

BOLINAO ELECTRONICS CORPORATION, CHRONICLE BROADCASTING NETWORK, INC., AND MONSERRAT BROADCASTING SYSTEM, INC., PETITIONERS, VS. BRIGIDO VALENCIA, SECRETARY OF THE DEPARTMENT OF...

G.R. No. 20740. June 30, 1964

Ponente: BARRERA, J.

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BARRERA, J.:

This is an original petition for prohibition, mandatory injunction with preliminary injunction filed by the Bolinao Electronics Corporation, Chronicle Broadcasting Network, Inc., and Monserrat Broadcasting System, Inc., owners and operators of radio and television stations enumerated therein, against respondents Secretary of Public Works and Communications and Acting Chief of the Radio Control Division. Later the Republic of the Philippines, as operator of the Philippine Broadcasting Service, sought and was allowed to intervene in this case, said intervenor having been granted a construction permit to install and operate a television station in Manila.

From the various pleadings presented by the parties including their written memoranda as well as the oral arguments adduced during the hearing of this case, the issues presented to the Court for resolution are: (1) whether the investigation being conducted by respondents, in connection with petitioners' applications for renewal of their station licenses, has any legal basis; (2) whether or not there was abandonment or renunciation by the Chronicle Broadcasting Network (CBN) of Channel 9 in favor of PBS; and (3) whether or not Philippine Broadcasting Service can legally operate Channel 9 and is entitled to damages, for CBN's refusal to give up operations thereof.

Section 3 of Act 3846, as amended by Republic Act 584, on the powers and duties of the Secretary of Public Works and Communications (formerly Commerce and Communications), provides:

"Sec. 3:

"(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." "

It is in the exercise of this power that the respondents allegedly are now conducting the investigation in connection with the petitions for renewal.

The notices of hearing, sent by respondents to petitioners, in connection with the applications involved herein, are uniformly worded, thus:

"(Name of station operator)

(Address)

Gentleman:

This has reference to your application for renewal of your radio station license No..... authorizing you to operate (Name of station) a (broadcast or TV) station, which expired on (Expiration date of previous license).

It is noted that said application was received in this Office on (Date of receipt of application) or (length of period of delay.) month after said license has expired which is a clear violation of Sections 12 and 14 of Department Order No. 11, which is hereunder quoted;

'Sec. 12.—License Required for Operation of Transmitter, Transceiver, or Station.—No radio transmitter or radio station shall be operated without first obtaining from the Secretary of Public Works & Communications a radio station license.

'Sec. 14.—When to Apply for Renewal—It renewal of a station license is desired, the licensee shall submit an application to the Secretary of Public Works and Communications two (2) months before the expiration date of the license to be renewed. Application should be made on prescribed forms furnished for I the purpose.'

"Please take notice that on January 28, 1963, at 9:00 a.m., the matter will be heard before the duty authorized representative of the Secretary of Public Works and Communications, at the Conference Room, Office of the Secretary, Third Floor, Post Office Building, Plaza Lawton, Manila (Commonwealth Act No. 3846, Sec. 3, subsection h). Your failure to appear at the said hearing will be construed as a waiver on your part to be heard and this Office shall forthwith act on said application in accordance with existing Radio Laws, Rules and Regulations.

"Very truly yours,

"s/ Jose L. Lachica

"t/ Jose L. Lachica

"Acting Undersecretary"

Also, passing upon petitioners' motion for dismissal of the aforementioned investigation conducted by respondents, it was ruled, thus:

"The present hearing, as the notices quoted above show, is precisely the hearing required by Section 3(1) of Act 3846, as amended. It is an indispensable step in the processing of application of license, when and if summary approval, for one reason or another, real or fancied, could not be given as in the instant case. Certainly, the respondents (movants) themselves would be the first ones to raise their voice of protest, if their application for renewal were to be summarily disapproved, without benefit of any hearing." (Italics supplied.)

Clearly, the intention of the investigation is to find out whether there is ground to disapprove the applications for renewal. But the only reason relied upon by the respondents 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 (which in effect take the place of a complaint in civil or administrative cases or an information in a criminal action) 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 respondents 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 laws and regulations, such as:

X X X

"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 practices, 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

"Approved:

(Sgd.) M. V. Feliciano

Undersecretary"

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 investigation of petitioners' application, 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'être* for it has disappeared. Its continuation will serve no useful purpose in contemplation of the law authorizing investigations in connection with applications for renewal of permit.

Respondents' claim that they have no authority to condone or pardon violations of the radio control regulations cannot be upheld: Firstly, by specific provision of law,[1] the respondent Department Secretary is given the discretion either to "bring criminal action 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 cited circular specifically approved by the Undersecretary of Public Works and Communications (who has not been shown to have acted beyond his powers as such in representation of the Secretary of the Department) warning the offenders, is an act authorized under the law. Secondly, the circular having been issued by respondents themselves, the latter can not now claim its illegality to evade the effect of its enforcement.

The next issue is whether there was abandonment or renunciation by petitioner CBN of its right to operate on Sec. 3(m), Act 3846, as amended by Rep. Act 584. Channel 9. It is admitted that there was no express agreement to this effect. The only basis of the contention of the respondents that there was such renunciation is the statement "Channel 10 assigned in lieu of Channel 9", appearing in the construction permit to transfer television station DZXL-TV from Quezon City to Baguio City, issued to petitioner. This statement alone, however, does not establish any agreement between the radio control authority and the station operator, on the switch or change of operations of CBN from Channel 9 to Channel 10. As explained by petitioner, it was made to understand that the assignment of Channel 10, in connection with the planned transfer of its station to Baguio, was to be effective

upon the final transfer of the said station. This was necessary to avoid interference of its broadcast with that of the Clark Air Force base station in Pampanga which is operating on Channel 8. In other words, Channel 10 would be assigned to petitioner only when the Baguio station starts to operate. When the plan to transfer DZXL-TV to Baguio had to be abandoned, it did not mean abandonment by the station of its right to operate and broadcast on Channel 9 in Quezon City. '

Respondents also made reference to the remarks appearing in the construction permit No. 793, issued to the Philippine Broadcasting Service, that "construction of the station shall be begun after DZXL-TV (Channel 9) Manila of Chronicle Broadcasting Network's permit to transfer is approved." It is claimed that upon the approval of the request to transfer, the petitioner was deemed to have renounced or abandoned Channel 9. This statement cannot bind petitioner. In the first place, as admitted by respondents, the clause "Chronicle Broadcasting Networks permit to transfer is approved" was merely placed by respondents' personnel after erasing the original words written therein. And, it does not appear what were really written there before the erasure. In the second place, CBN had no participation in the preparation of said permit. Insofar as petitioner is concerned, it is an *inter alios acta* which can not bind it. And finally, the fact that CBN was allowed to continue and did continue operating on Channel 9 even after the approval of proposed transfer, is proof that there was no renunciation or abandonment of that channel upon the approval of its petition to transfer. There being no proof that petitioner had really waived or renounced its right to operate on Channel 9, respondents committed error in refusing to grant or approve petitioner's application for renewal of the license for station DZXL-TV, Channel 9.

As regard intervenor's claim for damages, it would have been sufficient to state that it having failed to prove the alleged agreement between CBN and said intervenor on the exchange of use of Channels 9 and 10, no right belonging to said intervenor had been violated by petitioner's refusal to give up its present operation of Channel 9. However, it may also be added that as the records show, the appropriation to operate the Philippine Broadcasting Service as approved by Congress and incorporated in the 1962-1963 Budget of the Republic of the Philippines, was provided as follows:

"PHILIPPINE BROADCASTING SERVICE GENERAL FUND

PART ONE CURRENT GENERAL EXPENSES

IV.—SPECIAL PURPOSES

"1. For contribution to the operation of the Philippine Broadcasting Service, including promotion, programming, operations and general administration; Provided, That no portion of this appropriation shall be used for the operation of television stations in Luzon or any part of the Philippines where there are television stations....P300,000.00

X X X

"VI.—SPECIAL PROVISIONS

"5. No amount appropriated for televisions under Special Fund and General Fund shall be used for the operation of television stations in Luzon or any part of the Philippines where there are television stations."
(Italics supplied.)

Disallowing some of the items in the said Appropriations Act, the President included the following in his veto message:

"(e) PHILIPPINE BROADCASTING SERVICE

"IV.—SPECIAL PURPOSE

"1. For contribution to the operation of the Philippine Broadcasting Service, Provided, That no portion of this appropriation shall be used for the operation of television stations in Luzon or any part of the Philippines where there are television stations.

"5. No amount appropriated for televisions under Special Fund and General Fund shall be used for the operation of television stations in Luzon or any part of the Philippines where there are television stations.

"These two provisions if approved will render inoperative the television stations currently operated by the Philippine Broadcasting Service which started last September, 1961, in Manila."

Under the Constitution, the President has the power to veto any particular item or items of an appropriation bill. However, when a provision of an appropriation bill affects one or more items of the same, the President cannot veto the provision without at the same time vetoing the particular item or items to which it relates. (Art. VI, Sec. 20).

It may be observed from the wordings of the Appropriations Act that the amount appropriated for the operation of the Philippine Broadcasting Service was made subject to the condition that the same shall not be used or expended for operation of television stations in Luzon where there are already existing commercial television stations. This gives rise to the question of whether the President may legally veto a condition attached to an appropriation or item in the appropriation bill. But this is not a novel question. A little effort to research on the subject would have yielded enough authority to guide action on the matter. For, in the leading case of *State vs. Holder*,^[2] it was already declared that such action by the Chief Executive was illegal. This ruling, that the executive's veto power does not carry with it the power to strike out conditions or restrictions, has been adhered to in subsequent cases.^[3] If the veto is unconstitutional, it follows that the same produced no effect whatsoever,^[4] and the restriction imposed by the appropriation bill, therefore, remains. Any expenditure made by the intervenor PBS, for the purpose of installing or operating a television station in Manila, where there are already television stations in operation, would be in violation of the express condition for the release of the appropriation and, consequently, null and void. It is not difficult to see that even if it were able to prove its right to operate on Channel 9, said intervenor would not have been entitled to reimbursement of its illegal expenditures.

IN VIEW OF THE FOREGOING CONSIDERATIONS, the writ prayed for by petitioners is hereby granted. The writ of preliminary injunction heretofore issued by this Court is made permanent. Without costs. So ordered.

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

[1] Sec. 3(m), Act 3846, as amended by Rep. Act 588.

[2] 23 So. 643; 76 Miss. 158.

[3] *Fairfield vs. Porter*, 214 P. 319; *Com. vs. Dodson* 11 SE 2d 120; see also *State ex. rel. Wisconsin Tel. Co. vs. Henry* 260 NW 486.

[4] *State vs. Holder*, *supra*; *Fergus vs. Russel*; 110 NE 130; *Strong vs. People*, 220 P 999; *Wood vs. State Administrative Board*, 238 NE 6; *Lukens vs. Nye*, 105 P 393.

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