

GERONIMO SANTIAGO, PETITIONER, VS. FAR EASTERN BROADCASTING, RESPONDENT.

G.R. No. 48683. November 08, 1941

Ponente: OZAETA, J.

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OZAETA, J.:

This is an original petition for mandamus. The petitioner prays this court to issue the writ "directed to the respondent, Far Eastern Broadcasting, commanding it that the petitioner be allowed to broadcast any speech or address without previous censorship." The allegations of the petition are as follows:

"1. That the petitioner is of legal age, resident of the City of Manila and campaign manager of the political party Popular Front Sumulong; the respondent is a public utility corporation engaged in radio broadcasting service, and organized and existing in and under the laws of the Philippines, having its principal office in the Insular Life Building, Manila.

"2. That, sometime in September, 1941, the petitioner, as campaign manager of the Popular Front Sumulong, asked the respondent, through its manager, for the purchase of air time for the broadcast of the Popular Front political speeches at the Opera House on September 23, 1941. But the said respondent refused and still refuses to allow to broadcast except on condition that complete manuscript of contemplated speeches should be submitted in advance.

"3. That the act of the respondent in refusing to allow the use of its station for broadcasting the speeches except upon prior submission of complete manuscript of the speeches to be broadcast is discriminatory and constitutes unlawful censorship and a violation of the freedom of speech guaranteed by our Constitution.

"4. That at present the constitutional guarantees are not suspended, the state not being placed under martial law, and, consequently, the conduct of the respondent is unlawful.

"5. That the respondent, in refusing to allow the petitioner to use its station except upon prior censorship, unlawfully excludes and deprives the latter from the enjoyment and exercise of the right and freedom of speech.

"6. That the petitioner has no other plain, speedy or adequate remedy to enforce his right other than this action."

To that petition the respondent answered as follows:

"1. That the respondent is a corporation organized and existing according to the laws of the Commonwealth of the Philippines and in its aforesaid capacity owner and operator of stations KZRM, KZRF and KZUM by virtue of a specific franchise granted under Act No. 3180.

"2. That with reference to the purchase of air time mentioned in paragraph 2 of the petition, the respondent required the petitioner to submit a manuscript of contemplated speeches in advance of the broadcast in the exercise of a right granted by existing laws and regulations and in compliance with its obligation expressly undertaken to safeguard public morality and to broadcast programs that are educational, entertaining and not

prejudicial to public interest.

"3. That the act of the respondent mentioned in paragraph 2 hereof is not discriminatory for it is applied to all persons alike, and not violative of the constitutional provision regarding freedom of speech.

"4. That the act of the respondent mentioned in paragraph 2 hereof does not signify unlawful censorship and neither does it mean that it will refuse to furnish the petitioner with air time because the latter merely refused to submit its speeches and never came back.

"5. That mandamus should not issue in the above entitled case because the facts alleged in the petition do not warrant the same, the act of the respondent not constituting an unlawful exclusion of the petitioner from the use and enjoyment of a right to which it is entitled.

"6. That mandamus is not the proper remedy in the instant case."

The case hinges on whether the petitioner has a clear legal right to broadcast any speech over one of the radio stations owned and operated by the respondent without first submitting the manuscript, and whether there is a corresponding duty devolved by law upon the respondent to permit the petitioner to do so.

We note at the outset that the respondent did not actually refuse to sell air time to the petitioner. It required the petitioner to submit the script of the speeches to be broadcasted, and the petitioner refused to do so. So the question narrows down to whether or not the Far Eastern Broadcasting has the right to require the submission of the script. Section 2 of Act No. 3180, which is the franchise of the respondent corporation, provides that the broadcasting service shall be open to the general public subject to the general regulations of the grantee for the allotment of time and the class of communications acceptable for broadcasting. Commonwealth Act No. 98 created a Radio Board, among the duties of which is "to censor all programs, sustaining or sponsored, to be broadcasted or rebroadcasted by all broadcasting stations." Section 2 of said Act provides that pending the appointment of the Radio Board by the President, the Secretary of the Interior "shall examine all programs, sustaining or sponsored, of all broadcasting stations with the power "to eliminate or cancel from the program such number or parts thereof as in his opinion are neither moral, educational nor entertaining, and prejudicial to public interest." Section 3 provides that "any licensee or owner of broadcasting station who shall broadcast any program or parts thereof not duly approved or otherwise eliminated, by the Secretary of the Interior or the Radio Board, shall, upon his or its recommendation, as the case may be, forfeit his license."

Pursuant to said Act, the Secretary of the Interior, on November 18, 1936, promulgated Department Order No. 13. Paragraph 4 of said order requires all broadcasting stations to submit daily to the Secretary of the Interior at least twenty-four hours in advance of the actual broadcasting hour, two copies of all programs to be broadcasted by the stations. Paragraph 6 provides that "if a program contains any speeches, * * * copies of these or a gist thereof, may be required by the Secretary of the Interior to be submitted together with the program.

The respondent denies that its requirement that the petitioner submit the script of the speeches to be broadcasted was discriminatory, asserting that "it is applied to all persons alike"; and the petitioner has not adduced any proof of its allegation.

It seems clear from the laws and regulations herein before adverted to that the respondent had the right to require the petitioner to submit the manuscript of the speeches which he intended to broadcast. In his memorandum, counsel for the respondent sustains, and cites numerous authorities in support of his contention, that Commonwealth Act No. 98 is valid as a proper exercise by the state of its police power. However, we are not called upon here to inquire into the constitutionality and validity of said Act, which directly governs this case, because the petitioner has not specifically raised that question, and the general rule is that the constitutionality of a law will not be considered unless the point is specially pleaded, insisted upon, and adequately argued. (11 Am.

Jur., 774; 16 C. J. S., 220-221; 1 Cooley, Constitutional limitations, 8th ed., 338.) "The basic principle which underlies the entire field of legal concepts pertaining to the validity of legislation is that by enactment of legislation, a constitutional measure is presumed to be created." (11 Am. Jur., Constitutional Law, sec. 128.)

The petitioner argues that the broadcasting of the speeches of the candidates of the Sumulong Popular Front Party in the evening of September 23, 1941, could not by any means offer any danger to public safety or public morality, and that the respondent was not justified "to previously censor and approve the complete texts of the speeches of said candidates before allowing the same to be broadcasted in its station." The best proof, the petitioner asserts, that there was not the slightest danger to public peace and order was that the speeches that were delivered in the Opera House in the evening of September 23, 1941, were heard by the vast audience and published in some newspapers without causing a single untoward incident. We fail to perceive the cogency of such argument. It does not bolster up the case for the petitioner. It impliedly admits—and correctly, we think—that a speech that may endanger public safety may be censored and disapproved for broadcasting. How could the censor verify the petitioner's claim that the speeches he intended to broadcast offered no danger to public safety or public morality, if the petitioner refused to submit the manuscript or even the gist thereof? If the petitioner had complied with respondent's requirement and the respondent had arbitrarily and unreasonably refused to permit said speeches to be broadcasted, he might have reason to complain.

We find that it is not the duty of the respondent as a public service corporation to broadcast speeches without requiring the submission of the manuscript thereof in advance, but that, on the contrary, the laws and regulations expressly authorize the respondent to make such requirement. Hence the petition for mandamus must be, as it hereby is, denied, with cost against the petitioner. So ordered.

Abad Santos, Diaz, Moran, and Horrilleno, JJ., concur.

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