

## EN BANC

[ G.R. No. 252119, August 25, 2020 ]

### **ABS-CBN CORPORATION, PETITIONER, VS. NATIONAL TELECOMMUNICATIONS COMMISSION, \* RESPONDENT.**

#### **D E C I S I O N**

##### **PERLAS-BERNABE, J.:**

Before the Court is a Petition for *Certiorari* and Prohibition (With Urgent Applications for the Issuance of a Temporary Restraining Order [TRO] and/or a Writ of Preliminary Injunction [WPI])<sup>[1]</sup> assailing the Order<sup>[2]</sup> dated May 5, 2020 issued by respondent National Telecommunications Commission (NTC) which directed petitioner ABS-CBN Corporation (ABS-CBN) to immediately **cease and desist** from operating its radio and television stations (CDO) due to the expiration of its legislative franchise granted under Republic Act No. (RA) 7966, entitled "An Act Granting the ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Operate and Maintain Television and Radio Broadcasting Stations in the Philippines, and for Other Purposes."<sup>[3]</sup>

#### **The Facts**

On March 30, 1995, petitioner ABS-CBN was granted a legislative franchise to "construct, operate and maintain, for commercial purposes and in the public interest, television and radio broadcasting stations in and throughout the Philippines"<sup>[4]</sup> under RA 7966. The franchise was valid for a term of twenty-five (25) years from the law's effectivity on May 4, 1995, or until May 4, 2020.<sup>[5]</sup>

In 2014 and 2018, bills<sup>[6]</sup> for the renewal of ABS-CBN's franchise were filed in the 16<sup>th</sup> and 17<sup>th</sup> Congress.<sup>[7]</sup> In the current (or 18<sup>th</sup>) Congress, eleven (11) bills<sup>[8]</sup> for the renewal of ABS-CBN's franchise were submitted before the House Committee on Legislative Franchises, while two (2) bills<sup>[9]</sup> were filed before the Senate Committee on Rules.<sup>[10]</sup> On February 26, 2020, another bill<sup>[11]</sup> was filed seeking the amendment of Section 1 of RA 7966 to extend the term of ABS-CBN's franchise while Congress is still deliberating on the issue of franchise renewal.<sup>[12]</sup>

In addition to these bills, several Resolutions were filed in relation to the renewal or extension of ABS-CBN's franchise, particularly: (a) House Resolution No. 639,<sup>[13]</sup> urging the House Committee on Legislative Franchises to report, without delay, the pending franchise bills of ABS-CBN for plenary action; (b) House Joint Resolution No. 28,<sup>[14]</sup> seeking the extension of the franchise of ABS-CBN until the end of the 18<sup>th</sup> Congress, or until June 30, 2022, to give Congress additional time to review and assess the franchise bills; and (c) House Joint Resolution No. 29,<sup>[15]</sup> seeking to

extend the franchise of ABS-CBN until May 4, 2021, to give Congress enough time to thoroughly study and debate on the pending franchise bills.<sup>[16]</sup>

On February 24, 2020, the Senate Committee on Public Services called a hearing to "look into, in aid of legislation, the operations of [ABS-CBN] to determine compliance with the terms and conditions of its franchise under [RA] 7966." During the hearing, respondent NTC's Commissioner, Gamaliel A. Cordoba (Commissioner Cordoba), stated that the NTC has not withdrawn any Provisional Authority to operate under similar circumstances and has not closed any broadcast company in the past due to an expired franchise, pending its renewal. Commissioner Cordoba also declared that in the case of ABS-CBN, it will issue a Provisional Authority if so advised by the Department of Justice (DOJ).<sup>[17]</sup>

On February 26, 2020, the DOJ - through Secretary Menardo I. Guevarra - replied<sup>[18]</sup> to the letter dated February 12, 2020 written by Commissioner Cordoba requesting a legal opinion on the matter of the congressional franchise of ABS-CBN. Citing a number of circumstances,<sup>[19]</sup> the DOJ Secretary refrained from rendering a formal legal opinion on the matter. Nonetheless, he made the following observations for the NTC's "guidance": (a) there is an "established practice" or "equitable practice" to allow a broadcast company to continue its operations despite an expired franchise, pending its renewal; (b) the plenary power of Congress includes the auxiliary power to define and preserve the rights of the franchise applicant pending final determination of the renewal of the franchise; and (c) the NTC may provisionally authorize an entity to operate.<sup>[20]</sup>

On even date (February 26, 2020), the House Committee on Legislative Franchises sent a letter<sup>[21]</sup> to the NTC enjoining it to grant ABS-CBN a provisional authority to operate "effective May 4, 2020 until such time that the House of Representatives/Congress has made a decision on its application."<sup>[22]</sup> The letter was signed by the Committee's Chairperson, Franz E. Alvarez (Chairperson Alvarez) with the concurrence of Speaker Alan Peter S. Cayetano.<sup>[23]</sup>

On March 4, 2020, the Senate adopted Resolution No. 40,<sup>[24]</sup> "expressing the sense of the Senate that [ABS-CBN], its subsidiaries and/or affiliates, ABS-CBN Convergence, Inc., Sky Cable Corporation and Amcara Broadcasting Network, Inc., should continue to operate pending final determination of the renewal of its franchise by the 18<sup>th</sup> Congress."<sup>[25]</sup> This was an adoption of Senate Concurrent Resolution No. 6,<sup>[26]</sup> which was earlier filed, taking into consideration Senate Concurrent Resolution Nos. 7<sup>[27]</sup> and 8,<sup>[28]</sup> and Proposed Senate Resolution No. 344.<sup>[29]</sup>

On March 10, 2020, during the preliminary hearing of the House Bills for the renewal or grant of ABS-CBN's franchise conducted by the House Committee on Legislative Franchises, Commissioner Cordoba declared that the NTC "will follow the advice of the DOJ and let ABS-CBN continue [its] operations based on equity."<sup>[30]</sup>

On March 16, 2020, the NTC, due to the mandated suspension of regular work in light of the Enhanced Community Quarantine, issued a Memorandum Order<sup>[31]</sup> declaring that "[a]ll subsisting permits [*sic*] necessary to operate and maintain

broadcast and pay TV facilities nationwide expiring within the quarantine period shall automatically be renewed and shall continue to be valid sixty (60) days after the end of the government-imposed quarantine period."<sup>[32]</sup>

On May 3, 2020, Solicitor General Jose C. Calida, through a press release, "warned the [NTC] against granting ABS-CBN provisional authority to operate while the approval of its franchise is pending in Congress." He further declared that "the NTC [C]ommissioners could risk subjecting themselves to prosecution under the country's anti-graft and corruption laws should they issue the 'unlawful' [provisional authorities] to ABS-CBN in the absence of a franchise."<sup>[33]</sup>

For his part, the DOJ Secretary "[stood] by [his] position that there is sufficient equitable basis to allow broadcast entities to continue operating while the bills for the renewal of their franchise[s] remain pending with Congress."<sup>[34]</sup> Also, several lawmakers disagreed with the Solicitor General's statements, including Chairperson Alvarez who said that "[w]ith the legal opinion of the [DOJ] and the authority given by the House of Representatives, there is no reason for ABS-CBN to discontinue or stop [its] operations."<sup>[35]</sup>

On May 4, 2020, ABS-CBN's franchise expired. Hence, on May 5, 2020, the NTC issued the CDO directing ABS-CBN to "immediately **CEASE** and **DESIST** from operating [the enumerated<sup>[36]</sup>] radio and television stations." The CDO was based solely on the "expiration of RA 7966."<sup>[37]</sup> Consequently, on even date, ABS-CBN complied with the CDO and went off-air.<sup>[38]</sup>

On May 7, 2020, ABS-CBN filed the instant Petition for *Certiorari* and Prohibition (With Urgent Applications for the Issuance of a [TRO] and/or a [WPI]) before the Court, claiming that the NTC committed grave abuse of discretion in issuing the CDO.<sup>[39]</sup>

In its petition, **ABS-CBN mainly argues that instead of issuing the CDO, the NTC should have allowed ABS-CBN to continue its operations pending Congress' determination of whether or not to renew its legislative franchise based on the bills already filed therefor. In this regard, ABS-CBN posits that "the plenary power of Congress to grant or renew a franchise necessarily includes the corollary power to define and preserve rights and obligations pending its final determination of the matter."**<sup>[40]</sup> Therefore, by disregarding the pending bills for the renewal of ABS-CBN's franchise, the NTC gravely abused its discretion in issuing the assailed CDO.<sup>[41]</sup>

Also, ABS-CBN asserts that the CDO violated its right to equal protection of the laws, pointing out that the NTC deviated from its past practice to allow broadcasting entities to continue operating pending Congress' action on the renewal or extension of their franchises.<sup>[42]</sup>

Furthermore, ABS-CBN decries a transgression of its right to due process since the NTC issued the CDO without any prior notice or hearing and by ignoring the serious and irreparable damage that the CDO will inflict on it and its employees.<sup>[43]</sup>

Finally, ABS-CBN maintains that the CDO compromised the right to public information, especially in this time of public health emergency where it plays a significant role, and that it necessarily amounts to a limitation, if not, curtailment, of the freedom of speech and of the press with prior restraint.<sup>[44]</sup>

### **Incidents After the Filing of the Petition**

On May 11, 2020, the NTC received a Show Cause Order<sup>[45]</sup> from the House of Representatives, requiring it to explain why it should not be cited in contempt for issuing the CDO against ABS-CBN.<sup>[46]</sup> In a letter-response<sup>[47]</sup> dated May 12, 2020, the NTC explained that in view of the wording of the Constitution and related laws, as well as prevailing jurisprudence on the matter, **it could not issue a provisional authority in favor of ABS-CBN pending the deliberations of the Congress on its franchise, as to do so would amount to an encroachment into the exclusive power of Congress to grant legislative franchises to broadcasting companies.** Expressing regret over its failure to notify the House of Representatives of its decision to issue the assailed CDO, the NTC assured that it will abide **by any law passed by Congress** regarding the matter.<sup>[48]</sup>

On May 18, 2020, ABS-CBN filed an Urgent Reiterative Motion for the Issuance of a [TRO] and/or a [WPI],<sup>[49]</sup> pointing out that on May 13, 2020, House Bill No. (HB) 6732, entitled "An Act Granting ABS-CBN Broadcasting Corporation a Franchise to Construct, Install, Operate and Maintain Television and Radio Broadcasting Stations in the Philippines, and for Other Purposes," was filed before the House of Representatives, seeking to grant ABS-CBN a provisional franchise until October 31, 2020 to "give both the House of Representatives and the Senate [ample time] to hear the issues being raised for and against the renewal, and assess, with complete impartiality and fairness, whether or not the network shall be granted a franchise for another twenty-five (25) years."<sup>[50]</sup> While highlighting that HB 6732 had already been approved on second reading by the House of Representatives convened as a "Committee of the Whole" and that the members of the Senate had also expressed their willingness to act swiftly on the matter, ABS-CBN nevertheless lamented that it will still take some time before HB 6732 is passed into law. In this light, and in order to avert any grave and irreparable injury to it, its employees, various stakeholders, and the public in general, ABS-CBN reiterated its prayer for the Court to immediately issue a TRO or WPI to, in the meantime, restrain the implementation of the CDO.<sup>[51]</sup>

In a Resolution dated May 19, 2020, the Court resolved to: (a) require the NTC to comment on the petition and urgent applications for the issuance of a TRO and/or WPI; (b) separately implead the House of Representatives and the Senate as parties to this case and require them to likewise comment on the petition and urgent applications for a TRO and/or WPI; and (c) require NTC to file a reply to the aforesaid comments of the House of Representatives and Senate. The Court further resolved to deny the motion to consolidate this case with G.R. No. 251932.<sup>[52]</sup>

Complying with the Court's directive, the NTC, through the Office of the Solicitor General (OSG), filed its Comment (with Omnibus Motion)<sup>[53]</sup> dated May 25, 2020, raising both procedural and substantive arguments in support of the dismissal of the instant petition. In its Omnibus Motion, the NTC further prayed that **the Senate**

**and the House of Representatives should be discharged as parties to the instant case, since they are not real parties-in-interest or indispensable parties herein as no relief has been claimed by ABS-CBN as against them but only as against the NTC.**<sup>[54]</sup>

In response, ABS-CBN filed a Motion for Leave to File Opposition to Omnibus Motion and Opposition to Omnibus Motion,<sup>[55]</sup> positing that the Senate and the House of Representatives were rightly impleaded in this case, since the issue herein concerns their constitutional power to grant a legislative franchise, and the CDO is an incursion into the auxiliary power of Congress to preserve the rights of a franchise applicant.<sup>[56]</sup>

For its part, the Senate filed its Manifestation (In Lieu of Comment Re: Resolution dated May 19, 2020)<sup>[57]</sup> dated May 28, 2020. **Praying that it be discharged as a party to the case**, the Senate echoed the NTC's Omnibus Motion that it is neither an indispensable party nor a necessary party to the case, invoked the principle of separation of powers, and pointed out that there is no claim, counterclaim, or cross-claim against it.<sup>[58]</sup>

On June 1, 2020, the House of Representatives filed its Comment *Ad Cautelam*,<sup>[59]</sup> similarly seeking to be discharged as a party to the case since there is no cause of action or any relief sought by ABS-CBN as against it in the petition. Moreover, the House of Representatives asserted that any inquiry into its actions at this stage in the deliberations on ABS-CBN's franchise will be premature and offensive to the doctrine of separation of powers.<sup>[60]</sup>

### **The Issue Before the Court**

The primordial issue for the Court's resolution is whether or not the NTC gravely abused its discretion in issuing the assailed CDO against ABS-CBN.

### **The Court's Ruling**

In light of the supervening denial of the pending House bills for the renewal of ABS-CBN's legislative franchise, the Court finds it appropriate to **dismiss** this case on the ground of mootness. The Court explains.

At the onset, it is imperative to point out that based on our Constitution and laws, **a legislative franchise is both a pre-requisite and a continuing requirement** for broadcasting entities to broadcast their programs through television and radio stations in the country.

Broadly speaking, "a franchise is defined to be a **special privilege** to, do certain things conferred by government on an individual or corporation, and **which does not belong to citizens generally of common right.**"<sup>[61]</sup> Insofar as the great powers of government are concerned, "[a] franchise is basically a **legislative grant** of a **special privilege** to a person."<sup>[62]</sup> In *Associated Communications & Wireless Services v. NTC (Associated Communications)*,<sup>[63]</sup> the Court defined a "franchise [as] the privilege granted by the State through its **legislative body** x x x subject to regulation by the State itself by virtue of its police power through its administrative