

FIRST DIVISION

[G. R. No. 126496, April 30, 1997]

GMCR, INC.; SMART COMMUNICATIONS, INC.; INTERNATIONAL COMMUNICATIONS CORP.; ISLA COMMUNICATIONS CO., INC., PETITIONERS, VS. BELL TELECOMMUNICATION PHILIPPINES, INC.; THE NATIONAL TELECOMMUNICATIONS COMMISSION AND HON. SIMEON L. KINTANAR IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF THE NATIONAL TELECOMMUNICATIONS, RESPONDENTS.

[G. R. NO. 126526. APRIL 30, 1997]

COMMISSIONER SIMEON L. KINTANAR, NATIONAL TELECOMMUNICATIONS COMMISSION, PETITIONER, VS. BELL TELECOMMUNICATION PHILIPPINES, INC., RESPONDENT.

D E C I S I O N

HERMOSISIMA, JR., J.:

Before us are consolidated petitions seeking the review and reversal of the decision^[1] of the respondent Court of Appeals^[2] declaring the National Telecommunications Commission (hereafter, NTC) to be a collegial body under Executive Order No. 546^[3] and ordering the NTC to heretofore sit and act en banc, i.e., with the concurrence of at least two commissioners, for a valid dispensation of its quasi-judicial functions.

Established by evidence are the following facts:

On October 19, 1993, private respondent Bell Telecommunication Philippines, Inc. (hereafter, BellTel) filed with the NTC an Application for a Certificate of Public Convenience and Necessity to Procure, Install, Operate and Maintain Nationwide Integrated Telecommunications Services and to Charge Rates Therefor and with Further Request for the Issuance of Provisional Authority. This application was docketed as NTC Case No. 93-481. At the time of the filing of this application, private respondent BellTel had not been granted a legislative franchise to engage in the business of telecommunications service.

Since private respondent BellTel was, at that time, an unenfranchised applicant, it was excluded in the deliberations for service area assignments for local exchange carrier service^[4]. Thus, only petitioners GMCR, Inc., Smart Communications, Inc., Isla Communications Co., Inc. and International Communications Corporation, among others, were beneficiaries of formal awards of service area assignments in April and May, 1994.

On March 25, 1994, Republic Act No. 7692 was enacted granting private respondent

BellTel a congressional franchise which gave private respondent BellTel the right, privilege and authority to

“carry on the business of providing telecommunications services in and between provinces, cities, and municipalities in the Philippines and for this purpose, to establish, operate, manage, lease, maintain and purchase telecommunications systems, including mobile, cellular and wired or wireless telecommunications systems, fiber optics, satellite transmit and receive systems, and other telecommunications systems and their value-added services such as, but not limited to, transmission of voice, data, facsimile, control signals, audio and video, information service bureau, and all other telecommunications systems technologies as are at present available or be made available through technical advances or innovations in the future, or construct, acquire, lease and operate or manage transmitting and receiving stations and switching stations, both for local and international services, lines, cables or systems, as is, or are convenient or essential to efficiently carry out the purposes of this franchise.”^[5]

On July 12, 1994, private respondent BellTel filed with the NTC a second Application^[6] praying for the issuance of a Certificate of Public Convenience and Necessity for the installation, operation and maintenance of a combined nationwide local toll (domestic and international) and tandem telephone exchanges and facilities using wire, wireless, microwave radio, satellites and fiber optic cable with Public Calling Offices (PCOs) and very small aperture antennas (VSATs) under an integrated system. This second application was docketed as NTC Case No. 94-229. In this second application, BellTel proposed to install 2,600,000 telephone lines in ten (10) years using the most modern and latest state-of-the-art facilities and equipment and to provide a 100% digital local exchange telephone network.

Private respondent BellTel moved to withdraw its earlier application docketed as NTC Case No. 93-481. In an Order dated July 11, 1994, this earlier application was ordered withdrawn, without prejudice.

The second application of private respondent BellTel which was docketed as NTC Case No. 94-229 was assigned to a Hearing Officer for reception of private respondent BellTel’s evidence. Written opposition and other pertinent pleadings were filed by petitioners GMCR, Inc., Smart Communications, Inc., Isla Communications Co., Inc. and International Communications Corporation as oppositors. Other oppositors to private respondent BellTel’s application were Capitol Wireless, Inc., Eastern Misamis Oriental Telephone Cooperative, Liberty Broadcasting Network, Inc., Midsayap Communication, Northern Telephone, PAPTELCO, Pilipino Telephone Corporation, Philippine Global Communications, Inc., Philippine Long Distance Telephone Company, Philippine Telegraph and Telephone Corporation, Radio Communications of the Philippines, Inc. and Extelcom and Telecommunications Office.

On December 20, 1994, private respondent BellTel completed the presentation of its evidence-in-chief. In the course of the proceedings, the witnesses of BellTel were cross-examined by the aforementioned oppositors. On December 21, 1994, BellTel filed its Formal Offer of Evidence together with all the technical, financial and legal

documents in support of its application. Pursuant to its rules, the application was referred to the Common Carriers Authorization Department (CCAD) for study and recommendation.

On February 6, 1995, the CCAD, through Engr. Marle Rabena, submitted to Deputy Commissioner Fidelo Q. Dumlao, a Memorandum dated February 6, 1995^[7] manifesting his findings and recommending that “based on technical documents submitted, BellTel’s proposal is technically feasible.”^[8]

Subsequently, Mr. Raulito Suarez, the chief of the Rates and Regulatory Division of CCAD, conducted a financial evaluation of the project proposal of private respondent BellTel. On March 29, 1995, Mr. Suarez made the finding that BellTel has the financial capability to support its proposed project at least for the initial two (2) years.

Agreeing with the findings and recommendations of the CCAD, NTC Deputy Commissioners Fidelo Dumlao and Consuelo Perez adopted the same and expressly signified their approval thereto by making the following notation on the aforesaid Memorandum of the CCAD dated February 6, 1995:

“With the finding of financial capability and technical feasibility, the application merits due/favorable consideration.”^[9]

Below this notation, Deputy Commissioners Fidelo Dumlao and Consuelo Perez affixed their signatures and the date, “4/6/95.”

In view of these favorable recommendations by the CCAD and two members of the NTC, the Legal Department thereof prepared a working draft^[10] of the order granting provisional authority to private respondent BellTel. The said working draft was initialed by Deputy Commissioners Fidelo Q. Dumlao and Consuelo Perez but was not signed by Commissioner Simeon Kintanar.

While ordinarily, a decision that is concurred in by two of the three members composing a quasi-judicial body is entitled to promulgation, petitioners claim that pursuant to the prevailing policy and the corresponding procedure and practice in the NTC, the exclusive authority to sign, validate and promulgate any and all orders, resolutions and decisions of the NTC is lodged in the Chairman, in this case, Commissioner Simeon Kintanar, and, thus, since only Commissioner Simeon Kintanar is recognized by the NTC Secretariat as the sole authority to sign any and all orders, resolutions and decisions of the NTC, only his vote counts; Deputy Commissioners Dumlao and Perez have allegedly no voting power and both their concurrence which actually constitutes the majority is inutile without the assent of Commissioner Kintanar.

Anxious over the inaction of the NTC in the matter of its petition praying for the issuance of a provisional authority, private respondent BellTel filed on May 5, 1995 an Urgent Ex-Parte Motion to Resolve Application and for the Issuance of a Provisional Authority^[11]. Reference was explicitly made to the findings of the CCAD

and recommendations of Deputy Commissioners Dumlao and Perez that were all favorable to private respondent BellTel. Mention was also made of the aforementioned working draft of the order granting a provisional authority to BellTel, which draft was made by the Legal Department of the NTC and initialed by the said deputy commissioners.

No action was taken by the NTC on the aforecited motion. Thus, on May 12, 1995, private respondent BellTel filed a Second Urgent Ex-Parte Motion^[12] reiterating its earlier prayer.

Petitioners-oppositors filed an Opposition^[13] to the aforestated two motions of private respondent BellTel.

In an Order dated May 16, 1995, signed solely by Commissioner Simeon Kintanar, the NTC, instead of resolving the two pending motions of private respondent BellTel, set the said motions for a hearing on May 29, 1995. On May 29, 1995, however, no hearing was conducted as the same was reset on June 13, 1995.

On June 13, 1995, the day of the hearing, private respondent BellTel filed a Motion to Promulgate (Amending the Motion to Resolve)^[14] In said motion, private respondent prayed for the promulgation of the working draft of the order granting a provisional authority to private respondent BellTel, on the ground that the said working draft had already been signed or initialed by Deputy Commissioners Dumlao and Perez who, together, constitute a majority out of the three commissioners composing the NTC. To support its prayer, private respondent BellTel asserted that the NTC was a collegial body and that as such, two favorable votes out of a maximum three votes by the members of the commission, are enough to validly promulgate an NTC decision.

On June 23, 1995, petitioners-oppositors filed their Joint Opposition^[15] to the aforecited motion.

On July 4, 1995, the NTC denied the said motion in an Order solely signed by Commissioner Simeon Kintanar.

On July 17, 1995, private respondent BellTel filed with this court a Petition for Certiorari, Mandamus and Prohibition seeking the nullification of the aforestated Order dated July 4, 1995 denying the Motion to Promulgate.

On July 26, 1995, we issued a Resolution referring said petition to the respondent Court of Appeals for proper determination and resolution pursuant to Section 9, par. 1 of B.P. Blg. 129.

In the interim, the Solicitor General filed with the respondent appellate court a Manifestation In Lieu of Comment^[16] in which the Solicitor General took a legal position adverse to that of the NTC. The Solicitor General, after a close examination of the laws creating the NTC and its predecessors and a studious analysis of certain Department of Transportation and Communications (DOTC) orders, NTC circulars, and Department of Justice (DOJ) legal opinions pertinent to the issue of collegiality of the NTC, made the following recommendations:

"WHEREFORE, the Solicitor General respectfully prays that this Honorable Court:

- (a) declare respondent National Telecommunications Commission as a collegial body;
- (b) restrain respondent Commissioner Simeon Kintanar from arrogating unto himself alone the powers of the said agency;
- (c) order NTC, acting as a collegial body, to resolve petitioner Bell Telecom's application under NTC-94-229;
- (d) declare NTC Memorandum Circulars 1-1-93 and 3-1-93 as void; [and]
- (e) uphold the legality of DOTC Department Order 92-614."^[17]

On September 23, 1996, respondent Court of Appeals promulgated the herein assailed decision the dispositive portion of which reads as follows:

IN THE LIGHT OF ALL THE FOREGOING, judgment is hereby rendered as follows:

1. Petitioner's petition for a writ of Certiorari and Prohibition is hereby granted. Accordingly, NTC Memorandum Circular No. 1-1-93, *Annex 'J' of the Petition*, Memorandum Circular No. 3-1-93, *Annex 'K' of the Petition* and the Order of Kintanar, *Annex 'L' of the Petition*, are hereby SET ASIDE for being contrary to law. The Respondents and all those acting for and in their behalf are hereby enjoined and prohibited from implementing or enforcing the same; [and]
2. Petitioner's petition for mandamus is hereby *GRANTED* in that the Respondent NTC, composed of Kintanar and deputy commissioners Perez and Dumlao, are hereby directed to meet en banc and to consider and act on the draft Order, *Annex 'B' of the Petition*, within fifteen (15) days from the finality of this Decision. Without pronouncement as to costs.

SO ORDERED."^[18]

The herein assailed decision being unacceptable to petitioner Simeon Kintanar and petitioners GMCR, Inc., Smart Communications, Inc., Isla Communications Co., Inc. and International Communications Corporation as oppositors in the application of private respondent BellTel for a provisional authority, they filed with this court separate petitions for review.

Commissioner Kintanar's petition, docketed as G.R. No. 126526, ascribes to the respondent appellate court the following assignment of errors:

- "1. The Court of Appeals, in setting aside NTC MC 1-1-93 and MC 3-1-93 and the Order of the Commission dated July 4, 1995, made a collateral attack on a law which was nowhere called for in the pleadings of the parties nor is authorized by the Rules of Court.
2. The Court of Appeals erred in assuming and imposing that the