

SPOUSES FRAULIN A. PEÑASALES, AND LILIA J. PEÑASALES, PETITIONERS, VS. HONORABLE COURT OF APPEALS AND REPUBLIC BROADCASTING, INC., RESPONDENTS.

G.R. No. 95333. October 27, 1992

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This is a petition for review on certiorari of the decision dated August 31, 1990 of the Court of Appeals in CA-G.R. CV No. 09628 entitled, "Republic Broadcasting System, Inc. (RBS) vs. Lilia J. Peñasales, et al.," affirming in toto the decision dated July 25, 1984 of the Regional Trial Court of Iloilo City, in Civil Case No. 13143, which upheld the right of the private respondent to terminate the management of its Radio Station DYOO by the petitioners and ordering the latter to pay RBS the guaranteed monthly income of P5,000.00 per month which they had stopped paying since April, 1977.

The facts as stated in the appealed decision are:

On September 30, 1969, the Loreto F. de Hemedes, Inc. was granted Radio Station License No. 2650 to operate Radio Station DYOO in Iloilo City.

By virtue of a Contract of Management executed in September, 1970 the Loreto F. Hemedes, Inc. granted to Aida Jereza the management of Station DYOO for a term of five (5) years renewable for another five (5) years by mutual agreement of the parties. Under said contract, Jereza was to pay the corporation a guaranteed income of P2,500.00 a month, which was later raised to P5,000.00 a month by oral agreement of the parties.

In August, 1972, Aida Jereza abandoned the management of the station. Her sister, Lilia J. Peñasales, who was then an employee of Station DYOO, together with co-employees Rey Perreño and Isagani Hortillo, voluntarily assumed the operation and management of the radio station.

In a letter dated October 13, 1972, Mrs. Loreto F. Stewart, President of the Loreto F. de Hemedes, Inc. acknowledged the efforts of Lilia J. Peñasales and of Perreño and Hortillo in taking care of Station DYOO, and advised them to continue their good work until the station could be put on the air again. She appointed Lilia J. Peñasales as interim Cashier and Station Manager effective September 1, 1972. Peñasales managed the operated Station DYOO and paid the Loreto F. Hemedes, Inc. the guaranteed rental of P5,000.00 a month.

On March 14, 1976, the Broadcast Media Council created under P.D. 576, approved Resolution No. B-76-6 providing, among others, that all contracts or memoranda of agreement whereby a franchise grantee or a BMC certificate grantee engages the services of another person or party, other than its employees, to discharge the functions of management, programming, engineering, and other areas of broadcast operations shall be subject to the approval of the Council. In the same Resolution all grantees were given one (1) week from receipt to comply therewith.

Pursuant thereto, on March 8, 1977, RBS informed Peñasales that their management arrangement over Station DYOO would be terminated thirty (30) days from receipt of said letter but not later than April 5, 1977 and

requested him to turn over the properties of the station to RBS or its duly designated representative.

Instead of complying with the letter, Lilia J. Peñasales and her husband filed a complaint against RBS and the Broadcast Media Council on March 23, 1977 in the Court of First Instance of Iloilo (now Regional Trial Court) contesting the termination of the management agreement, and praying for the issuance of a temporary restraining order and a writ of preliminary injunction to enjoin RBS from terminating the management contract.

RBS wrote a letter to the Broadcast Media Council on May 13, 1977 explaining that it had not taken actual physical possession of Station DYOO because of the filing of the aforesaid complaint by Peñasales.

In its Order No. 101 issued on June 5, 1977; the Broadcast Media Council ordered the suspension of the operations of Station DYOO effective June 20, 1977.

The parties tried to settle Civil Case No. 11003 filed by Peñasales but failed. The case was subsequently dismissed. Afterwards, the parties continued negotiations as RBS was willing to sell Station DYOO to Peñasales. However, the spouses failed to produce the required downpayment, hence, the proposed settlement fizzled out.

In the meantime, Peñasales continued to operate the station using the license and the facilities of RBS, by making representations with the Broadcast Media Council. She stopped paying to the RBS the guaranteed monthly income of P5,000.00 after March, 1977.

On November 15, 1977, RBS filed the present complaint against the Peñasales spouses to recover from them the possession of Radio Station DYOO and all its facilities and equipment, and for damages. Upon motion of the plaintiff, the lower court issued a writ of preliminary injunction on May 18, 1982 restraining the defendants from operating Radio Station DYOO and restoring its possession to the plaintiff.

In their answer to the complaint, the defendants alleged that the plaintiff had abandoned the operation of Station DYOO since 1970 and that Lilia Peñasales is now the de facto franchise holder of the station as she was the one who worked for its reopening by obtaining authority from the Provincial Commander and from the Media Advisory Council. She filed a counterclaim for damages and prayed that she be declared the true franchise holder of Station DYOO.

The lower court rendered judgment upholding the right of the plaintiff to terminate the contract with the defendants, and ordering the defendants jointly and severally to pay the sum of P5,000.00 a month from April, 1977 to May, 1982 with interest thereon at 12% per annum from November 15, 1979, when the case was filed, until fully paid.

On August 31, 1990, the Court of Appeals affirmed in toto the decision of the trial court.

In this petition for review, the petitioners merely reiterate the assignments of error in their brief against the trial court, which they now address against the decision of the Court of Appeals. They allege that the appellate court erred in holding:

1. that the P5,000.00 monthly rental they paid to RBS was for the right to use not only the facilities but also the license to operate Radio Station DYOO;
2. that RBS owns the license to operate the station;
3. that RBS can terminate the subject contract; and
4. that the parties are not in *pari delicto*.

The petition has no merit. All the issues raised therein are factual, not legal issues.

The Court of Appeals correctly observed that the monthly rental of P5,000.00 was for the right to use the facilities and equipment as well as the right to operate the radio station for "the facilities and equipment would have been useless without the right to operate" (p. 24, Rollo) because petitioner did not have a franchise to operate a radio station.

The finding of the Court of Appeals that Loreto F. Hemedes, Inc. and/or its successor, RBS, owned the franchise to operate Station DYOO is a finding of fact which this Court may not review or disturb. As owner, it could terminate the contract which it granted Peñasales to use said franchise.

The appellate court's finding that the parties were not in pari delicto when they signed in 1972 the contract granting Peñasales the right to operate Station DYOO under the franchise of Loreto F. Hemedes, Inc. is correct because the prohibition against the operation of a franchise by other than the owner thereof, was promulgated by the Broadcast Media Council in 1976 only. The termination by RBS of its contract with Peñasales was precisely in compliance with the prohibition.

WHEREFORE, the petition for review is DENIED for lack of merit. Costs against the petitioners.

SO ORDERED.

Padilla, (Acting Chairman), and Medialdea, JJ., concur.

Bellosillo, J., no part.

Cruz, J., (Chairman), on leave.

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