a resolution dated January 10, 1984 and released on January 17, 1984, the Court granted respondent PLDT's motion for 15-day extension from the expiration of the reglementary period within which to file a motion for reconsideration (pp. 233, 236, rec.).

On January 12, 1984, PLDT filed its motion for reconsideration (pp. 237-268, rec.).

On February 27, 1984, respondent PLDT filed a motion to admit attached supplemental motion for reconsideration (pp. 281-301, rec.).

On February 27, 1984, public respondent NTC, thru the Solicitor General, filed a manifestation and motion that it is joining co-respondent PLDT in its motion for reconsideration thereby adopting the same as its own (pp. 302-303, 305-306, rec.).

In a resolution dated March 1, 1984 and issued on March 2, 1984, the Court admitted the supplemental motion for reconsideration of PLDT, noted the manifestation and motion of the Solicitor General for and in behalf of respondent NTC that it is joining the motion for reconsideration of PLDT and adopting it as its own, and required petitioner to comment within 10 days from notice on the aforesaid supplemental motion for reconsideration of PLDT (p. 304-A, rec.).

On March 28, 1984, petitioner filed its comment on respondent's motion for reconsideration (pp. 310-317, rec.).

In a resolution dated April 3, 1984 and issued on April 11, 1984, the Court denied the motion for reconsideration

(p. 318-A, rec.).

On April 6, 1984, respondent PLDT filed a motion to strike out "discussion (e)" in petitioner's "comment on respondents' motions" dated March 20, 1984 (pp. 319-321, rec.).

In a resolution dated April 12, 1984 and issued on April 16, 1984, the Court required petitioner's counsel Atty. Tomas Llasas to comment within 10 days from notice on the aforesaid motion to strike out (p. 323, rec.).

On April 17, 1984, respondent PLDT, thru counsel, filed a motion for leave to file within 15 days from date a second motion for reconsideration (pp. 324-326, rec.).

On April 27, 1984, petitioner filed an opposition to the aforesaid motion for PLDT for leave to file within 15 days to file a second motion for reconsideration (pp. 328-330, rec.).

On May 2, 1984, private respondent PLDT filed a second motion for reconsideration with an annex (pp. 332-344, rec.).

In a resolution dated May 8, 1984 but issued on May 11, 1984, the Court granted the motion of PLDT to file a second motion for reconsideration within 15 days from April 16, 1984, noted the opposition of petitioner to said motion, and required petitioner to comment within 15 days from notice on the aforesaid second motion for reconsideration of PLDT for the reconsideration of the decision of November 25, 1983 (p. 345, rec.).

On May 4, 1984, petitioner filed its comment on the second motion for reconsideration of private respondent (pp. 346-350, rec.).

In a resolution dated May 10, 1984 and issued on May 16, 1984, the Court required respondents to file a reply within 10 days from notice on the aforesaid comment of petitioner on private respondent PLDT's motion praying that the discussion (par. 3) in petitioner's comment on the first motion for reconsideration and the supplemental motion for reconsideration be deleted (p. 352, rec.).

On May 21, 1984, public respondent NTC filed a manifestation joining private respondent PLDT and adopting the latter's second motion for reconsideration (pp. 353-354, rec.), which the Court granted in a resolution dated May 29, 1984 and issued on June 6, 1984 (p. 355-A).

On May 28, 1984, respondent PLDT filed a motion for extension of 10 days or until June 7, 1984 within which to submit the required reply in the resolution of May 10, 1984 and issued on May 16, 1984 (pp. 356-357, rec.), which was granted in a resolution dated June 5, 1984 and issued on July 3, 1984 (p. 357-A, rec.).

On June 1, 1984, petitioner filed its comment on PLDT's second motion for reconsideration, with a motion to declare final the decision with respect to public respondent NTC (pp. 358-362, rec.).

A day before June 1, 1984, or on May 31, 1984, private respondent PLDT filed its reply to petitioner's "comment on motion of private respondent" dated May 4, 1984 [motion to strike] (pp. 366-369, rec.).

On July 16, 1984, after its motions for extension were granted, public respondent NTC, thru the Solicitor General, finally filed its reply (pp. 370--371, 372-A, 373, 375-381, rec.).

It should be emphasized that the resolution of this Court dated April 3, 1984 but issued on April 11, 1984, denying the first motion for reconsideration, did not state that the denial is final (see p. 318-A, rec.).

And the motion of May 29, 1984 but filed on June 1, 1984 of petitioner to declare as final the decision of November 25, 1983 (which motion was included in plaintiff's comment on PLDT's second motion for reconsideration) with respect to public respondent NTC (pp. 361-362, rec.), was not acted upon by this Court,

ostensibly because as early as May 21, 1984, public respondent NTC, thru the Solicitor General, filed a manifestation that it is joining private respondent PLDT in its second motion for reconsideration dated May 18, 1984 and adopting it as its own (pp. 353-354, rec.).

II

It is not disputed -- and should be emphasized -- that on August 31, 1982, this Court set aside the NTC order dated April 14, 1982 in the case of Samuel Bautista vs. NTC, et al. (16 SCRA 411) provisionally approving the revised schedule of rates for the Subscriber Investments Plan, on the ground that there was necessity of a hearing by the Commission before it could have acted on the PLDT application for said revised schedule, to give opportunity to the public, especially herein petitioner and the Solicitor General, to substantiate their objections to the said schedule as excessive and unreasonable, especially for the low-income and middle-income groups, which cannot afford telephone connections and that there is no need to increase the rate because PLDT is financially sound.

Thereafter, in NTC Case No. 82-27 entitled "Re Philippine Long Distance Telephone Co.," respondent NTC conducted several hearings on PLDT's revised Subscriber Investments Plan schedule at which written oppositions were filed by herein petitioner PCFI, the Solicitor General, Atty. Samuel Bautista, Flora Alabanza, the municipality of Marikina, and the Integrated Telecommunications Suppliers' Association of the Philippines (ITESAP). Other oppositors failed to file their written oppositions. The hearings on the merits actually started on August 4, 1982 and continued for four (4) subsequent dates.

The oppositors, thru counsel, thoroughly cross-examined the witness for the applicant, Mr. Romeo Sisteban, applicant's Vice-President for Budget and Financial Planning.

None of the oppositors opted to present evidence but merely filed Memoranda and thereafter manifested that the case is submitted for decision. Because PLDT made some concessions in favor of the oppositors, oppositors ITESAP, Eastern Telecommunications, Inc., Philippine Global Communications, Inc. (Philcom), Globe-Mackay Cable and Radio Corporation (GMCR) withdrew their opposition and manifested that they are no longer opposing the application, after which respondent NTC issued the challenged decision of November 22, 1982.

Respondent NTC rendered the challenged decision dated November 22, 1982, approving the revised schedule on the ground that the rates are within the 50% of-cost limit provided in P.D. No. 217, that they are just and reasonable and in consonance with the public policies declared in said decree, and that such approval is in the public interest (see NTC decision of Nov. 22, 1982, pp. 2-19, rec.).

It is undisputed therefore that petitioner and the other oppositors were accorded due process.

From said decision dated November 22, 1982, petitioner filed the instant petition.

III

The decision promulgated on November 25, 1983 interprets the rule-making authority delegated in Section 2 of P.D. No. 217 to the then Department of Public Works, Transportation and Communications as mandatory, which construction is not supported by the actual phraseology of said Section 2, which reads thus:

"The Department of Public Works, Transportation and Communications, through its Board of Communications and/or appropriate agency shall see to it that the herein declared policies for the telephone industry are immediately implemented and for this purpose, pertinent rules and regulations may be promulgated" (Italics supplied).

The basic canon of statutory interpretation is that the word used in the law must be given its ordinary meaning,

unless a contrary intent is manifest from the law itself. Hence, the phrase "may be promulgated" should not be construed to mean "shall" or "must". It shall be interpreted in its ordinary sense as permissive or discretionary on the part of the delegate -- department or the Board of Communications then, now the National Telecommunications Commission -- whether or not to promulgate pertinent rules and regulations. There is nothing in P.D. No. 217 which commands that the phrase "may be promulgated" should be construed as "shall be promulgated." The National Telecommunications Commission can function and has functioned without additional rules, aside from the existing Public Service Law, as amended, and the existing rules already issued by the Public Service Commission, as well as the 1978 rules issued by the Board of Communications, the immediate predecessor of respondent NTC. It should be recalled that the PLDT petition for approval of its revised SIP schedule was filed on March 20, 1980.

P.D. No. 217 does not make the rules and regulations to be promulgated by the respondent NTC as essential to the exercise of its jurisdiction over applications for SIP schedules. In *Ang Tibay vs. CIR* (69 Phil. 635), this Court, through Mr. Justice Jose P. Laurel, did not include the promulgation of rules and regulations as among the seven (7) requirements of due process in quasi-judicial proceedings before a quasi-judicial body such as the respondent NTC.

What is patently mandatory on the ministry or National Telecommunications Commission is the immediate implementation of the policies declared in P.D. No. 217. To repeat, the ministry or the NTC "shall see to it that the herein declared policies for the telephone industry are immediately implemented xx x." The formulation of rules and regulations is purely discretionary on the part of the delegate.

Both words "shall" and "may be" are employed in the lone sentence of Section 2 of P.D. No. 217. This graphically demonstrates that P.D. No. 217 preserves the distinction between their ordinary, usual or normal senses.

This is emphasized by the fact that under Section 3 of P.D. No. 217, only "the pertinent provisions" of the Public Service Act, as amended, which are in conflict with the provisions of P.D. No. 217, had been repealed or modified by said P.D. No. 217.

Section 3 of P.D. No. 217 states:

"The pertinent provisions of the Public Service Act, as amended, the franchise of the Philippine Long Distance Telephone Company under Act 3436, as amended, all existing legislative and/or municipal franchises and other laws, executive orders, proclamations, rules and regulations or parts thereof, as are in conflict with the provisions of this Decree are hereby repealed or modified accordingly."

And under the Public Service Act, as amended (C.A. No. 146), the Board of Communications then, now the NTC, can fix a provisional amount for the subscriber's investment to be effective immediately, without hearing (par. 3 of Sec. 16, C.A. 146, as amended).

Section 16(c) of C.A. No. 146, as amended, provides:

"(c) To fix and determine individual or joint rates, toll, charges, classifications, or schedules thereof, as well as commutation, mileage, kilometrage, 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; but it shall call a hearing there on within thirty days thereafter, upon publication and notice to the concerns operating in the territory affected: Provided, further, That in case the public service equipment of an operator is used principally or secondarily for the promotion of a private business, the net profits of said private business shall be considered in relation with the public service of such operator for the purpose of fixing the rates."

The Rules of Practice and Procedures promulgated on January 25, 1978 by the Board of Communications, the immediate predecessor of respondent NTC, pursuant to Section 11 of the Public Service Act, otherwise known as Commonwealth Act No. 146, as amended, govern the rules of practice and procedure before the BOC then, now respondent NTC. Section 2 of said Rules defines their scope, including exempting parties from the application of the rules in the interest of justice and to best serve the public interest, and the NTC may apply such suitable procedure to improve the service in the transaction of public service. Thus, Section 2 of Rule 1 of said Rules reads:

"Sec. 2. Scope -- These rules govern pleadings, practice and procedure before the Board of Communications in all matters of hearing, investigation and proceedings within the jurisdiction of the Board. However, in the broader interest of justice and in order to best serve the public interest, the Board may, in any particular matter, except it from these rules and apply such suitable procedure to improve the service in the transaction of the public business."

Sections 4 and 5 of Rule 2 of said rules insure the appearance of the Solicitor General and other consumers or users. The notice of hearing is required to be published and to be served on the affected parties by Section 2 of Rule 8; while Section 1 of Rule 9 allows the filing of written oppositions to the application. Under Section 3 of Rule 15, the BOC then, now the NTC, may grant, on motion of the applicant or on its own initiative, provisional relief based on the pleading, supporting affidavits and other documents attached thereto, without prejudice to a final decision after completion of the hearing which shall be called within thirty (30) days from the grant of the provisional relief.

Finally, Section 1 of Rule 19 provides for the suppletory application of the Rules of Court governing proceedings before the Court of First Instance then, now the Regional Trial Courts, which are not inconsistent with the rules of practice and procedure promulgated by the BOC on January 25, 1978.

There is nothing in P.D. No. 217 modifying, much less repealing Section 16(c) of the Public Service Act, as amended.

It is true that P.D. No. 1874 promulgated on July 21, 1983 amending Section 2 of P.D. No. 217 expressly authorizes the National Telecommunications Commission (now the successor of the Board of Communications) to approve "such amounts for subscriber investments as applied for provisionally and without the necessity of a hearing; but shall call a hearing thereon within thirty (30) days thereafter, upon publication and notice to all parties affected." But such amendment merely reiterates or confirms paragraph (c) of Section 16 of C.A. No. 146, as amended, otherwise known as the Public Service Law, and serves merely to clarify the seeming ambiguity of the repealing clause in Section 3 of P.D. No. 217 to dissipate all doubts on such power of the National Telecommunications Commission.

The construction of the majority decision of November 25, 1983 of the word "may" to mean "shall" is too strained, if not tortured.

IV

WE cannot subscribe to the view that the National Telecommunications Commission should or must promulgate "pertinent rules and regulations"; because the existing substantive and procedural laws as well as the rules promulgated by the Public Service Commission under and pursuant to the Public Service Law, otherwise known as CA No. 146, as amended, are more than adequate to determine the reasonability of the amounts of investment of telephone subscribers, the viability of the company and the other factors that go into determining such amounts and such viability. The existing laws and rules on rate-making are more than sufficient for a proper determination

of such amounts of investments of individual subscribers and the profitability of the venture.

The adequacy of the existing Public Service Law, otherwise known as C.A. No. 146, as amended, and rules had been demonstrated, because they have been applied in the following cases involving PLDT:

1. PLDT vs. PSC, G.R. No. L-26762, Aug. 31, 1970, 34 SCRA 609;
2. Republic vs. PLDT, G.R. No. L-18841, Jan. 27, 1969, 26 SCRA 620;
3. PLDT vs. PSC, G.R. Nos. L- 24198 & L-24207-10, Dec. 18, 1968, 26 SCRA 427;
4. Republic Telephone Co. vs. PLDT, G.R. No. L-21070; PLDT vs. Republic Telephone Co., G.R. No. L-21075, both decided on Sept. 23, 1968, 25 SCRA 80;
5. PLDT vs. Medina, G.R. No. L-24658, April 3, 1968, 23 SCRA 1; and
6. PLDT vs. Medina, G.R. Nos. L-24340-44, July 18, 1967, 20 SCRA 659.

As heretofore stated, as early as January 25, 1978, other pertinent rules of practice and procedure were promulgated by the then Board of Communications, now the respondent National Telecommunications Commission, implementing P.D. No. 217, in addition to the applicable provisions of the Public Service Law, as amended, and the rules previously issued by the Public Service Commission (Annex 2 to the Memo of respondent PLDT filed on August 15, 1983, pp. 147-165, rec.).

Even before 1978, respondent applied the procedure prescribed by the Public Service Law, as amended, and the rules previously issued by the Public Service Commission, the NTC predecessor, in several cases involving similar applications for SIP schedules of Filipino Telephone Corporation (BOC Case No. 73-064; see BOC decision in said cases dated December 5, 1974, May 11, 1978, March 15, 1977, Feb. 19, 1976 and Aug. 31, 1978 - Annexes 3, 4, 4-A, 5, pp. 166-195, rec.).

The majority opinion recognizes that for the last three years, the PLDT had earned a yearly average net profit of over P100 million and the existing subscribers have been receiving their corresponding quarterly dividends on their investments.

It should be stressed that Section 5 of Article XIV of the 1973 Constitution, as amended, expressly directs that "the State shall encourage equity participation in public utilities by the general public". As above-stated, the existing individual subscribers of PLDT had been sharing in the net profits of the company every quarter after the promulgation of P.D. 217 on June 16, 1973.

The amount that is provisionally approved under the subscriber's investment plan for PBX/PAEX trunks and for business telephones in Metro Manila and the provinces, whether new installations or transfers, appears to be reasonable, including those for the leased lines or outside local.

To lighten the burden of subscribers, investments may be paid in installments or under some convenient arrangements which the NTC may authorize, which is now expressly provided for in Section 1 of P.D. 1874 amending Sec. 6 of P.D. 217.

Section 1 of P.D. 1874 directs that:

"Section 1, paragraph 6 of the Presidential Decree No. 217 is hereby amended to read as follows:

"6. In any subscriber self-financing plan, the amount of subscriber self-financing will, in no case, exceed fifty per centum (50%) of the amount which results from dividing the telephone utility's gross investment in telephone plant in service by its number of primary stations in service, both as reported in the utility's latest

audited annual report rendered to the National Telecommunications Commission; PROVIDED, however, that the amount payable by the telephone subscriber may be paid on installment or under such payment arrangement as the National Telecommunications Commission may authorize."

V

It should be likewise emphasized that pursuant to the mandate of Section 5, Article XIV of the 1973 Constitution, as amended, the law-making authority, in issuing both P.D. Nos. 217 and 1874, established the all-important policy of making available on regular and uninterrupted basis the telephone service because

it is "a crucial element in the conduct of business activity, xx xx and is essential for the smooth and efficient function of industry;

"xx x efficient telephone service contributes directly to national development by facilitating trade and commerce;

"xx x the telephone industry is one of the most highly capital intensive industries;

"xx x the telephone industry has fundamentally different financing characteristics from other utilities in that capital requirements per telephone unit installed increase as the number of customers serviced also increases instead of decreasing in cost per unit as in power and water utilities;

"xx x continued reliance on the traditional sources of capital funds through foreign and domestic borrowing and through public ownership of common capital stock will result in a high cost of capital, heavy cash requirements for amortization and thus eventually in higher effective cost of telephone service to subscribers;

"xx x the subscribers to telephone service tend to be among the residents of urban areas and among the relatively higher income segment of the population;

"xx x it is in the interest of the national economy to encourage savings and to place these savings in productive enterprises; and

"xx x it is the announced policies of the government to encourage the spreading out of ownership in public utilities" (see Whereases of P.D. 217; Italics supplied).

P.D. No. 217 further states as the basic policies of the State concerning the telephone industry "in the interest of social, economic and general well-being of the people x x x --

"1. The attainment of efficient telephone service for as wide an area as possible at the lowest reasonable cost to the subscriber;

"2. The expansion of telephone service shall be financed through an optimal combination of domestic and foreign sources of financing and an optimal combination of debt and equity funds so as to minimize the aggregate cost of capital of telephone utilities;

"3. Consistent with the declared policy of the State to attain widespread ownership of public 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;

"4. In line with the objective of spreading ownership among a wide base of the people, the concept of telephone subscriber self-financing is hereby adopted whereby a tele-phone subscriber finances part of the capital investments in telephone installations through the purchase of stocks, whether common or preferred stock, of the telephone company;

"5. As part of any subscriber self-financing plan, when the issuance of preferred stock is contemplated, it is

required that the subscriber be assured, in all cases of a fixed annual income from his investment and that these preferred capital stocks be convertible into common shares, after a reasonable period and under reasonable terms, at the option of the preferred stockholder; and

"6. 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."

The same policies and objectives are sub-stancially re-stated and capsulized in the three Whereases of P.D. No. 1874 amending P.D. No. 217 as pointed out in the basic policies aforestated in P.D. No. 217 that the cost per telephone unit increases in proportion to the increase in the number of customers served; and that foreign borrow-ing will impose heavy cash requirements for amortizations of such foreign loans which would result in the higher effective costs of telephone service to subscribers and ultimately would be a heavy drain on our dollar reserves, which will result in our inability to meet our other foreign commitments and mar the image of the Republic of the Philippines in international trade relations. Thus, P.D. No. 217 stresses that in the interest of the national economy it is essential to encourage savings and to place these savings (subscriber's investments) in productive enterprises.

PLDT is profitable for the subscribers-investors as shown by its net profit and the dividends received quarterly by the existing subscribers.

There is no showing -- not even an allegation -- that the net profits realized by PLDT all these years have been dissipated and not plowed back into the firm to improve its service.

But the rising cost of materials and labor needed to improve the PLDT service, aggravated by the devaluation of our currency, all the more justify the revised SIP schedule approved by the respondent NTC.

The approved revised SIP schedule, which appears reasonable and fair is herein reproduced:

"REVISED SIP SCHEDULE

Revised SIP Rates

“ Service Category Metro Manila Provincial

“I. New Installations -

“1. PBX/PABX Trunk P5,000 P3,000

2. Business Phone:

Single line 3,500 2,000

Party line 2,000 1,500

3. Residential Phone:

Single line 1,800 1,300

Party line 900 800

4. Leased line 2,500 2,500

5. Tie trunk or tie line 2,500 2,500

6. Outside local 2,500 2,500

“II. Transfers -

“1. PBX/PABX 1,500 1,200

2. Business Phone:

Single line 800 600

Party line 600 500

3. Residential Phone:

Single line 600 500

Party line 500 300

4. Leased line 800 800

5. Tie trunk or tie line 800 800

6. Outside local 800 800”

(pp. 34-35, rec.).

With the dividends that will be received quarterly under the revised SIP schedule, the subscribers (whether of phone installations for business with or without trunk lines, as well as transfers of the same; or of residential phones whether single or party line as well as transfers of the same), will recover their investments after some years and will thereafter remain stockholders and part-owners of PLDT. All the subscribers therefore, are assured not only of profits from, but also preservation of, their investments, which are not donations to PLDT.

There are always two sides -- sometimes more -- to a case or proposition or issue. There are many cases decided by this Court where this Court had reconsidered Its decisions and even reversed Itself, conformably to the environmental facts and the applicable law.

After a re-study of the facts and the law, illuminated by mutual exchange of views, the members of the Court may and do change their minds.

To repeat, the decision of November 25, 1983 was not a unanimous decision for it has the concurrence of only nine (9) members of the Court, because three (3) took no part and one (1) reserved his vote (p. 232, rec.).

WHEREFORE, THE DECISION OF NOVEMBER 25, 1983 SHOULD BE AS IT IS HEREBY RECONSIDERED AND SET ASIDE AND THE PETITION IS HEREBY DISMISSED. NO COSTS.

SO ORDERED.

Concepcion, Jr., Guerrero, Escolin, De La Fuente, and Cuevas, JJ., concur.

Fernando, C.J., did not take part.

Teehankee and Melencio-Herrera, JJ., join in the dissents of JJ. Abad Santos and Relova.

Aquino and Plana, JJ., in the result.

Gutierrez, Jr., see separate concurring opinion.

SEPARATE OPINION

GUTIERREZ, JR., J.:

My concurrence in Mr. Justice Makasiar's ponencia is not without certain misgivings. I agree with the Court's views on the powers of the National Telecommunications Commission, the applicability of existing rules and regulations, and the policy declarations in P.D. Nos. 217 and 1874. However, while now convinced that the increase in mandatory investments for subscribers is based on law and that there is no showing of arbitrariness in the law's implementation, I must confess that I see no justification for the continued inefficient services rendered by the respondent telephone company. When the Court was deliberating on the motion for reconsideration, my own residential telephone was out of order. And I believe that our experiences in our neighborhood do not represent isolated cases. I have yet to hear from or about satisfied PLDT customers.

My point is -- increased rates and increases in the "subscribers' self-financing plan" must be matched by equivalent and demonstrably improved telephone services. More than its duty to increase rates and subscribers' fees whenever warranted, the respondent Commission has the statutory and greater obligation to supervise "the attainment of efficient telephone service for as wide an area as possible at the lowest reason-able cost to the subscribers."

I am aware that almost all major components of our telephone system must be imported from foreign sources. Since the Philippine peso is now worth one American nickel, the cost of services based on imported materials must increase. Loans contracted when the foreign exchange rate was not so disadvantageous now require double or treble amortizations in depreciated pesos. The Court cannot assume the role of King Canute. Only the financial experts in the political departments can return the peso to a respectable value. Moreover, it is indeed to the nation's advantage to look for local capital sources instead of resorting to more foreign borrowings.

I must stress, however, that consumers would not mind paying reasonable increases if they get satisfactory services. The respondent telephone company has yet to solve this elementary and glaringly obvious problem. Pinpointing the cause and applying the solution should be the company's number one concern.

DISSENTING OPINION

ABAD SANTOS, J.:

I vote to deny the second Motion for Reconsideration. I am amazed that the decision which was promulgated as recently as November 25, 1983, with no dissenting opinion to dilute its acceptability should now be reconsidered. My amazement is heightened by the fact that when the case was discussed on July 26, 1984, I had the impression that the motion was doomed so that a request to defer action on it would have met the same fate had not the request been put on a pag-bigyan basis.

The case involves a simple problem of statutory construction -that of Section 2 of Presidential Decree No. 217. It reads as follows:

"The Department of Public Works, Transportation and Communications, through its Board of Communications and/or appropriate agency shall see to it that the herein declared policies for the telephone industry are immediately implemented and for this purpose, pertinent rules and regulations may be promulgated."

The issue is whether or not the National Telecommunications Commission (NTC) must first promulgate the rules and regulations mentioned in the decree before it can approve the Subscriber Investment Plan (SIP) of private respondent Philippine Long Distance Telephone Co. (PLDT).

The decision, without any dissenting opinion sustained the petitioner's contention that it is the duty of NTC to first promulgate rules and regulations.

The resolution, which is not unanimous, does not subscribe to the view that the NTC should or must promulgate rules and regulations because, it is said, the decree must be given its ordinary meaning; the word used is the permissive "may" and not the mandatory "shall." The non-unanimous resolution thus relies on the canons *index animi sermo est* (speech is the indication of intent) and *a verba legis non est recedendum* (from the words of the statute there should be no departure).

Any lawyer of modest sophistication knows that canons of statutory construction march in pairs of opposite. Thus with the canons above mentioned we have the following opposite: *verba intentioni, non e contra, debent inservire* (words ought to be more subservient to the intent and not the intent to the words). Sutherland explains the limits of literalism thus:

"The literal interpretation of the words of an act should not prevail if it creates a result contrary to the apparent intention of the legislature and if the words are sufficiently flexible to admit of a construction which will effectuate the legislative intention. The intention prevails over the letter, and the letter must if possible be read so as to conform to the spirit of the act. 'While the intention of the legislature must be ascertained from the words used to express it, the manifest reason and obvious purpose of the law should not be sacrificed to a literal interpretation of such words.' Thus words or clauses may be enlarged or restricted to harmonize with other provisions of an act. The particular inquiry is not what is the abstract force of the words or what they may comprehend, but in what sense were they intended to be understood or what understanding do they convey as used in the particular act." (Vol. 2A Statutory Construction, pp. 65-66 [1972].)

It is an elementary rule in statutory construction that the word "may" in a statute is permissive while the word "shall" is mandatory. The rule, however, is not absolute. Thus Professor Luis J. Gonzaga states:

"According to Black, 'Where the statute provides for the doing of some act which is required by justice or public duty, or where it invests a public body, municipality or officer with power and authority to take some

action which concerns the public interest or rights of individuals, the permissive language will be construed as mandatory and the execution of the power may be insisted upon as a duty.' Thus, where the statute provided that 'the commissioners may take into consideration the enhanced value to the remaining land of an owner whose land was taken for highway purposes,' it was held that the word 'may' should be given a mandatory meaning and is the same as the word 'shall', since it directs the doing of a thing for the sake of justice or the public good. Similarly, a statute by which municipal corporations are 'authorized and empowered' to provide for the support of indigent persons within their limits or to make public improvements as to open and repair streets, remove obstructions from highways, construct sewers and the like, are to be construed as mandatory although they only purport to grant permission or authority since the public has an interest in such matters and the grant of authority is therefore equivalent to the imposition of duty." (Statutes and their Construction, pp. 98-99 [1969].)

In the case at bar compelling reasons dictate that the provision of the decree should be construed as mandatory rather than merely directory. They are stated in the unanimous decision as follows:

"1. P.D. 217 deals with matters so alien, innovative and untested such that existing substantive and procedural laws would not be applicable. Thus, the Subscriber Investment Plan (SIP) was so set up precisely to ensure the financial viability of public telecommunications companies which in turn assures the enjoyment of the population at minimum cost the benefits of a telephone facility.

"The SIP has never been contemplated prior to P.D. 217.

"The existing law on the other hand, the Public Service Act, diametrically runs counter to the spirit and intention, if not the purpose of P.D. 217. It may even be gainsaid that as long as the optimum number of individuals may enjoy telephone service, there is no limitation on the profitability of such companies. Hence, while P.D. 217 encourages the profitability of public telecommunication companies, the Public Service Act limits the same.

"2. In the absence of such rules and regulations, there is outright confusion among the rights of PLDT, the consumers and the government itself. As may clearly be seen, how can the Decision be said to have assured that most of the population will enjoy telephone facilities? Did the Decision likewise assure the financial viability a PLDT? Was the government's duty to provide telephone service to its constituents subserved by the Decision? These questions can never be answered unless such rules and regulations are set up.

"3. Finally, it should be emphasized that NTC is estopped from claiming that there is no need to promulgate such rules and regulations. In the case of PCFI vs. NTC, G.R. No. 61892, now pending resolution before this Honorable Tribunal, NTC totally refused to act on a petition filed by PLDT precisely for the promulgation of such rules and regulations.

"Why then did NTC refuse to act on such petition if and when there is no need for the promulgation of such rules and regulations? After all, NTC could have simply ruled that the petition in G.R. No. 61892 is unnecessary because such rules and regulations are also unnecessary. (pp. 135-136, Rollo)"

The above reasons also rebut the contention in the non-unanimous resolution that the existing substantive and procedural laws as well as the rules promulgated by the Public Service Commission are more than adequate to determine the reasonableness of the amounts of investment of telephone subscribers, etc.

The PLDT's SIP is an unreasonable imposition by a utility company on a captive public. The injury is compounded by the fact that although the company makes mega profits its service, to use a McEnroe expression, is the pits.

DISSENTING OPINION

RELOVA, J.:

For the reasons stated in my ponencia of November 25, 1983, I vote to DENY the second motion for reconsideration, dated May 2, 1984, filed by private respondent Philippine Long Distance Telephone Company, through counsel. The argument advanced in the motion that Presidential Decree No. 217 was amended by Presidential Decree No. 1874 which was issued on July 21, 1983, is without merit. Section 4 of said PD 1874 specifically provides that "all decisions or orders of the National Telecommunications Commission heretofore issued approving subscribers investment plans or revisions thereof, are hereby declared valid and legal in all respects, excepting such decisions or orders as, on the date of this decree, "are pending review by the Supreme Court." The case at bar was filed with this Court on March 3, 1983 or before the issuance of Presidential Decree No. 1874.

Besides, Section 1 of Presidential Decree No. 217 which was promulgated on June 16, 1973 declares that "in the interest of the social, economic and general well being of the people, the State hereby adopts the following basic policies of the telephone industry:

1. The attainment of efficient telephone service for as wide an area as possible at the lowest reasonable cost to the subscriber."

xxx xxx xxx

DISSENTING OPINION

TEEHANKEE, J.:

I join the dissents of Justices Abad Santos and Relova. I only wish to add that there has been a departure here from the Court's usual practice and rules (cf. Rule 52, sec. 2; Rule 51, sec. 1; and Rule 56, secs. 1 and 11) of setting the case for rehearing and hearing the parties in oral argument when a new majority (because of a change of votes or new members or for whatever reason) is inclined to reconsider and overturn the original majority; more so, on a second motion for reconsideration, the first motion for reconsideration having been denied without a dissenting vote and the parties not having been previously heard in oral argument.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.