

ALLIED BROADCASTING CENTER, INC., PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS AND NATIONAL TELECOMMUNICATIONS COMMISSION, RESPON...

G.R. No. 91500. October 18, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a petition for the declaration of the unconstitutionality of Presidential Decree No. 576-A with a prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction.

The allegations of the petition are that on January 19, 1960, Republic Act No. 3001 was passed granting petitioner the permit or franchise to construct, maintain and operate radio broadcasting stations in the Philippines. Petitioner was able to construct, maintain and operate ten (10) radio broadcasting stations all over the country. Through said broadcasting stations, petitioner was able to provide adequate public service which enabled the government to reach the population on important public issues, and assist the government in programs relating to public information and education. Its radio stations have never been used for the broadcasting of obscene or indecent language or speech, or for the dissemination of misleading information or willful misrepresentation, or to the detriment of the public health, or to incite, encourage or assist in subversion or treasonable acts.

Under Section 10 of Republic Act No. 3001, petitioner's franchise or permit "shall be subject to amendment, alteration or repeal by the Congress of the Philippines when the public interest so requires x x x."

On November 11, 1974, Presidential Decree No. 576-A entitled "Decree Regulating The Ownership And Operation Of Radio And Television Stations And For Other Purposes" was issued and duly published in the December 2, 1974 supplemental issue of the Official Gazette.[1]

Sections 3, 4, 5 and 6 of the said Decree provide as follows:

"Sec. 3. No person or corporation may own, operate, or manage more than one radio or television station in one municipality or city; nor more than five AM and FM radio stations; nor more than five television channels in the entire country, and no radio or television station shall be utilized by any single-interest group to disseminate information or otherwise influence the public or the government to serve or support the ends of such group.

Sec. 4. Any person or corporation which owns more than the number of radio or television stations authorized in the preceding section shall divest itself of the excess stations or channels. Any excess station shall be sold through the Board of Communications.

The divestiture provided herein shall be made not later than December 31, 1981. Thereafter, a person or corporation shall make such divestiture within one year from the discovery of the offense.

Sec. 5. Failure to divest as provided in the foregoing section shall, in addition to the penalties provided in

Section 6, subject the person or corporation guilty of such failure to cancellation of the franchise of every excess station and to confiscation of the station and its facilities without compensation.

Sec. 6. All franchises, grants, licenses, permits, certificates or other forms of authority to operate radio or television broadcasting systems shall terminate on December 31, 1981. Thereafter, irrespective of any franchise, grant, license, permit, certificate or other forms of authority to operate granted by any office, agency or person, no radio or television station shall be authorized to operate without the authority of the Board of Communications and the Secretary of Public Works and Communications or their successors who have the right and authority to assign to qualified parties frequencies, channels or other means of identifying broadcast systems; Provided, however, that any conflict over, or disagreement with, a decision of the aforementioned authorities may be appealed finally to the Office of the President within fifteen days from the date the decision is received by the party in interest."

Pursuant to Section 6 of the said Decree, all franchises, grants, licenses, permits, certificates, or other forms of authority to operate radio or television broadcasting systems/stations, including the franchise or permit of petitioner under Republic Act No. 3001, have been deemed terminated or revoked effective December 31, 1981.

Thus, petitioner is left with only 3 radio stations located in Iloilo City, Bacolod City and Roxas City.

Petitioner alleged that said Decree has caused it great and irreparable damage, because - (a) it divested petitioner of its franchise without due process of law and forced it to divest itself of some of its radio stations; (b) it deprived petitioner of its right to further construct, maintain and operate radio broadcasting stations in other cities or municipalities of the country;^[2] (c) it deprived petitioner of its right to avail of loan facilities or renew its existing loan availments from any bank or financial institution in order to expand and continue the operation of its radio broadcasting business; and (d) petitioner suffered loss of income.

Hence, this petition to declare Presidential Decree No. 576-A as unconstitutional and null and void ab initio. The grounds of the petition are as follows:

"I. THE ISSUANCE OF PRESIDENTIAL DECREE NO. 576-A SUMMARILY TERMINATING THE PETITIONER'S FRANCHISE OR PERMIT ON DECEMBER 31, 1981 CONSTITUTES AN UNLAWFUL TAKING OR DEPRIVATION OF THE PROPERTY RIGHTS (FRANCHISE OR PERMIT) OF PETITIONER WITHOUT DUE PROCESS OF LAW AND/OR PAYMENT OF JUST COMPENSATION;

"II. THE ISSUANCE OF THE AFORESAID DECREE FORCED THE PETITIONER TO DIVEST ITSELF OF SOME OF ITS RADIO STATIONS AND THE TERMINATION OF ITS CONGRESSIONAL FRANCHISE CONSTITUTES A VIOLATION AND IMPAIRMENT OF PETITIONER'S OR THE PEOPLE'S RIGHT OR FREEDOM OF SPEECH, EXPRESSION AND/OR OF THE PRESS;

III. THE ISSUANCE OF THE AFORESAID DECREE FORCED THE PETITIONER TO DIVEST ITSELF OF SOME OF ITS RADIO STATIONS AND THE ARBITRARY TERMINATION OF ITS CONGRESSIONAL FRANCHISE CONSTITUTES AN UNLAWFUL IMPAIRMENT OF THE OBLIGATION OF CONTRACT BETWEEN THE STATE AND THE PETITIONER; AND

IV. THE ISSUANCE OF THE AFORESAID DECREE RESTRICTING PETITIONER OR ANY OTHER PERSON OR ENTITY TO OPERATE A CERTAIN NUMBER OF RADIO OR TELEVISION STATIONS IN ONE CITY OR MUNICIPALITY, OR IN THE ENTIRE COUNTRY FOR THAT MATTER, AND FURTHER TERMINATING THE CONGRESSIONAL FRANCHISE OF PETITIONER CONSTITUTES AN UNLAWFUL RESTRAINT OF TRADE;"^[3]

Without giving due course to the petition, the respondents were required to submit their comment thereto within ten (10) days from notice. After the comment of the respondents was submitted, the petitioner was required to file a reply thereto. As said reply was filed the Court required respondents to submit their rejoinder. The rejoinder of

respondents had been duly submitted so the case is now due for resolution.

After a careful deliberation on the petition, the Court finds the same to be devoid of merit.

The petition seeks a declaration of the unconstitutionality and/or nullity of Presidential Decree No. 576-A. As such, it must be treated as one seeking declaratory relief under Rule 64 of the Rules of Court. Such an action should be brought before the Regional Trial Court and not before the Supreme Court. A petition for declaratory relief is not among the petitions within the original jurisdiction of the Supreme Court even if only questions of law are involved.[4]

Thus, the present petition should be dismissed on this score.

Moreover, there is no actual case or controversy involving the law sought to be annulled. Petitioner does not allege that it has filed an application for a license to operate a radio or television station in excess of the authorized number and that the same is being denied or refused on the basis of the restrictions under Presidential Decree No. 576-A. Petitioner does not also allege that it had been penalized or is being penalized for a violation under said Decree. There is, likewise, no allegation that any of the petitioner's stations had been confiscated or shut down pursuant to Presidential Decree No. 576-A. Obviously, the constitutional challenge is not being raised in the context of a specific case or controversy wherein the petitioner has asserted his rights. All that petitioner seeks is the nullification of Presidential Decree No. 576-A and the reinstatement of its rights under Republic Act No. 3001.

Judicial review cannot be exercised in vacuo. Judicial power is "the right to determine actual controversies arising between adverse litigants." [5]

The function of the courts is to determine controversies between litigants and not to give advisory opinions.[6] The power of judicial review can only be exercised in connection with a bona fide case or controversy which involves the statute sought to be reviewed.[7]

Petitioner alleges that it used to maintain and operate at least ten (10) radio broadcasting stations but pursuant to Sections 3, 4, 5 and 6 of Presidential Decree No. 576-A it divested itself of the "excess stations" thus leaving it with three (3) radio stations located in Iloilo City, Bacolod City and Roxas City. Petitioner did not allege that it challenged the constitutionality of the decree at any time since it took effect on December 31, 1981. It does not appear that petitioner's compliance was made under protest. In view of its acquiescence with Presidential Decree No. 576-A, the petitioner is now estopped from challenging the same under the principle of estoppel that "one who sleeps on his rights shall not be heard to complain."

The allegation of petitioner that its petition should be treated as a petition for prohibition does not place petitioner in any better position. The petition cannot be considered as one for prohibition as it does not seek to prohibit further proceedings being conducted by any tribunal, corporation, board or person exercising judicial or ministerial functions.[8]

In the instant petition, petitioner does not seek to prohibit any proceeding being conducted by public respondent which adversely affects its interest. Petitioner does not claim that it has a pending application for a broadcast license which is about to be denied under Presidential Decree No. 576-A. Apparently, what petitioner seeks to prohibit is the possible denial of an application it may make to operate radio or television stations on the basis of the restrictions imposed by Presidential Decree No. 576-A. Obviously, the petition is premature.

Petitioner prays for reinstatement of its rights under its original franchise. Reinstatement is an affirmative remedy and cannot be secured through a writ of prohibition which is essentially a preventive and not a corrective remedy.

It cannot correct an act that is a fait accompli.[9]

WHEREFORE, the petition is DISMISSED with costs against petitioner.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Paras and Feliciano, JJ., on leave.

[1] Volume 70, No. 48, page 10042.

[2] See Section 1, Republic Act No. 3001.

[3] Page 6, Rollo.

[4] See Section 17, Republic Act No. 296; Section 19(b), Batas Pambansa Blg. 129; Alliance of Government Workers vs. Minister of Labor and Employment, 124 SCRA 1 (1983).

[5] Muskrat vs. United States, 219 U.S. 346 (1911).

[6] In Re: Workmen's Compensation Fund, 119 N.E. 1027 (1918), cited in Director of Prisons vs. Ang Chio Kio, 33 SCRA 494, 509 (1970).

[7] PACU vs. Secretary of Education, 97 Phil. 806, 810 (1955).

[8] Section 2, Rule 65, Rules of Court.

[9] Agustin vs. de la Fuente, 84 Phil. 515 (1949).

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