

RADIO COMMUNICATIONS OF THE PHILIPPINES, PHILIPPINE TELEGRAPH & TELEPHONE CORPORATION AND CLAVECILLA RADIO SYSTEM, PETITIONERS, VS. NATIONAL TELECOMMUNICATIONS COMMISSION AND PH...

G.R. NO. 66683. April 23, 1990

Ponente: BIDIN, J.

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BIDIN, J.:

This is a petition for certiorari and prohibition with preliminary injunction and/or restraining order seeking to annul and set aside the January 25, 1984 order of the National Telecommunications Commission (hereinafter respondent Commission) in NTC Case No. 84-003 and to prohibit respondent Commission from taking cognizance of, and assuming jurisdiction over the "Application for Approval of Rates for Digital Transmission Service Facilities" of the Philippine Long Distance and Telephone Company (PLDT, for brevity), private respondent herein, for lack of jurisdiction.

The decretal portion of the said order reads:

"IN VIEW OF THE FOREGOING, and finding prima facie that the rates and currency adjustment provision herein proposed are just and reasonable, and that these more modern telecommunications facilities should be made available to interested users, this Commission believes that in the public interest, the application of this case may be, as it is hereby PROVISIONALLY APPROVED with corresponding authority to apply a currency adjustments of 1% for every P.10 increase or decrease of the peso to a dollar for these rates using as starting basis the currency adjustment level of P14.00 to US \$1.00.

"This provisional authority may be revoked, revised or amended at any time in accordance with law. Applicant shall refund or credit to the account of its subscriber any amount found in excess of what should be authorized in the final resolution of this case.

"The Board Secretary of the Commission is hereby directed to set this case for hearing within the prescribed 30-day period allowed by law.

"This Order takes effect immediately.

"SO ORDERED."

The factual antecedents are as follows:

On January 4, 1984, private respondent PLDT filed an appli-cation with respondent Commission for the Approval of Rates for Digital Transmission Service Facilities under NTC Case No. 84--003. On January 25, 1984, the respondent Commission provisionally approved and set the case for hearing within the prescribed 30-day period allowed by law.

Later, on February 2, 1984, the respondent Commission issued a notice of hearing, setting private respondent

PLDT's application for hearing on February 22, 1984 at 9:30 o'clock in the morning (Rollo, p. 37). In the aforementioned notice of hearing, herein petitioners except Philippine Telegraph and Telephone Corporation were not included in the list of affected parties- (Rollo, p. 38). At the hearing, petitioner PT & T Co., along with other petitioners which came to know of the pending petition through the former, appeared and moved for some time within which to file an opposition or reply to said application. Petitioners alleged that neither respondent Commission nor private respondent PLDT informed them of the existence of this provisional authority (Rollo, 10).

Hence, this petition.

Petitioners raised the following assignment of errors:

A

THE RESPONDENT NATIONAL TELECOMMUNICATIONS COMMISSION GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN ISSUING PROVISIONAL AUTHORITY TO PRIVATE RESPONDENT WITHOUT PRIOR NOTICE AND HEARING WHEN ITS APPLICATION IS NOT FOR RATE APPROVAL BUT FOR AUTHORITY TO ENGAGE IN SERVICES OUTSIDE ITS FRANCHISES.

B

THE RESPONDENT NATIONAL TELECOMMUNICATIONS COMMISSION GRAVELY ABUSED ITS DISCRETION AMOUNTING TO EXCESS OR LACK OF JURISDICTION IN ASSUMING JURISDICTION OVER THE APPLICATION OF PRIVATE RESPONDENT SINCE APPLICATION IS FOR NEW SERVICES NOT COVERED IN THE FRANCHISE AND CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY GRANTED TO PRIVATE RESPONDENT. (Rollo, p. 12)

In the Resolution of March 21, 1984, the Second Division of this Court required respondents to comment, issued a temporary restraining order and transferred the case to the Court En Banc (Rollo, p. 40) which was accepted in the resolution of April 5, 1984 (Rollo, p. 52-a).

On June 21, 1984, this Court resolved to consider respondents' comment as answer and the petition was given due course. The parties were required to file their respective memoranda (Rollo, p. 137). Petitioners filed their joint memorandum on August 13, 1984 while respondent PLDT filed its memorandum on August 15, 1984.

The pivotal issue of this case is whether or not the respondent Commission gravely abused its discretion amounting to excess or lack of jurisdiction in issuing a provisional authority in favor of PLDT, without prior notice to the petitioners.

In their petition, petitioners alleged that the application filed by respondent PLDT is not for approval of rates as its caption misleadingly indicates but for authority to engage in new services not covered by private respondent's franchise and certificate of public convenience and necessity. Petitioners further claimed that PLDT is limited by its legislative franchise to render only "radiotelephonic services," exclusive of "radio-telegraphic or record services." Therefore, the issuance of the provisional authority by the respondent Commission without notice and hearing constitutes grave abuse of discretion inasmuch as such power or prerogative exists only for rate cases under Section 16(c) of the Public Service Act.

On the other hand, respondent PLDT refuted the facts alleged in the petition as grossly false and misrepresented. Respondent PLDT maintains that the act of the respondent Commission in having issued its order of January 25, 1984 is a valid exercise of its jurisdiction considering that the franchise of PLDT authorizes it to operate not only telephone system, domestic and international, but also transmission service facilities. In fact, PLDT pointed out

that petitioners themselves with the exception of CLAVECILLA had been actual users of PLDT lines or channels for data transmission.

The petition is devoid of merit.

Section 16(c) of the Public Service Act (CA No. 146) provides for the fixing of rates, by the Commission, which shall be imposed and observed by any public service, as follows:

"Sec. 16(c). To fix and determine individual and joint rates, tolls, 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 thereon 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 shall be considered in relation with the public service of such operator for the purpose of fixing the rates." (Italics supplied)

The Public Service Commission found that the application involved in the present petition is actually an application for approval of rates for digital transmission service facilities which it may approve provisionally and without the necessity of any notice and hearing as provided in the above-quoted provision of law.

Well-settled is the rule that the Public Service Commission now is empowered to approve provisionally rates of utilities without the necessity of a prior hearing (*Republic v. Medina*, 41 SCRA 643 [1971]). Under the Public Service Act, as amended (CA 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, CA 146, as amended; *Philippine Consumers Foundation, Inc. v. NTC*, 131 SCRA 260 [1984]). Further, the Public Service Act makes no distinction between initial or revised rates. These rates are necessarily proposed merely; until the Commission approves them (*Republic v. Medina*, *supra*). Moreover, the Commission can hear and approve revised rates without published notices or hearing. The reason is easily discerned from the fact that provisional rates are by their nature temporary and subject to adjustment in conformity with the definitive rates approved after final hearing (*Republic v. Medina*, *supra*; *Cordero v. Energy Regulatory Board*, G.R. No. 83931, November 3, 1988, En Banc, Minute Resolution) and it was so stated in the case at bar, in the National Telecommunications Commission's order of January 25, 1984.

The Commission did not grant the PLDT any authority to engage in any new communication service, but merely approved provisionally PLDT's proposed revision of its then authorized schedule of rates for the lease on availment by end-users of the digital full period leased lines or channels for data transmission which said company acquired, installed, and presently maintain in serviceable condition, a relief well within its power to grant. Undoubtedly, a public utility is entitled to a just compensation and a fair return upon the value of its property while it is being used in public service (*Phil. Ship-owners' Ass'n. v. Public Utility Commissioner*, 43 Phil. 328 [1922]; *Ynchausti Steamship Co. v. Public Utility Commissioner*, 42 Phil. 624 [1922]).

As to the required notice, it is impossible for the respondent Commission to give personal notice to all parties affected, not all of them being known to it. More than that, there is no dispute that the notice of hearing was published and as admitted by petitioners, one of them received the notice which in turn informed the others. In fact, the petitioners have timely opposed the petition in question, so that lack of notice was deemed cured. Under the circumstances, the Commission may be deemed to have substantially complied with the requirements (*Matienzo v. Abellera*, 162 SCRA 1 [1987]). In any event, the provisional nature of the authority and the fact that the primary application shall be given a full hearing are the safeguards against its abuse (*Matienzo v. Abellera*, *supra*).

Moreover, the maximum rate fixed in a franchise which its holder is authorized to collect, is always subject to a revision and regulation by the Public Service Commission (now NTC). For if such maximum rate is not subject to alteration, the power of the Commission to review would be rendered nugatory, as it cannot be said that the power to revise may be exercised only where the franchise does not impose a limitation (*Manila Gas Corporation v. De Vera, et al.*, 70 Phil. 321 [1940]). Therefore, the authority of the Commission to issue ex parte a provisional permit to operate proposed public service is not absolute but is based on the superior and imperative necessity of meeting an urgent public need (*Veneracion v. Congson Ice Plant & Cold Storage, Inc.*, 52 SCRA 119 [1973]). It is the duty of the PSC, (now NTC) to see to the needs and interest of the public (*Dizon v. PSC*, 50 SCRA 500 [1973]).

Finally, there is a legal presumption that the rates are reasonable and it must be conceded that the fixing of rates by the government through its authorized agent, involves the exercise of reasonable discretion, and unless there is an abuse of that discretion, the courts will not interfere (*Ynchausti Steamship Co. v. Public Utility Commissioner*, supra; *Manila Electric Company v. De Vera, et al.*, 66 Phil. 161 [1938]). Likewise, as a rule, the court does not interfere with administrative action prior to its completion or finality (*Matienzo v. Abellera*, 162 SCRA 1 [1988]).

A doctrine long recognized is that where the law confines in an administrative office the power to determine particular questions or matters upon the facts presented, the jurisdiction of such office shall prevail over the courts. Hence, findings of administrative officials and agencies who have acquired expertise because their jurisdiction is confined to specific matters are generally accorded not only respect but at times even finality if such findings are supported by substantial evidence (*Liang Bay Logging Co., Inc. v. Enage*, 152 SCRA 80-81 [1987]).

A careful study of the records yields no cogent reason to disturb the findings and conclusions of the National Telecommunications Commission.

WHEREFORE, the petition is Dismissed for lack of merit and the assailed order of the National Telecommunications Commission is Affirmed. The temporary restraining order issued on March 21, 1984 is Set Aside.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Fernan, C.J., and Sarmiento, J., on leave.

Cortes, J., in the result.

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