

ELISEO B. LEMI, PETITIONER VS. BRIGIDO VALENCIA, ET AL., RESPONDENTS

G.R. No. L-20768. February 28, 1963

Ponente: DIZON, J.

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DIZON, J.:

On January 11, 1963, upon application of respondent Alfredo M. Cargo, supported by a sworn statement subscribed by his co-respondent, Heraclio San Juan, the Court of First Instance of Manila issued a Search Warrant authorizing them to search radio station DZQR located at 603 Ronquillo St. Sta. Cruz, Manila, and to seize and take possession of the radio transmitter used thereat, allegedly in violation of law. On that same date and in the middle of a broadcasting program, they accompanied by agents of the Presidential Anti-Graft Committee (PAGCOM) served the search warrant, made the corresponding search, and seize the transmitter then being used at the aforesaid station.

Subsequently, Eliseo B. Lemi filed with Us a special civil action of mandamus, with a petition for the issuance of a preliminary mandatory injunction against Brigido Valencia, Secretary of Public Works and Communications; Roberto M. San Andres, Chief, Radio Control Office; Alfredo M. Cargo, Agent of the abovenamed secretary; Heraclio San Juan, Radio Regulations Inspector, Radio Control office; and Conrado Cajator, Chairman, Presidential Anti-Graft Committee.

After respondents had been summoned and required to show cause why the preliminary mandatory injunction prayed for should not be issued, a hearing thereon was held, and the matter is now before US for resolution.

It appears that by virtue of Republic Act No. 1553 petitioner is the holder, of a franchise authorizing him to construct, install maintain, and operate radio stations in the Philippines. On January 8, 1960, he was issued a license by the Radio Control Office, Department of Public Works and communications, to construct, maintain, and operate radio station DZQR, with an assigned frequency of 740 kc, at 603 Ronquillo St. City of Manila, which location was, with approval of the authorities concerned, subsequently transferred to Globe Theater Bldg., corner of Raon st. and Quezon Boulevard, Manila, and again, with proper authority, returned to its original location where the search mentioned heretofore was made.

The first license (No. 5931) issued to petitioner on January 8, 1960 was for the period from May 24, 1960 to May 23, 1961. On April 12, 1961, he filed an application for its renewal to cover the period from May 24, 1961 to May 23, 1962, and paid the corresponding fees. Although the Radio Control Office appears not to have acted at all on this application, petitioner continued to operate his station without any interference whatsoever from said office, this giving rise, naturally, to the presumption that it had no objection to the continued operation of said station. On May 31, 1962, petitioner filed a second application for renewal to cover the period from May 24, 1962 to May 23, 1963 and paid the corresponding fees. Again the Radio Control Office took no action on the matter, one way or the other, thus inducing petitioner to believe that there was nothing irregular or wrong with his application and with the continued operation of his station. In fact, as late as December 7, 1962, respondent San Andres, on behalf

of his co-respondent, the Secretary of Public Works and Communications, requested petitioner to feature some matters in his radio broadcasts as a public service feature. Up to the time of the hearing on the motion for the issuance of a preliminary mandatory injunction, there had been no hearing held on the question of whether petitioner's last application for renewal should be approved or disapproved.

Respondents admit petitioner's authority to operate the radio station mentioned heretofore but claim that in the operation thereof he had, in violation of law, used a transmitter different from the one he was authorized to use for the purpose; that the transmitter petitioner was authorized to use was UNELMANCO BCT 500 S/N RCD 0503 which, with the approval of the Radio Control Office, was later changed to COLLINS T.M. 400 S/N RCD 0637, while the transmitter used by him and seized under the search warrant already mentioned was one without any name plate or serial number.

Petitioner denies the above allegations of the respondents and claim that the seized radio transmitter was the COLLINS transmitter which the Radio Control Office had authorized it to use instead of the original UNELMANCO transmitter; that if it appeared not to have any visible name plate or serial number, it was due to the fact that, it being a mere second hand surplus equipment, it had to be repainted.

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.

That because of the seizure of the radio transmitter petitioner's station can not continue broadcasting is undeniable. In fact, by reason of the seizure effected in the middle of a broadcasting program, the latter had to be discontinued. It can not be denied, therefore, that, in practical effect, the seizure amounted to a closure of the station and/or disapproval of petitioner's application for the renewal of his license.

Section 3 of the Radio Control Act provides that no application for the renewal of station or operator license shall be disapproved without giving the licensee a hearing. This legal provision was implemented by Department Order No. 11, series of 1950, Section 17 which provides, inter alia, that a radio station license may also be revoked for violations of the radio laws and regulations, local or international, provided, however, that no such license shall be revoked without giving the licensee a hearing.

While, as already stated, petitioner's last application for renewal of license has not been disapproved, we believe that the requirement of a hearing applies not only if a radio license is to be revoked, but also before the Radio Control Office may lawfully do anything that, for all practical purposes, would amount to such revocation because it makes it impossible for the radio station concerned to continue broadcasting. This, precisely, is the situation

obtaining in the present case.

But respondents claim that the seizure of petitioner's transmitter was effected lawfully because it was done pursuant to a search warrant issued by the Court of First Instance of Manila. We perceive no force and validity in this argument. That the seizure was made under authority of a search warrant can not obliterate the fact that such seizure was made in violation of the law requiring a previous hearing. The application for the issuance of the warrant amounted, in effect to an effort to evade the law requiring said hearing.

While courts should exercise great care in granting preliminary mandatory injunction because the writ operates not merely to preserve the status quo between the parties but to compel one of them to perform a positive act; nevertheless, we held in *Meralco vs. Del Rosario* 22 Phil. p. 433, that in cases of extreme urgency; where petitioner's right to the writ is clear: where considerations of relative inconvenience are strongly in his favor; where there appears to be a willful invasion of petitioner's right the injury inflicted upon him being a continuing one; and where the effect of the mandatory injunction would not be to create a new relation between the parties but solely to re-establish a pre-existing relation between them recently and arbitrarily interrupted by the respondent, courts should not hesitate in granting the writ. Considering the facts obtaining in the present case, particularly the circumstance that petitioner's inability to continue broadcasting through his radio station affects his contractual relations with third parties, we find it justified to grant the preliminary writ of mandatory injunction prayed for.

Wherefore, upon the filing by petitioner and approval by this Court of a bond, in the sum of P1,000.00, let the writ of preliminary mandatory injunction prayed for be issued commanding respondents to return to petitioner the radio transmitter mentioned in the latter's verified petition.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Regala and Makalintal, JJ., concur.

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