

EN BANC

[G.R. No. 138810, September 29, 2004]

BATANGAS CATV, INC., PETITIONER, VS. THE COURT OF APPEALS, THE BATANGAS CITY SANGGUNIAN PANLUNGSOD AND BATANGAS CITY MAYOR, RESPONDENTS.

DECISION

SANDOVAL-GUTIERREZ, J.:

In the late 1940s, John Walson, an appliance dealer in Pennsylvania, suffered a decline in the sale of television (tv) sets because of poor reception of signals in his community. Troubled, he built an antenna on top of a nearby mountain. Using coaxial cable lines, he distributed the tv signals from the antenna to the homes of his customers. Walson's innovative idea improved his sales and at the same time gave birth to a new telecommunication system -- the Community Antenna Television (CATV) or Cable Television.^[1]

This technological breakthrough found its way in our shores and, like in its country of origin, it spawned legal controversies, especially in the field of regulation. The case at bar is just another occasion to clarify a shady area. Here, we are tasked to resolve the inquiry -- may a local government unit (LGU) regulate the subscriber rates charged by CATV operators within its territorial jurisdiction?

This is a petition for review on certiorari filed by Batangas CATV, Inc. (petitioner herein) against the *Sangguniang Panlungsod* and the Mayor of Batangas City (respondents herein) assailing the Court of Appeals **(1)** Decision^[2] dated February 12, 1999 and **(2)** Resolution^[3] dated May 26, 1999, in CA-G.R. CV No. 52361.^[4] The Appellate Court reversed and set aside the Judgment^[5] dated October 29, 1995 of the Regional Trial Court (RTC), Branch 7, Batangas City in Civil Case No. 4254,^[6] holding that neither of the respondents has the power to fix the subscriber rates of CATV operators, such being outside the scope of the LGU's power.

The antecedent facts are as follows:

On July 28, 1986, respondent *Sangguniang Panlungsod* enacted Resolution No. 210^[7] granting petitioner a **permit** to construct, install, and operate a CATV system in Batangas City. Section 8 of the Resolution provides that petitioner is authorized to charge its subscribers the maximum rates specified therein, "provided, however, that any increase of rates shall be subject to the approval of the *Sangguniang Panlungsod*."^[8]

Sometime in November 1993, petitioner increased its subscriber rates from ₱88.00 to ₱180.00 per month. As a result, respondent Mayor wrote petitioner a letter^[9] threatening to cancel its permit unless it secures the approval of respondent

Sangguniang Panlungsod, pursuant to Resolution No. 210.

Petitioner then filed with the RTC, Branch 7, Batangas City, a petition for injunction docketed as Civil Case No. 4254. It alleged that respondent *Sangguniang Panlungsod* has no authority to regulate the subscriber rates charged by CATV operators because under Executive Order No. 205, the National Telecommunications Commission (NTC) has the sole authority to regulate the CATV operation in the Philippines.

On October 29, 1995, the trial court decided in favor of petitioner, thus:

"WHEREFORE, as prayed for, the defendants, their representatives, agents, deputies or other persons acting on their behalf or under their instructions, are hereby enjoined from canceling plaintiff's permit to operate a Cable Antenna Television (CATV) system in the City of Batangas or its environs or in any manner, from interfering with the authority and power of the National Telecommunications Commission to grant franchises to operate CATV systems to qualified applicants, and the right of plaintiff in fixing its service rates which needs no prior approval of the Sangguniang Panlungsod of Batangas City.

The counterclaim of the plaintiff is hereby dismissed. No pronouncement as to costs.

IT IS SO ORDERED."^[10]

The trial court held that the enactment of Resolution No. 210 by respondent violates the State's deregulation policy as set forth by then NTC Commissioner Jose Luis A. Alcuaz in his Memorandum dated August 25, 1989. Also, it pointed out that the sole agency of the government which can regulate CATV operation is the NTC, and that the LGUs cannot exercise regulatory power over it without appropriate legislation.

Unsatisfied, respondents elevated the case to the Court of Appeals, docketed as CA-G.R. CV No. 52361.

On February 12, 1999, the Appellate Court reversed and set aside the trial court's Decision, ratiocinating as follows:

"Although the Certificate of Authority to operate a Cable Antenna Television (CATV) System is granted by the National Telecommunications Commission pursuant to Executive Order No. 205, this does not preclude the Sangguniang Panlungsod from regulating the operation of the CATV in their locality under the powers vested upon it by Batas Pambansa Bilang 337, otherwise known as the Local Government Code of 1983. Section 177 (now Section 457 paragraph 3 (ii) of Republic Act 7160) provides:

'Section 177. Powers and Duties – The Sangguniang Panlungsod shall:

a) Enact such ordinances as may be necessary to carry into effect and discharge the responsibilities conferred upon it by

law, and such as shall be necessary and proper to provide for health and safety, comfort and convenience, maintain peace and order, improve the morals, and promote the prosperity and general welfare of the community and the inhabitants thereof, and the protection of property therein;

x x x

d) Regulate, fix the license fee for, and tax any business or profession being carried on and exercised within the territorial jurisdiction of the city, except travel agencies, tourist guides, tourist transports, hotels, resorts, de luxe restaurants, and tourist inns of international standards which shall remain under the licensing and regulatory power of the Ministry of Tourism which shall exercise such authority without infringement on the taxing and regulatory powers of the city government;'

Under cover of the General Welfare Clause as provided in this section, Local Government Units can perform just about any power that will benefit their constituencies. Thus, local government units can exercise powers that are: **(1)** expressly granted; **(2)** necessarily implied from the power that is expressly granted; **(3)** necessary, appropriate or incidental for its efficient and effective governance; and **(4)** essential to the promotion of the general welfare of their inhabitants. (Pimentel, The Local Government Code of 1991, p. 46)

Verily, the regulation of businesses in the locality is expressly provided in the Local Government Code. The fixing of service rates is lawful under the General Welfare Clause.

Resolution No. 210 granting appellee a permit to construct, install and operate a community antenna television (CATV) system in Batangas City as quoted earlier in this decision, authorized the grantee to impose charges which cannot be increased except upon approval of the Sangguniang Bayan. It further provided that in case of violation by the grantee of the terms and conditions/requirements specifically provided therein, the City shall have the right to withdraw the franchise.

Appellee increased the service rates from EIGHTY EIGHT PESOS (P88.00) to ONE HUNDRED EIGHTY PESOS (P180.00) (Records, p. 25) without the approval of appellant. **Such act breached Resolution No. 210 which gives appellant the right to withdraw the permit granted to appellee."**^[11]

Petitioner filed a motion for reconsideration but was denied.^[12]

Hence, the instant petition for review on certiorari anchored on the following assignments of error:

THE COURT OF APPEALS ERRED IN HOLDING THAT THE GENERAL WELFARE CLAUSE OF THE LOCAL GOVERNMENT CODE AUTHORIZES RESPONDENT SANGGUNIANG PANLUNGSOD TO EXERCISE THE REGULATORY FUNCTION SOLELY LODGED WITH THE NATIONAL TELECOMMUNICATIONS COMMISSION UNDER EXECUTIVE ORDER NO. 205, INCLUDING THE AUTHORITY TO FIX AND/OR APPROVE THE SERVICE RATES OF CATV OPERATORS; AND

II

THE COURT OF APPEALS ERRED IN REVERSING THE DECISION APPEALED FROM AND DISMISSING PETITIONER’S COMPLAINT.”

[13]

Petitioner contends that while Republic Act No. 7160, the Local Government Code of 1991, extends to the LGUs the general power to perform any act that will benefit their constituents, nonetheless, it does not authorize them to regulate the CATV operation. Pursuant to E.O. No. 205, only the NTC has the authority to regulate the CATV operation, including the fixing of subscriber rates.

Respondents counter that the Appellate Court did not commit any reversible error in rendering the assailed Decision. *First*, Resolution No. 210 was enacted pursuant to Section 177(c) and (d) of *Batas Pambansa Bilang 337*, the Local Government Code of 1983, which authorizes LGUs to regulate businesses. The term “businesses” necessarily includes the CATV industry. And *second*, Resolution No. 210 is in the nature of a contract between petitioner and respondents, it being a grant to the former of a franchise to operate a CATV system. To hold that E.O. No. 205 amended its terms would violate the constitutional prohibition against impairment of contracts.^[14]

The petition is impressed with merit.

Earlier, we posed the question -- may a local government unit (LGU) regulate the subscriber rates charged by CATV operators within its territorial jurisdiction? A review of pertinent laws and jurisprudence yields a negative answer.

President Ferdinand E. Marcos was the first one to place the CATV industry under the regulatory power of the national government.^[15] On June 11, 1978, he issued **Presidential Decree (P.D.) No. 1512**^[16] establishing a monopoly of the industry by granting *Sining Makulay, Inc.*, an exclusive franchise to operate CATV system in any place within the Philippines. Accordingly, **it terminated all franchises, permits or certificates for the operation of CATV system previously granted by local governments or by any instrumentality or agency of the national government.**^[17] Likewise, it prescribed the subscriber rates to be charged by *Sining Makulay, Inc.* to its customers.^[18]

On July 21, 1979, President Marcos issued **Letter of Instruction (LOI) No. 894** vesting upon the Chairman of the Board of Communications direct supervision over the operations of *Sining Makulay, Inc.* Three days after, he issued **E.O. No. 546**^[19]

integrating the Board of Communications^[20] and the Telecommunications Control Bureau^[21] to form a single entity to be known as the "National Telecommunications Commission." Two of its assigned functions are:

"a. Issue Certificate of Public Convenience for the operation of communications utilities and services, radio communications systems, wire or wireless telephone or telegraph systems, radio and television broadcasting system and other similar public utilities;

b. Establish, prescribe and regulate areas of operation of particular operators of public service communications; and determine and prescribe charges or rates pertinent to the operation of such public utility facilities and services except in cases where charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies recognized by the Philippine Government as the proper arbiter of such charges or rates;"

Although *Sining Makulay Inc.*'s exclusive franchise had a life term of 25 years, it was cut short by the advent of the 1986 Revolution. Upon President Corazon C. Aquino's assumption of power, she issued **E.O. No. 205**^[22] opening the CATV industry to all citizens of the Philippines. **It mandated the NTC to grant Certificates of Authority to CATV operators and to issue the necessary implementing rules and regulations.**

On September 9, 1997, President Fidel V. Ramos issued **E.O. No. 436**^[23] prescribing policy guidelines to govern CATV operation in the Philippines. Cast in more definitive terms, it restated the NTC's regulatory powers over CATV operations, thus:

"SECTION 2. The **regulation and supervision** of the cable television industry in the Philippines shall remain vested solely with the **National Telecommunications Commission (NTC).**

SECTION 3. Only persons, associations, partnerships, corporations or cooperatives, granted a **Provisional Authority or Certificate of Authority by the Commission** may install, operate and maintain a cable television system or render cable television service within a service area."

Clearly, it has been more than two decades now since our national government, through the NTC, assumed regulatory power over the CATV industry. Changes in the political arena did not alter the trend. Instead, subsequent presidential issuances further reinforced the NTC's power. Significantly, President Marcos and President Aquino, in the exercise of their legislative power, issued P.D. No. 1512, E.O. No. 546 and E.O. No. 205. Hence, they have the force and effect of statutes or laws passed by Congress.^[24] That the regulatory power stays with the NTC is also clear from President Ramos' E.O. No. 436 mandating that the regulation and supervision of the CATV industry shall remain vested "solely" in the NTC. Black's Law Dictionary defines "sole" as "without another or others."^[25] **The logical conclusion, therefore, is that in light of the above laws and E.O. No. 436, the NTC exercises regulatory power over CATV operators to the exclusion of**