

CRUSADERS BROADCASTING SYSTEM, INC., PETITIONER, VS. NATIONAL TELECOMMUNICATIONS COMMISSION AND COURT OF APPEALS, RESPONDENTS.

G.R. No. 139583. May 31, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a petition for review under Rule 45 of the Rules of Court seeking to nullify the Decision[1] of the Court of Appeals which affirmed the decision of the National Telecommunications Commission (NTC, for brevity) denying petitioner's request for renewal of its temporary permit to operate DWCD-FM, and recalling its assigned frequency.

Undisputed are the pertinent facts, to wit:

The petitioner, Crusaders Broadcasting System, Inc. (Crusaders, for short), was the grantee of Temporary Permit No. BSD-0459-92 to operate 10-KW DWCD-FM at a frequency of 97.9 Mhz.

On July 12, 1994, Mr. Cesar A. Dumlao, Chairman of Crusaders, sent to the Commission a letter (Exh. "A") requesting permission to stop the broadcast of DWCD-FM for around a month starting July 12, 1994, so as to renovate its 20-year old Broadcast Booth and the entire facilities of the station.

Subsequently, upon application of Crusaders, NTC renewed Temporary Permit No. BSD-0814-94, dated December 14, 1994, covering the period from January 1, 1995 to December 31, 1996. Again, on December 12, 1996, Crusaders applied for another renewal of its Temporary Permit.

Acting on subject application, the NTC caused the inspection of the radio station of Crusaders and per report of NTC-National Capital Region, which conducted such ocular inspection on February 21, 1997, the station of Crusaders was inoperative. Acting upon such finding, the Broadcast Service Division of the NTC recommended the cancellation and revocation of the permit of Crusaders and the recall of its frequency 97.9 Mhz.

Thus, on April 25, 1997 the Commission wrote Chairman Cesar A. Dumlao of Crusaders, informing the latter of the denial of his application for the renewal of Crusaders' Temporary Permit.

Crusaders presented a motion for reconsideration, thru its counsel, Atty. Felino Ganal, explaining that Crusaders was not able to resume its operations because of the institution of Civil Case No. 64739 before the Regional Trial Court of Pasig, Branch 163, by Conamor Broadcasting Corporation (Conamor, for brevity), against Crusaders Broadcasting System, Inc. and of the issuance of an order of injunction by the said Court enjoining Crusaders from operating its radio station.

On July 14, 1997, the Commission issued a show-cause Order directing Crusaders to explain: (1) Why its application for renewal of Temporary Permit for station DWCD-FM should not be denied; (2) Why its station, DWCD-FM, should not be ordered closed; and (3) Why its station DWCD-FM assigned frequency should not be

recalled.

On August 5, 1997, Atty. Felino Ganal filed an "Urgent Motion For Extension" for the filing of Crusaders' answer/explanation. Such motion was followed by a second "Urgent Motion For Extension", dated August 15, 1997, and a third motion for extension, dated August 22, 1997.

On August 28, 1997, for failure of Crusaders to submit a responsive pleading, the Commission issued an order declaring Crusaders in default, and, thereafter, handed down its decision recalling the assigned frequency of Crusaders.

The following day, or on February 29, 1997, to be precise, Atty. Ganal filed an Answer, averring that the show-cause order was served upon him and not upon his client Crusaders and therefore, it was only upon the filing of its answer that Crusaders should be deemed to have voluntarily submitted itself to the jurisdiction of the Commission. It was further alleged that Crusaders is a grantee of a congressional franchise (RA No. 8091) but it could not yet resume its operation because its transmitter was taken by Conamor by virtue of an order of injunction issued by the Regional Trial Court of Pasig City in Civil Case No. 64739; that it has already applied with Commission for authority to acquire an additional transmitter; that the said injunction was already lifted and set aside by the same trial court, in an Order dated August 27, 1997; that it has mobilized its resources towards the operation of its radio station and that it has, in fact, made a test broadcast.

On September 22, 1997, Crusaders filed an "urgent Motion for New Trial and/or Reconsideration" praying for the lifting of the order of default, setting aside of the decision, and for the reopening of the case.

After hearing, the Commission granted the motion for new trial and/or reconsideration and declared the case reopened for reception of evidence by Crusaders in order to afford it ample opportunity to be heard and to substantiate its defense as regards the show-cause order issued by the Commission. The initial evidence presented in support of the motion for new trial and/or reconsideration was later adopted as Crusaders evidence in the main case.

Then, the Commission came out with its assailed decision, disposing thus:

"WHEREFORE, in light of all the foregoing, the Commission believes and so holds that respondent's request for renewal of its temporary permit to operate DWCD-FM should be, as it is, hereby DENIED.

Consequently, respondent's assigned frequency, 97.9 Mhz, is hereby withdrawn and recalled, the same to be assigned without reasonable delay to the best qualified applicant.

SO ORDERED."[2]

Crusaders' next step was to go to the Court of Appeals, which dismissed its petition for lack of merit.

Undaunted, Crusaders found its way to this Court via the present petition for review.

It is petitioner's submission that the NTC committed a grave reversible error in considering as untenable the temporary stoppage of Crusaders' broadcast. Petitioner insists that were it not for the order of injunction issued by the Regional Trial Court of Pasig City, which prohibited it from broadcasting, and caused the seizure of its transmitter, antenna, and other equipment, its station could have resumed operations.

Petitioner contends further that had the NTC approved its application, dated December 12, 1995, for the acquisition of a new transmitter, it could have re-started to operate DWCD-FM despite the Court's injunction order. In short, petitioner maintains that its failure to operate is not unjustified because the stoppage of its broadcasting was not due to its own fault or negligence.

It is likewise petitioner's stance that the Court of Appeals erred:

1. In upholding the finding of NTC that the "Programming and Marketing Agreement" with Conamor Broadcasting Corporation "to be one for a joint venture, which is a flagrant violation of Radio laws in that it would allow a non-franchise grantee to operate a public utility;"
2. In finding, in general terms, that "the findings of the respondent NTC are supported by substantial evidence and, therefore, should be "accorded respect and finality"; and
3. In upholding the NTC decision under the so-called "doctrine of primary jurisdiction."

Crusaders likewise assigned some substantive and procedural errors on the part of the NTC but the same were affirmed by the Court of Appeals.

Petitioner theorizes that the Court of Appeals gravely erred in affirming the decision of NTC, which denied the renewal of its temporary permit to operate DWCD-FM and caused the withdrawal of its assigned frequency.

On the other hand, respondent NTC, through the Office of Solicitor General (OSG), countered that the NTC was justified in denying petitioner's application for renewal of temporary permit and in recalling its assigned frequency. Anent the issue of the shifting of burden of proof, it alleges that the show-cause order dated July 14, 1997 was based on the inspection reports, dated February 21, 1997 and July 11, 1997, respectively, which indicated that petitioner failed to rehabilitate its broadcast booth and other facilities. Consequently, the burden of proof shifted to the petitioner.

Respondent also contends that subject inspection reports need not be authenticated and identified by competent witnesses, the same being public documents; citing Section 23, Rule 132 of the Rules of Court, which provides that "Documents consisting of entries in public records made in the performance of a duty by a public officer are prima facie evidence of the facts therein stated."

Indeed, it appears decisively clear that the assailed NTC decision is anchored on substantial evidence.

The issue at bar may be encapsulated thus: Whether or not the NTC properly denied the application for renewal of Crusaders' temporary permit to operate DWCD-FM, and validly ordered the withdrawal of the latter's assigned frequency.

Section 1 of Act No. 3846[3] reads:

Section 1. No person, firm, company, association or corporation shall construct, install, establish, or operate a radio transmitting station, or a radio receiving station used for commercial purposes, or a radio broadcasting station, without having first obtained a franchise therefore from the Congress of the Philippines: xxx

While Section 3 of the same Act provides:

Section 3. The Secretary of Public Works and Communications is hereby empowered, to regulate the construction or manufacture, possession, control, sale and transfer of radio transmitters or transceivers (combination transmitter-receiver) and the establishment, use, the operation of all radio stations and of all form of radio communications and transmissions within the Philippines. In addition to the above he shall have the following specific powers and duties:

- (1) 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.

xxx.

It should be noted that by virtue of Executive Order (E.O) No. 546, creating the Ministry of Public Works and Ministry of Transportation and Communications, the regulation of radio communications is a function assigned

to, and being performed by, the NTC.

Petitioner does not deny and in fact, uses it as the reason for the stoppage of its broadcast that it was the filing of the aforementioned civil case against it (petitioner) which grounded DWCD-FM's broadcasting. It is not disputed, either, that what prompted Conamor to bring a complaint against petitioner was the latter's rescission of a "Programming and Marketing Agreement", which gave Conamor the following rights and privileges akin to those of an owner, among others, to wit:

- (a) The sole discretion to determine and implement whatever programs are deemed suitable to make the station competitive;
- (b) The full discretion to change the station call letters, name, slogan or tagline and such other services that bear upon the station's identity to improve the station's market position;
- (c) The acquisition, at its expense, of a new transmitter, studio, broadcast equipment recording booth, including cost of construction; and
- (d) A share in the net profit at the rate of 65%, leaving only 35% to respondent, when the new facilities of Conamor became operational. (Exhibits "E-2" and "E-2-a")

It is uncontested as well, that under the said Agreement, Conamor was free from any claim arising from employer-employee relationship.

In order to settle the civil case, Crusaders and Conamor later entered into a "Compromise Agreement" which superseded the programming and marketing agreement. The Court approved compromise containing the following conditions:

- "1. Upon execution hereof, the parties hereby agree to jointly operate DWCD-FM at its original office and Broadcasting Station at No. 209 Dela Paz Street, Mandaluyong City, Metro Manila;
- 2. The parties shall equally share in the expenses as well as in the profits or losses, as the case may be, while they are jointly operating the radio station;
- 3. The plaintiff shall immediately return the radio station's official transmitter, antenna system and other available equipment of DWCD-FM from the Strata 200 Building, Emerald Avenue, Pasig City, Metro Manila to the above Mandaluyong City office of defendant;
- 4. The parties further agree that in the event the subject DWCD-FM would be sold or assigned to a third part, the written consent of the plaintiff shall be indispensably necessary to give effect and validity to any such sale, assignment or disposition of the said radio station;
- 5. In case of sale, assignment or any disposition of the subject radio station to any third party, 78.94% of the proceeds thereof shall go to the defendant (3.57% of which shall be paid to Atty. Felino Ganal a s (sic) his attorney's fees) while the remaining 21.06% shall belong to the plaintiff." (Exhibit "J")

The said compromise agreement speaks for itself. Conamor has been given the right to operate and manage a radio station despite the clear mandate of the Radio Law that only holders of a legislative franchise can do so. Even on this ground alone, Crusaders can be prevented by the NTC from broadcasting. That the said ground was not reflected in the show-cause order does not mean that the same cannot be raised thereafter by the NTC, as it has done in the present case, when it gleaned a basis therefor during the administrative proceedings, from the evidence presented by the petitioner itself the substance of the agreement between petitioner and Conamor. The said findings were not rebutted by petitioner which kept on harping only on the alleged unfairness of NTC in the application of its procedures as well as on the existence of the said civil case against it and on the refusal of NTC

to approve its application for the acquisition of a new transmitter.

On the matter of factual findings by the NTC as to the inoperativeness of subject radio station, the Court agrees with the Court of Appeals that the said findings are supported by substantial evidence. Substantial evidence is such relevant evidence which a reasonable mind might accept as adequate to support a conclusion. As aptly stressed upon and ratiocinated by the Court of Appeals:

"In the main, therefore, the findings of the respondent NTC are supported by substantial evidence. As to whether or not it should have adopted a policy of leniency is a matter that is addressed solely to its discretion.

As in the case of other administrative agencies, the technical matters involved are entrusted to NTC's expertise. In the matter of issuance of licenses to operate radio stations, it is in a better position than the courts to determine to whom such privilege should be granted in order that public interest will be served. As long as its decisions are supported by substantial evidence, they are entitled to respect from the courts.

The National Telecommunications Commission (NTC) numbers among those administrative agencies discharging specialized functions, in this case, the regulation of the nation's airwaves. As in the case of other administrative tribunals, its findings of fact will be accorded respect, and on occasion, even finality, by reason of their acquired expertise on specific matters within their particular jurisdiction. (*Bataan Shipyard and Engineering Corporation v. National Labor Relations Commission*, 269 SCRA 199 [1997]; *Malonzo v. Commission on Elections*, 269 SCRA 380 [1987] (sic); *Naguiat v. National Labor Relations Commission*, 269 SCRA 564 [1997]). The only requirement is that its decisions must be supported by substantial evidence, which need be neither overwhelming nor preponderant (*Manila Central Line Corporation v. Manila Central Line Free Workers Union-National Federation of Labor*, 290 SCRA 690 [1998])."[4]

Neither can the Court find merit in the submission by petitioner that the stoppage of its broadcast would not have happened were it not for the case for injunction filed against it. In the first place, the said case could not have been instituted had petitioner not entered into a programming and marketing agreement with Conamor. What is more, it does not dispute the finding of NTC that it (petitioner) could have resumed broadcasting had it complied with the Order of RTC-Pasig to observe the formal requirements for a motion to lift the order of injunction on the basis of a counterbond. Such a simple step petitioner failed to take, and its failure to put up a counterbond engendered the stoppage of its operations for three years and rendered the stoppage of its operation justified.

The Court upholds the primary jurisdiction exercised by the NTC and quotes with approval the following opinion of the Court of Appeals, to wit:

"Moreover, the doctrine of primary jurisdiction prevents this Court from "arrogating unto itself" the authority to resolve a controversy which falls under the jurisdiction of a tribunal possessed of a special competence. (*Paat v. Court of Appeals*, 266 SCRA 167 [1997]). As held in *Villaflor v. Court of Appeals*, 280 SCRA 297 [1997, which reiterates the rulings in *Ismael, Jr. and Co. v. Deputy Executive Secretary*, 90 SCRA 673 [1990] and *Concerned Officials of MWSS v. Vasquez*, 240 SCRA 502 [1995]:

'Courts cannot and will not resolve a controversy involving a question which is within the jurisdiction of an administrative tribunal, especially where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services to determine technical and intricate matters of fact.'"[5]

WHEREFORE, the assailed decision of the Court of Appeals is **AFFIRMED** and the petition for review under consideration is **DENIED** for lack of merit. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, and Gonzaga-Reyes, JJ., concur.

Panganiban, J., on leave.

[1] Penned by Associate Justice H. L. Hofileña, and concurred in by Associate Justices R. Reyes and O. Amin.

[2] Rollo, p. 260.

[3] An Act Providing for the Regulation of Public and Radio Communications in the Philippines and for Other Purposes.

[4] Rollo, p. 380.

[5] Rollo, p. 381.

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