

ELISEO B. LEMI, PETITIONER, VS. BRIGIDO VALENCIA, SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS; ROBERTO M. SAN ANDRES, CHIEF, RADIO CONTROL OFFICE; ALFREDO M. CARGO (SUPPOSEDLY ...*G.R. No. L-20768. November 29, 1968*

Ponente: CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/35e9d2690065/>**CASTRO, J.:**

Republic Act 1553, approved on June 16, 1956, authorized the petitioner Eliseo B. Lemi to construct, maintain and operate radio broadcasting and television stations. On June 8, 1960 the Radio Control Office of the Department of Public Works and Communications issued to him license 5931 to construct, maintain and operate radio station DZQR. This license was effective for one year, that is, from May 24, 1960 to May 23, 1961.

On April 12, 1961 Lemi applied for renewal of the license to cover the period from May 24, 1961 to May 23, 1962, and paid the corresponding renewal license fee of P50. The Radio Control Office took no action on this renewal application. On May 31, 1962 he again applied for renewal of the license, to cover the period from May 24, 1962 to May 23, 1963, and again paid the correspond-ing renewal license fee. Again the Radio Control Office took no action thereon. He continued operating the radio station without any interference whatsoever from the office of the Public Works Secretary, and the Radio Control Office. As a matter of fact, a letter dated December 7, 1962 of the chief of the latter office requested the licensee "to feature the many newly recorded Philippine Christmas songs."

In the morning of January 11, 1963, while the radio station DZQR was broadcasting, Alfredo M. Cargo, an agent of the Public Works Secretary, and Heraclio San Juan, a radio regulation inspector of the Radio Control Office, accompanied by agents of the Presidential Anti-Graft Committee (PAGCOM), armed with a search warrant issued by the Court of First Instance of Manila, searched the radio station and thereafter seized and carried away a radio transmitter which was being used at the time, on the pretext that it "was without any name plate or serial number and is entirely dif-ferent from the authorized transmitter," in gross violation of the Radio Control Law.

On January 19, 1963 Lemi instituted the present original petition for mandamus with preliminary injunction, against Public Works Secretary Brigido Valencia, Chief Roberto San Andres of the Radio Control Office, Alfredo M. Cargo, Heraclio San Juan, Chairman Conrado Cajator of the PAGCOM and the latter's agents, praying that this Court (1) issue a preliminary mandatory injunction directing the respondents to return immediately the radio transmitter to him, and, after due hearing on the merits, to make the writ permanent; and (2) order the respondents to issue without delay the renewal license applied for by him.

The petitioner averred that the summary and unwarranted seizure of the transmitter "was a wanton and deliberate disregard" of the pertinent provisions of the Radio Control Law and the regulations promulgated thereunder providing for "due formal hearing before a seizure or closure;" that the search warrant was pro-cured "by means of misrepresentation and deceit" on the part of the respondents' agents, who made it appear "that a criminal charge

or some sort of charge had been previously filed against the petitioner when x x x no such charge is known to petitioner up to this time;" that the transmitter "was never illegally used as it was (used) with full knowledge and approval and consent of the respondents themselves;" that the said transmitter was not capable of transmitting messages abroad; that being "attached to the radio station permanently as an indispensable structure thereof without which broadcast could not have been possible," the trans-mitter is "real property" and "not subject of seizure warrant;" that the seizure thereof was "actually inspired by vindictiveness and ill-will arising from the criticisms aired by a paying commentator x x x R.T. Jocson, in his daily radio program, 'So the People May Know', of the abuses of the Chief of the Radio Control Office and the present administration x x x further aggravated by the refusal of petitioner to accede to the repeated requests of respondent Roberto San Andres to refrain from testifying in the administrative charges x x x which x x x R. T. Jocson x x x previously filed against respondent Roberto San Andres, and to bar the said commentator from the air;" and that the continued deprivation of the use of the transmitter during the pendency of the petition would work great injustice and irreparable damage and injury to him because he would then be prevented from fulfilling his contractual commitments with his numerous clientele.

The petitioner further averred that sometime after November 3, 1961, after he had filed the first application for renewal of the radio station license, Eliodoro L. Jose, chief radio inspector of the Radio Control Office, inspected the station and found the equipment and installations therein "in order and in compliance with the pertinent requirements of radio regulations, [and] recommended the issuance of a radio station license;" and that inspite such recommendation, the respondents Public Works Secretary and Chief of the Radio Control Office, "with the evident purpose of prejudicing the operations of the herein petitioner, unlawfully neglected the performance of their duties by maliciously withholding the license for station DZQR already paid by the petitioner, although the law specifically enjoins issuance thereof as a ministerial duty after petitioner had complied with the requirements of the law and regulations."

We gave due course to the petition and ordered the respondents to submit their answer and show cause why a writ of preli-minary mandatory injunction should not be issued.

In their answer to the petition, the respondents claimed that the radio transmitter was seized "by virtue of a valid search warrant after it was clearly established x x x that the transmit-ter x x x was illegally constructed and installed without any previous permit;" that the seized transmitter "is powerful enough to transmit messages abroad;" that no misrepresentation was committed in securing the search warrant as "a criminal charge has already been filed against the petitioner with the Office of the City Fiscal for violation of Radio Station and Communications Law, docketed as I.S. No. 1689 and scheduled for hearing x x x on Jan-uary 31, 1963; and that the transmitter is subject to seizure as it is movable property."

The respondents further averred that although license 5931 expired on May 23, 1961, the renewal application was filed only on May 15, 1962, in violation of section 2 of Act 3846, as amended which provides that applications for renewal of radio licenses should be filed at least two months before the expiry dates of the licenses sought to be renewed; that mere payment of the corresponding renewal license fee does not in itself constitute a renewal of the radio station license; that the renewal license was withheld because the petitioner was using a transmitter "without any nameplate or serial number," different from the one authorized by the Radio Control Office which initially was an "UNELMANCO-BCT 500 S/N RCD-0503" and later authorized to be substituted by a "COLLINS T.M. 400 S/N RCD-0637;" that the use of the unauthorized transmitter is in gross violation of section 1-A of Act 3846, as amended; that the issuance of a license to operate a radio station involves the exercise of judgment and discretion; and that the only specific legal duty of the respondent Public Works Secretary is to hold a hearing in case he disapproves a license, pursuant to section 3(1) of Act 3846, as amended.

The respondents further maintained that the petitioner not having exhausted other available remedies in the ordinary course of law, namely, (1) a court action to quash the search warrant, and (2) an appeal to the respondent Secretary, the petition is prematurely filed.

The petitioner's rejoinder recited that when he filed the first application for renewal on April 12, 1961, the period fixed in license 5931 (May 23, 1961) had not yet expired; that it has been a long established and existing practice that once the renewal license fee is accepted, the acceptance is equivalent to a permit to continue operating during the pendency of the issuance of the renewal license until the disapproval of the application for renewal, which may take effect only after due notice and hearing; that if the transmitter "has no visible name plate, it was because the same was repainted to conform with good engineering practice, it being a secondhand surplus equipment;" that the search warrant is null and void ab initio, the respondents having admitted "the absence of any formal information against the petitioner before the filing of an application for a search warrant with the Court of First Instance of Manila;"[1] that the respondents' "refusal to renew x x x license for an unreasonable length of time is equivalent to a disapproval of the application itself and/ or revocation of the old license without due notice and hearing," in violation of section 3(1), supra, and section 17 of Department Order 11, series of 1950; that a petition for mandamus can be availed of even without exhausting available administrative remedies; and that in matters of this nature, this Court has concurrent jurisdiction with courts of first instance, pursuant to section 5 of Rule 67 of the new Rules of Court.

Acting on the manifestation filed by the petitioner on February 20, 1963, we issued a resolution on the following February 28, commanding the respondents to return the radio transmitter, upon the filing of a bond of P1,000.

Is the petitioner entitled to the reliefs prayed for?

Section 3 of Rule 65 of the new Rules of Court authorizes the issuance of a writ of mandamus when "any x x x person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no plain, speedy and adequate remedy in the ordinary course of law." It is essential, therefore, for a writ of mandamus to issue, that the plaintiff has a legal right to the thing demanded and that it is the imperative duty of the defendant to perform the act required.[2] The legal right of the plaintiff to the thing demanded must be well-defined, clear and certain.[3] The corresponding duty of the defendant to perform the required act must also be clear and specific.[4] Mandamus will not issue in doubtful cases, as it simply commands the exercise of a power already possessed or to perform a duty already imposed.[5] Mandamus will lie to compel action, or to remedy official inaction.[6]

Under section 3 of the Radio Control Law,[7] the Public Works Secretary[8] is empowered to regulate the establishment, use and operation of all radio stations and of all forms of radio communication and transmission within the Philippines, and to issue such rules and regulations as may be necessary for the proper implementation of the law.[9] In addition,

"(k) He is hereby empowered to approve or to disapprove any application for the construction, installation, establishment or operation of a radio station;

"(l) He may approve or disapprove any application for renewal of station or operator license: Provided, however, that no application for renewal shall be disapproved without giving the licensee a hearing;

"(m) He may, at his discretion, bring criminal actions against violators of the radio laws or the regulations and confiscate the radio apparatus in case of illegal operation; or simply suspend or revoke the offender's station or operator licenses, or refuse to renew such licenses; or just reprimand and warn the offenders."

The exercise of the above-enumerated specific powers and duties involves judgment and discretion on the part of the Secretary. Discretion,

"when applied to public functionaries, means a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others. A purely ministerial act or duty, in contradistinction to a discretionary act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, with out regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretion-ary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment." [10]

Under section 9 of the Radio Control Law, the Public Works Secretary is authorized "to create a Radio Regulation Section, Division or Office which shall take charge of carrying out the provisions of this Act and of the regulations prescribed by him, or to delegate temporarily the duties herein conferred upon him and the enforcement of the regulations prescribed by him, to any bureau or office under his department, subject to his general supervision and control."

1. In the case at bar, the respondents Secretary and Chief of the Radio Control Office patently neglected the discharge of the duty, under Section 3(1), supra, to "approve or disapprove" the petitioner's applications for renewal of the radio license. On April 12, 1961 the latter filed the first application for renewal of license 5931, and paid the corresponding license fee of P50. The Radio Control Office which is directly under the "supervision and control" of the Public Works Secretary took no action on this application. On May 31, 1962 the petitioner filed another application for renewal of his radio license and paid the corresponding renewal license fee. No action was likewise taken on this one. And despite the continued operation of the radio station since May 23, 1961, the date license 5931 expired, there was no interference whatsoever from the office of the respondent Secretary and the Radio Control Office. In point of fact, such continued operation was officially tolerated, as can be gleaned from the letter dated December 7, 1962 sent by the Chief of the Radio Control Office to the petitioner, at the behest of the respondent Secretary, requesting the licensee "to feature the many newly recorded Philippine Christmas songs," as a special public feature in the radio programs of station DZQR.

The respondents maintain, however, that the petitioner is not entitled to the renewal of his license, because the first renewal application was filed only on April 12, 1961, 41 days more or less before license 5931 expired (on May 23, 1961), and the second renewal application was filed only on May 31, 1962, 8 days more or less after the period supposedly covered by the first application for renewal was to expire (on May 23, 1962), in violation of section 2 of Act 3846, as amended, which requires that "if a renewal is desired, the licensee shall submit application x x x at least two months before the expiration date of the license to be renewed."

We see no obstacle to the application to the case at bar of our ruling in *Bolinao Electronics Corporation et al. vs. Valencia, et al.* [11] There this Court made the following pronouncements:

"But the only reason relied upon by the res-pondents to be the ground for the disapproval of the applications, is the alleged late filing of the petitions for renewal. The notices sent to petitioners x x x alleged only one supposed violation which would justify disapproval. But petitioners claim that this violation has ceased to exist when the act of late filing was condoned or pardoned by respon-dents by the issuance of the circular dated July 24, 1962, which in its pertinent part, reads:

"CIRCULAR TO:

ALL RADIO STATIONS, RADIO DEALERS, MANUFACTURERS AND RADIO TRAINING SCHOOLS

'It has come to the attention of this Office that a great number of radio station operators have been conducting their operations resorting to practices which are in violation of existing radio laws and regulations, such as:

xx xx xx

'6. Late submission of applications for new and renewal licenses.

'It is now the intention of this Office to correct whatever laxity which in the past has encouraged this illegal practice, to strictly enforce the radio regulations and to take drastic action against violators of these regulations.

'You are, therefore, requested to examine closely your operating practices, permits and licenses and take remedial measures as soon as possible but not later than August 10, 1962.

"(SGD.) ROBERTO M. SAN ANDRES

Radio Regulation Chief'

"It seems clear that the foregoing circular sustains petitioners' contention that the previous non-observance by station operators of radio laws and regulations of the Radio Control Office regarding filing of petitions for renewal, among others, was condoned if the necessary steps were taken to correct their records and practices before August 10, 1962. It is not denied that herein subject applications for renewal were all made before said date, or even before the issuance of the circular itself on July 24, 1962. The lone reason given for the in-vestigation of petitioners' applications, i.e., late filing thereof, is therefore no longer tenable. The violation, in legal effect, ceased to exist and, hence, there is no reason nor need for the present investigation. The *raison d'etre* for it has disappeared. Its continuation will serve no useful pur-pose in contemplation of the law authorizing inves-tigations in connection with applications for renewal of permit."

2. The respondents further maintain that in the operation of radio station DZQR, the petitioner was using a transmitter different from the authorized one; that the authorized transmitter was an "UNELMANCO-BCT 500 S/N RCD-0503" which, upon prior approval of the Radio Control Office, was later changed to a "COLLINS T. M. 400 S/N RCD-0637;" that the transmitter which was seized on January 11, 1963 was "without any name plate or serial number," in gross violation of section 1-A of Act 3846, as amended, providing that "no person x x x shall possess or own a radio transmitter x x x without registering the same with the Secretary of Commerce and Industry, x x x and no person x x x shall construct x x x radio transmitter x x x without a permit issued by the Secretary of Commerce and Industry;" " and that in the exercise of his discretionary power under section 3(m), *supra*, the respondent Secretary filed a criminal action against the petitioner for such violation with the City of Manila, docketed as I.S. No. 1689; and that the radio transmitter was seized on the strength of a search warrant issued by the Court of First Instance of Manila.

We resolved this issue in our resolution of February 28, 1963, by virtue of which we granted the writ of preliminary mandatory injunction commanding the respondents to return to the petitioner the radio transmitter. We said in that resolution that

"The fact that petitioner had been allowed to operate his radio station for so long practically without any interference on the part of the Radio Control Office would seem to support his contention.

"True, a memorandum submitted on March 29, 1962, by Eliodoro B. Jose, Head, Project No. 2, to the Chief, Radio Control Division, is to the effect that, in a previous report made by him, he had stated that when he inspected petitioner's station then located at the Capitol Technical Institute Building, he was shown a permit for the transfer of the station from Globe Theater Building to the Capitol Technical Institute Building; that the transmitter then being used was not the same for which the permit to transfer was issued; that he advised petitioner to apply for the corresponding permit to purchase, possess, or construct the transmitter so that a license may be issued for the new station; but the same report shows that Mr. Jose had recommended that a

license be issued to petitioner upon the filing of the corresponding application; that the non-closure of radio station DZQR, in spite of an order given to Mr. Jose to have it closed was explained by him in another memorandum of March 26, 1962, this being the reason presumably - why the station continued to operate without any interference on the part of the Radio Control Office. This report or memorandum, itself shows that, aside from the claim that the radio transmitter used at the time by petitioner was not the one he was authorized to use, the same was not objectionable in any other respect; that its use was known and was - to a certain extent - tolerated by the Radio Control Office."

The use of the radio transmitter by the petitioner having been "known and - to a certain extent - tolerated" by the Radio Control Office; "the violation in legal effect, ceased to exist."

No validity can be accorded to the respondents' assertion that, in seizing the transmitter, the respondent Secretary was merely exercising his confiscatory power under section 3(m), *supra*. This Court in no certain terms declared in its resolution of February 28, 1963 that the seizure, though made under authority of a search warrant, cannot obliterate the fact that such seizure violated section 3(1), *supra*, which provides that "no application for renewal shall be disapproved without giving the licensee a hearing, " and section 17 of Department Order 11 which provides that no "radio station license may be revoked for willful violations of the radio laws and regulations, local or international x x x without giving the licensee a hearing;" that the application for issuance of the search warrant and the ultimate seizure of the radio transmitter in effect amounted to an attempt to evade the requirement of such hearing; and that the seizure effected made it impossible for the radio station to continue operating.

The requirement of a hearing as provided by the Radio Control Law and the rules and regulations promulgated thereunder, is founded on the fundamental principle that no person shall be deprived of his property without due process of law. A franchise, like the one granted by R.A. 1553 to the petitioner, is property entitled to constitutional protection.[12] A "radio license is an operating authority of importance involving primarily the interest of the public,"[13] and "valuable rights and investments made in reliance on a license x x x should not be destroyed x x x except for the most compelling reasons." [14]

3. The respondents finally maintain that the present petition is premature because the petitioner failed to exhaust available remedies on the administrative level. This contention is without merit. There is no statute providing for an appeal from an action taken by the Radio Control Office to the Secretary of Public Works and Communications. And if an appeal there be to the respondent Secretary, by virtue of the latter's power of general supervision and control" over the Radio Control Office,[15] this remedy is not such "adequate remedy in the ordinary course of law" as would bar the present action for mandamus, for the acts committed by the respondents are "patently illegal,"[16] having been performed in violation of the Radio Control Law and the rules and regulations promulgated thereunder, and the immediate return of the transmitter demanded "urgency of judicial intervention"[17] as its seizure completely immobilized the radio station DZQR and prevented the petitioner from complying with his contractual commitments.

4. On the matter of the *ex parte* motion of the petitioner that the respondents be cited for contempt, we fully concur in the finding of our then 1st Deputy Clerk of Court & Reporter, contained in his report of January 18, 1964, that although the conduct of the respondents in "not faithfully" complying with the terms of the writ of preliminary mandatory injunction issued by this Court on March 4, 1963, constitutes "reckless imprudence," such conduct "may not be as grave as contempt as it would had they actually refused to return the transmitter."

ACCORDINGLY, the writ of preliminary mandatory injunction issued on March 4, 1963 is made permanent. Although there was clear official neglect and unwarranted inaction on the part of the respondents in the matter of the issuance of the renewal licenses applied for in the first and second renewal applications, the periods covered by the said applications have long expired. The pertinent relief prayed for is now a matter that is obviously moot

and academic. No pronouncement as to costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Capistrano, JJ., concur.

Reyes, J.B.L., J., concurs in separate opinion.

[1] The initiation of a criminal prosecution is not essential for the issuance of a search warrant. (Philips vs. Municipal Mayor and Chief of Police of Caloocan, L-9183, May 30, 1959).

[2] Gonzales vs. Board of Pharmacy, 20 Phil. 367, 375.

[3] Villamor, et al. vs. Lacson, et al., L-15845, Nov. 28, 1964.

[4] Llanto vs. Mohamad Ali Dimaporo, et al., L-21905, March 31, 1966.

[5] Alzate, etc. vs. Aldana, etc., et al., L-18085, May 31, 1963 and cases cited therein.

[6] Gonzales vs. Board of Pharmacy, supra; Guanio vs. Fernandez, 55 Phil. 814, 821; Sanson vs. Barrios, 63 Phil. 198, 204; Hipolito vs. The City of Manila, et al., 87 Phil. 180; Gocheco Brothers, Inc. vs. Ycasiano, et al., L-5999, March 20, 1954; Alzate vs. Aldana, etc., et al., supra; Bernabe vs. Bolinao, et al., L-22000, Nov. 29, 1966.

[7] Act 3846, as amended by Commonwealth Acts 365 and 571, and further amended by R.A. 584.

[8] The Secretary of Commerce and Industry was replaced by the Secretary of Public Works and Communications, pursuant to section 20 of Executive Order 392 and section 2 of Department Order 89.

[9] On January 1, 1951 the Public Works Secretary promulgated Department Order 11, series of 1950, which took effect on January 1, 1951. This Department Order is entitled "General Rules and Regulations governing the construction, installation, establishment or operation of radio stations and the possession or ownership, construction or manufacture, purchase, sale and transfer of transmitters or transceivers in the Philippines."

[10] Sanson vs. Barrios, supra.

[11] L-20740, June 30, 1964.

[12] 2 Tañada & Carreon, Political Law of the Philippines, 1962 ed., p. 30, citing Terrace vs. Thompson, 263 U. S. 197; Campbell vs. Holt, 115 U.S. 620.

[13] Ranger vs. Federal Commun. Com. [1961], 42 PUR 3d, 297 F2d 782.

[14] Churchill Tabernacle vs. Federal Commun. Com. [1947], 69 PUR NS 185, 81 US App DC 411, 160 F2d 255.

[15] Sec. 8, Act 3846, as amended.

[16] Gonzales vs. Hechanova, etc., et al., L-21897, Oct. 22, 1963, and cases cited therein; Abaya vs. Villegas, et al., L-25641, Dec. 17, 1966 and cases cited therein.

[17] Gonzales vs. Hechanova, etc., et al., supra.

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CONCURRING OPINION

REYES, J. B.L., J.:

I fully concur with the opinion of Mr. Justice Castro, but would like to express emphatic condemnation of the practice followed by the Radio Control Office of indefinitely and unreasonably delaying action upon radio license applications. I view official conduct of the type described in the main opinion not as a mere instance of official indolence, but as a subtle attempt to impose absolute radio censorship, and to silence at will radio stations which allow airing of views critical of the powers that be. We should be ever alert to such indirect subversion of the constitutional liberties of speech and of the press.

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