

**REPUBLIC OF THE PHILIPPINES (BUREAU OF
TELECOMMUNICATIONS). THE DIRECTOR OR ACTING DIRECTOR OF
THE BUREAU OF TELECOMMUNICATIONS, THE REGIONAL
SUPERINTENDENT OF THE BUREAU OF TE...**

G.R. No. 64888. November 28, 1996

Ponente: HERMOSISIMA, JR., J.

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HERMOSISIMA, JR., J.:

Before us is a petition for the review of the decision[1] of the then Intermediate Appellate Court[2] (now the Court of Appeals) in an injunction suit[3] filed in the then Court of First Instance[4] (now the Regional Trial Court) by respondent Republic Telephone Company, Inc. (hereafter, RETELCO [now Philippine Long Distance Telephone Company, Inc.]) against petitioner officers of the Bureau of Telecommunications (hereafter, BUTELCO, now the Department of Telecommunications and Communications [DOTC] Telecommunications Office).

The respondent appellate court narrated the facts of this case, undisputed as they are, in the following manner:

"This case arose from a complaint filed on May 17, 1972 by petitioner-appellee, the Republic Telephone Company [RETELCO], seeking to enjoin the respondents Director or Acting Director of the Bureau of Telecommunications; its Regional Superintendent; the Exchange Manager and Chief Operator of the Bureau of Telecommunications at Malolos, Bulacan, and the agents and representatives acting in their behalf, from operating and maintaining their local telephone system in Malolos, Bulacan and from soliciting subscribers in that municipality and its environs, alleging inter alia that such operations and maintenance of the telephone system and solicitation of subscribers by respondents constituted an unfair and ruinous competition to the detriment of petitioner [RETELCO] who is a grantee of both municipal and legislative franchises for the purpose. Respondents [BUTELCO], thru counsel, filed a motion to dismiss the aforesaid petition on the grounds that they are not the indispensable and real parties in interest in the case and that petitioner [RETELCO] has no cause of action against them. The motion was denied on June 20, 1972 x x x and after petitioner-appellee [RETELCO] had furnished a bond of P75,000.00, Order was issued on June 30, 1972, restraining respondents [BUTELCO] from operating and maintaining the local telephone system in Malolos and from soliciting customers. Respondents [BUTELCO] filed their Answer on July 6, 1972, followed with a motion on July 8, 1972, asking for the lifting of the Writ of Preliminary Injunction suit, contending that state-owned property, albeit immune from suit, had been adversely affected by the injunction. For the reason that evidence has to be adduced yet to determine respondents' [BUTELCO's] compliance with Executive Order No. 94, Series of 1947, the court a quo denied the motion. On December 7, 1972, the Republic of the Philippines, on behalf of the Bureau of Telecommunications, begged leave of court to intervene in the proceedings on the ground that the suit affected state property and accordingly the state has a legal interest involved. There being no essential dispute between the parties over the fact that the suit indeed involved property of the state, the Answer in Intervention was admitted and the case proceeded to trial.

It is not disputed that petitioner-appellee, Republic Telephone Company, Inc., or RETELCO, is a domestic

corporation engaged in the business of installing, operating and maintaining nationwide local telephone services. It had acquired a municipal franchise on December 29, 1959 from the Municipal Council of Malolos, Bulacan per Resolution No. 190, Series of 1959 to install, maintain and operate a local telephone system within the municipality of Malolos for a period of thirty-five years x x x. The municipal franchise was approved by the Provincial Board of Bulacan on January 21, 1960 thus certificate of public convenience and necessity was secured from the Public Service Commission on March 15, 1960 under PSC Case No. 129826 which the President of the Philippines approved on March 23, 1960 x x x. RETELCO accepted the commission certificate and filed the required deposit with the Treasurer of the Philippines on April 11, 1960 x x x. On June 22, 1963, RETELCO obtained a legislative franchise under Republic Act No. 3662 of the then Congress of the Philippines for the construction, operation and maintenance of a nationwide telephone service with exchanges in various areas including the municipality of Malolos. It was approved by the President of the Philippines for a period of fifty years x x x and the correspondent certificate of public convenience and necessity was granted on January 16, 1968 under Public Service Commission case No. 67-4023 x x x.

From the evidence, it appears that on the basis of a viable project study and reliance upon the laws affording protection against unfair and ruinous competition, RETELCO commenced operation of its Malolos telephone venture in 1960 and as of 1963 it had 197 subscribers which number increased to 368 subscribers in May 1969. The investment made reached the sum of P263,050.88 x x x. But way back in February, 1969 RETELCO learned through public announcements of government projects to be launched that the Bureau of Telecommunications would establish and operate telephone system in Malolos to serve government offices and the private [sector] as well thus exposing x x x appellee's [RETELCO's] telephone business operation to the risk of undue competition. Immediately, they filed protests, and sought for administrative remedies and reliefs from the Telecommunications Board, the President of the Philippines, the Secretary of the Department of Public Works and Communication, the then Speaker Jose B. Laurel, Jr. of the House of Representatives, and the Philippine National Bank which was financing the project x x x but all were to no avail. In May, 1969, the Bureau of Telecommunications commenced its operation of the telephone exchange in Malolos and, incidentally, number of the telephone subscribers of RETELCO dropped to a level of 255 as of September, 1969, to 131 in October, 1970 and to 125 as of March, 1972 x x x at the cost of P197,055.63 in terms of revenue losses x x x. However, after the preliminary injunction was issued on June 30, 1972, the number of subscribers gradually increased such that as of January, 1974 there were already 320 subscribers as against RETELCO's capacity of accommodating 450 subscribers x x x. The Bureau of Telecommunications was not subject to the jurisdiction of the Public Service Commission on matters of fixing the rates of fees to be charged to telephone subscribers, thus RETELCO attributed the sharp decline in the number of telephone subscribers to the difference in rates individually charged by them x x x.

The lower court, finding after trial that respondents [BUTELCO] and intervenors-appellants were duplicating the functions of petitioner-appellee [RETELCO] in contravention of Executive Order No. 94, Series of 1947, rendered a judgment making the preliminary injunction PERMANENT."[5]

Respondent appellate court sustained the court a quo's finding that Section 79 of Executive Order No. 94, Series of 1947 prohibited any other entity, besides the present operator, from maintaining and selling telephone services in Malolos, Bulacan, unless there was first executed a mutually acceptable arrangement or agreement between such other entity and the present operator as regards the utilization of the latter's existing facilities. Respondent court found respondent RETELCO to be the present operator of telephone services in Malolos, Bulacan, and BUTELCO having failed to first make arrangements with the former before establishing its own telephone system, respondent appellate court upheld the propriety of the permanent injunction issued by the court a quo in this wise:

"PREMISES CONSIDERED, the preliminary injunction previously granted is hereby made PERMANENT, and the respondents and the intervenor Bureau of Telecommunications and their successors, agents, representative, and assigns, are hereby PERPETUALLY enjoined and restrained from operating and

maintaining their local telephone exchange in the Municipality of Malolos, Province of Bulacan, and from soliciting customers or subscribers in said areas, UNTIL they comply with the requisites mentioned in Section 79 (B) of Executive Order No. 94, particularly with respect to needed negotiation with the petitioner or UNTIL such time as RETELCO's telephone franchise in Malolos, Bulacan shall have lawfully ceased to exist. The bond posted for the preliminary injunction is hereby cancelled."[6]

In rendering judgment in favor of respondent RETELCO, the appellate court rejected BUTELCO's main argument that Section 79 of Executive Order No. 94, Series of 1947, has been repealed by Presidential Decree No. 1 promulgated by then President Marcos in the exercise of his martial law powers, by virtue of which decree the Integrated Reorganization Plan was made part of the law of the land. Under such plan, in turn, BUTELCO's functions had been expanded to include the operation of telephone systems for government offices for purposes of augmenting inadequate private communications services. BUTELCO was rebuffed by the appellate court in this wise:

"Read in its entirety, the Integrated Reorganization Plan of 1972 is expressive of the indispensable need for investigation and negotiation to determine the actual and real conditions of local telephone facilities under private ownership - a proviso explicitly contained in Executive Order No. 94, without [sic] which, the announced policy of allowing private enterprise to flourish would be set to naught. This clearly negates the contention that Executive Order No. 94 was repealed, hence, the non-compliance therewith would be fatal and the installation and operation of telephone system by the Bureau of Telecommunications in Malolos, Bulacan was illegal at its inception which cannot [be] corrected by subsequent legislation or judicial approbation."[7]

Hence this petition which assails the aforesaid decision on the following grounds:

I

"THE INTERMEDIATE APPELLATE COURT ERRED IN RULING THAT THE INTEGRATED REORGANIZATION PLAN DOES NOT REPEAL AND/OR MODIFY SECTION 79 (b), EXECUTIVE ORDER NO. 94, SERIES OF 1947, INsofar AS THE FUNCTIONS OF BUREAU OF TELECOMMUNICATIONS ARE CONCERNED, WHICH RULING IS COMPLETELY OPPOSED TO A PRIOR DECISION OF SAME RESPONDENT COURT IN A CASE INVOLVING THE SAME PARTIES, SAME ISSUES, AND THE SAME SUBJECT MATTER.

II

COROLLARY TO THE ABOVE ERROR, RESPONDENT COURT ERRED:

A. IN HOLDING THAT UNDER THE INTEGRATED REORGANIZATION PLAN, THE BUREAU OF TELECOMMUNICATIONS IS NOT AUTHORIZED TO PROVIDE TELECOMMUNICATIONS FACILITIES, INCLUDING TELEPHONE SYSTEMS, FOR GOVERNMENT OFFICES, IN AREAS WHERE THERE ARE [sic] EXISTING PRIVATE TELEPHONE SYSTEM, WITHOUT NEGOTIATING WITH THE PRESENT OWNER OR OPERATORS;

B. IN HOLDING THAT THE INSTALLATION AND OPERATION OF THE TELEPHONE SYSTEM BY THE BUREAU OF TELECOMMUNICATIONS, WAS ILLEGAL; AND

C. IN HOLDING THAT RETELCO HAS THE EXCLUSIVE RIGHT IN OPERATING AND MAINTAINING [A] TELEPHONE SYSTEM IN GOVERNMENT OFFICES IN MALOLOS, BULACAN."[8]

We grant the petition.

We agree with petitioners that respondent RETELCO did not, even under Section 79 (b) of Executive Order No. 94, Series of 1947, have the exclusive right to operate and maintain a telephone system in Malolos, Bulacan.

RETELCO's foremost argument is that "such operations and maintenance of the telephone system and solicitation of subscribers by [petitioners] constituted an unfair and ruinous competition to the detriment of [RETELCO which] is a grantee of both municipal and legislative franchises for the purpose." In effect, RETELCO pleads for protection from the courts on the assumption that its franchises vested in it an exclusive right as prior operator. There is no clear showing by RETELCO, however, that its franchises are of an exclusive character. Now, the cover headings on the rollo and the records of this case show that RETELCO is now Philippine Long Distance Telephone Company (PLDT), although nothing - no document or allegation - in the rollo and the records indicate how the substitution came to be. At any rate, it may very well be pointed out as well that neither did the franchise of PLDT at the time of the controversy confer exclusive rights upon PLDT in the operation of a telephone system[9]. In fact, we have made it a matter of judicial notice that all legislative franchises for the operation of a telephone system contain the following provision:

"It is expressly provided that in the event the Philippine Government should desire to maintain and operate for itself the system and enterprise herein authorized, the grantee shall surrender his franchise and will turn over to the Government said system and all serviceable equipment therein, at cost, less reasonable depreciation".[10]

BUTELCO's initiative to operate and maintain a telephone system in Malolos, Bulacan, was undertaken pursuant to Section 79 (b) of Executive Order No. 94, Series of 1947. Said provision vested in BUTELCO the following powers and duties, among others:

"x x x

(b) To investigate, consolidate, negotiate for, operate and maintain wire-telephone or radio telephone communication service throughout the Philippines by utilizing such existing facilities in cities, towns, and provinces as may be found feasible and under such terms and conditions or arrangements with the present owners or operators thereof as may be agreed upon to the satisfaction of all concerned x x x."

While we affirmed in the case of Republic v. PLDT[11], that "[t]he Bureau of Telecommunications, under section 79 (b) of Executive Order No. 94, may operate and maintain wire telephone or radio telephone communications throughout the Philippines by utilizing existing facilities in cities, towns, and provinces under such terms and conditions or arrangement with present owners or operators as may be agreed upon to the satisfaction of all concerned,"[12] we also at the same time clarified that "nothing in these provisions limits the Bureau to non-commercial activities or prevents it from serving the general public".[13]

"x x x It may be that in its original prospectuses the Bureau officials had stated that the service would be limited to government offices; but such limitations could not block future expansion of the system, as authorized by the terms of the Executive Order, nor could the officials of the Bureau bind the Government not to engage in services that are authorized by law."[14]

In other words, BUTELCO cannot be said to be prohibited under the aforecited legal provision from operating and maintaining its own telephone system in Malolos, Bulacan.

Now in the subsequent case of Director of the Bureau of Telecommunications v. Aligaen, we emphasized the relevance of the latter portion of Section 79 (b) of Executive Order No. 94 as providing a caveat to any initiative on the part of the government to operate and maintain a telephone system in an area where there is an existing franchise holder. In the said case of Aligaen, we foregrounded the need for BUTELCO to first enter into negotiation or arrangement with the operator or owner of the existing telephone system. We had stated, thus:

"x x x The Bureau of Telecommunications may take steps to improve the telephone service in any locality in the Philippines, but in so doing it must first enter into negotiation or arrangement with the operator or owner of the existing telephone system. x x x When a private person or entity is granted a legislative franchise to operate

a telephone system, or any public utility for that matter the government has the correlative obligation to afford the grantee of the franchise all the chances or opportunity to operate profitably, as long as public convenience is properly served rather than promote a competition with the grantee. x x x"[15]

This is not to say, however, that the lack of prior negotiation with the existing telephone system operator renders illegal the operation by BUTELCO of a telephone system. After all, the very provision in question phrases the prior negotiation requirement in less than mandatory terms. Section 79 (b) of Executive Order No. 94, Series of 1947 provides:

"(b) To x x x negotiate for, operate and maintain wire-telephone or radio telecommunications service throughout the Philippines by utilizing such existing facilities in cities, towns, and provinces as may be found feasible and under such terms and conditions or arrangements with the present owners or operators thereof as may be agreed upon to the satisfaction of all concerned" [emphasis supplied].

The right of the prior operator under the aforecited provision is to be unfailingly and seriously considered in case it chooses to propose arrangements or such terms and conditions whereby BUTELCO is to coordinate its efforts to set up and operate a telephone system with the existing operator. BUTELCO, in that case, would be obligated to exercise good faith and exert optimal cooperative efforts so that it may save government some money and prevent competition by "utilizing existing facilities in cities, towns and provinces x x x [of] the present owners or operators," as mandated by Section 79 (b) of Executive Order No. 94.

In the case at bench, BUTELCO admittedly did not fulfill this obligation. Such failure, however, is not violative of any mandatory provision of law. There was no violation of Section 79 (b) of Executive Order No. 94 but only an irregularity in the procedure by which BUTELCO undertook the operation of a telephone system in Malolos, Bulacan. It cannot be denied that, even if prior negotiations were undertaken by BUTELCO with RETELCO, and they both could not agree on mutually acceptable terms and conditions, nothing in Section 79 (b) of Executive Order No. 94 prohibits BUTELCO from proceeding with the setting up and operation of a telephone system in Malolos, Bulacan, despite the presence of a prior operator in the person of RETELCO. Thus, any injunction prohibiting BUTELCO from operating its telephone system finds no sufficiently legal and just basis under Section 79 (b) of Executive Order No. 94.

To read from Section 79 (b) of Executive Order No. 94 an ultra-protectionist policy in favor of telephone franchise holders, smacks of a promotion of the monopolization of the country's telephone industry which, undeniably, has contributed to the slackened pace of national development. As we have pointed out in the case of *PLDT v. National Telecommunications Commission*[16]:

"Free competition in the industry may also provide the answer to a much-desired improvement in the quality and delivery of this type of public utility, to improved technology, fast and handy mobil service, and reduced user dissatisfaction. After all, neither PLDT nor any other public utility has a constitutional right to a monopoly position in view of the Constitutional proscription that no franchise certificate or authorization shall be exclusive in character or shall last longer than fifty (50) years (*ibid.*, Section 11; Article XIV, Section 5, 1973 Constitution; Article XIV, Section 8, 1935 Constitution)."[17]

In the light of the above ruling, necessary no longer is it to discuss the other assigned errors of petitioner.

WHEREFORE, the petition is HEREBY GRANTED. The decision of respondent Court of Appeals is hereby reversed and set aside. The questioned writ of preliminary injunction made permanent by respondent Court of First Instance (now the Regional Trial Court) in its judgment, dated January 6, 1975, is hereby dissolved for having been issued without legal basis.

No pronouncement as to costs.

SO ORDERED.

Padilla, (Chairman), Bellosillo, Vitug, and Kapunan, JJ., concur.

[1] In CA-G.R. CV No. 59004, dated May 18, 1983, penned by Associate Justice Floreliana Castro-Bartolome and concurred in by Associate Justices B.S. de la Fuente and Mariano A. Zosa, Rollo, pp. 38-46.

[2] Third Civil Cases Division.

[3] Civil Case No. 4183-M filed on May 17, 1972.

[4] Branch VI, Bulacan.

[5] Decision in CA-G.R. CV No. 59004, pp. 3-5, Rollo, pp. 38-40.

[6] Id., pp. 1-2, Rollo, pp. 36-37.

[7] Id., p. 9, Rollo, p. 46.

[8] Petition dated September 19, 1983, pp. 14-15, Rollo, pp. 20-21.

[9] PLDT v. City of Davao, 15 SCRA 75, 82 (1965).

[10] Director of the Bureau of Telecommunications v. Aligaen, 33 SCRA 368, 384.

[11] 26 SCRA 620 (1969).

[12] Id., p. 628.

[13] Id., p. 630.

[14] Id., pp. 630-631.

[15] Director of the Bureau of Telecommunications v. Aligaen, 33 SCRA 368, 383-884 (1970).

[16] 190 SCRA 717 (1990).

[17] Id., p. 737.

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