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SECOND DIVISION

[G.R. No. 162272, April 07, 2009]

SANTIAGO C. DIVINAGRACIA, PETITIONER, VS. CONSOLIDATED BROADCASTING SYSTEM, INC. AND PEOPLE'S BROADCASTING SERVICE, INC., RESPONDENTS.

D E C I S I O N

TINGA, J.:

Does the National Telecommunications Commission (NTC) have jurisdiction over complaints seeking the cancellation of certificates of public convenience (CPCs) and other licenses it had issued to the holders of duly-issued legislative franchises on the ground that the franchisees had violated the terms of their franchises? The Court, in resolving that question, takes the opportunity to elaborate on the dynamic behind the regulation of broadcast media in the Philippines, particularly the interrelationship between the twin franchise and licensing requirements.

I.

Respondents Consolidated Broadcasting System, Inc. (CBS) and People's Broadcasting Service, Inc. (PBS) were incorporated in 1961 and 1965, respectively. Both are involved in the operation of radio broadcasting services in the Philippines, they being the grantees of legislative franchises by virtue of two laws, Republic Act (R.A.) No. 7477 and R.A. No. 7582. R.A. No. 7477, enacted on 5 May 1992, granted PBS a legislative franchise to construct, install, maintain and operate radio and television stations within the Philippines for a period of 25 years. R.A. No. 7582, enacted on 27 May 1992, extended CBS's previous legislative franchise[1] to operate radio stations for another 25 years. The CBS and PBS radio networks are two of the three networks that comprise the well-known "Bombo Radyo Philippines."[2]

Section 9 of R.A. No. 7477 and Section 3 of R.A. No. 7582 contain a common provision predicated on the "constitutional mandate to democratize ownership of public utilities."[3] The common provision states:

> SEC. 9. Democratization of ownership.â€• In compliance with the constitutional mandate to democratize ownership of public utilities, the herein grantee shall make public offering through the stock exchanges of at least thirty percent (30%) of its common stocks within a period of three (3) years from the date of effectivity of this Act: *Provided*, That no single person or entity shall be allowed to own more than five percent (5%) of the stock offerings.[4]

It further appears that following the enactment of these franchise laws, the NTC issued four (4) Provisional Authorities to PBS and six (6) Provisional Authorities to CBS, allowing them to install, operate and maintain various AM and FM broadcast

stations in various locations throughout the nation.[5] These Provisional Authorities were issued between 1993 to 1998, or after the enactment of R.A. No. 7477 and R.A. No. 7582.

Petitioner Santiago C. Divinagracia[6] filed two complaints both dated 1 March 1999 with the NTC, respectively lodged against PBS[7] and CBS.[8] He alleged that he was "the actual and beneficial owner of Twelve percent (12%) of the shares of stock" of PBS and CBS separately,[9] and that despite the provisions in R.A. No. 7477 and R.A. No. 7582 mandating the public offering of at least 30% of the common stocks of PBS and CBS, both entities had failed to make such offering. Thus, Divinagracia commonly argued in his complaints that the failure on the part of PBS and CBS "to comply with the mandate of their legislative franchise is a misuse of the franchise conferred upon it by law and it continues to exercise its franchise in contravention of the law to the detriment of the general public and of complainant who are unable to enjoy the benefits being offered by a publicly listed company."[10] He thus prayed for the cancellation of all the Provisional Authorities or CPCs of PBS and CBS on account of the alleged violation of the conditions set therein, as well as in its legislative franchises.[11]

On 1 August 2000, the NTC issued a consolidated decision dismissing both complaints.[12] While the NTC posited that it had full jurisdiction to revoke or cancel a Provisional Authority or CPC for violations or infractions of the terms and conditions embodied therein,[13] it held that the complaints actually constituted collateral attacks on the legislative franchises of PBS and CBS since the sole issue for determination was whether the franchisees had violated the mandate to democratize ownership in their respective legislative franchises. The NTC ruled that it was not competent to render a ruling on that issue, the same being more properly the subject of an action for *quo warranto* to be commenced by the Solicitor General in the name of the Republic of the Philippines, pursuant to Rule 66 of the Rules of Court.[14]

After the NTC had denied Divinagracia's motion for reconsideration,[15] he filed a petition for review under Rule 43 of the Rules of Court with the Court of Appeals.[16] On 18 February 2004, the Court of Appeals rendered a decision[17] upholding the NTC. The appellate court agreed with the earlier conclusion that the complaints were indeed a collateral attack on the legislative franchises of CBS and PBS and that a *quo warranto* action was the proper mode to thresh out the issues raised in the complaints.

Hence this petition, which submits as the principal issue, whether the NTC, with its retinue of regulatory powers, is powerless to cancel Provisional Authorities and Certificates of Public Convenience it issued to legislative franchise-holders. That central issue devolves into several narrower arguments, some of which hinge on the authority of the NTC to cancel the very Provisional Authorities and CPCs which it is empowered to issue, as distinguished from the legislative franchise itself, the cancellation of which Divinagracia points out was not the relief he had sought from the NTC. Questions are raised as to whether the complaints did actually constitute a collateral attack on the legislative franchises.

Yet this case ultimately rests to a large degree on fundamentals. Divinagracia's case rotates on the singular thesis that the NTC has the power to cancel Provisional Authorities and CPCs, or in effect, the power to cancel the licenses that allow broadcast stations to operate. The NTC, in its assailed Decision, expressly admits that it has such power even as it refrained from exercising the same.[18] The Court has yet to engage in a deep inquiry into the question of whether the NTC has the power to cancel the operating licenses of entities to whom Congress has issued franchises to operate broadcast stations, especially on account of an alleged violation of the terms of their franchises. This is the opportune time to examine the issue.

II.

To fully understand the scope and dimensions of the regulatory realm of the NTC, it is essential to review the legal background of the regulation process. As operative fact, any person or enterprise which wishes to operate a broadcast radio or television station in the Philippines has to secure a legislative franchise in the form of a law passed by Congress, and thereafter a license to operate from the NTC.

The franchise requirement traces its genesis to Act No. 3846, otherwise known as the Radio Control Act, enacted in 1931.[19] Section 1 thereof provided that "[n]o person, firm, company, association or corporation shall construct, install, establish, or operate x x x a radio broadcasting station, without having first obtained a franchise therefor from the National Assembly x x x"[20] Section 2 of the law prohibited the construction or installation of any station without a permit granted by the Secretary of Public Works and Communication, and the operation of such station without a license issued by the same Department Secretary.[21] The law likewise empowered the Secretary of Public Works and Communication "to regulate the establishment, use, and operation of all radio stations and of all forms of radio communications and transmissions within the Philippine Islands and to issue such rules and regulations as may be necessary."[22]

Noticeably, our Radio Control Act was enacted a few years after the United States Congress had passed the Radio Act of 1927. American broadcasters themselves had asked their Congress to step in and regulate the radio industry, which was then in its infancy. The absence of government regulation in that market had led to the emergence of hundreds of radio broadcasting stations, each using frequencies of their choice and changing frequencies at will, leading to literal chaos on the airwaves. It was the Radio Act of 1927 which introduced a licensing requirement for American broadcast stations, to be overseen eventually by the Federal Communications Commission (FCC).[23]

This pre-regulation history of radio broadcast stations illustrates the continuing necessity of a government role in overseeing the broadcast media industry, as opposed to other industries such as print media and the Internet.[24] Without regulation, the result would be a free-for-all market with rival broadcasters able with impunity to sabotage the use by others of the airwaves.[25] Moreover, the airwaves themselves the very medium utilized by broadcastâ€•are by their very nature not susceptible to appropriation, much less be the object of any claim of private or exclusive ownership. No private individual or enterprise has the physical means,

acting alone to actualize exclusive ownership and use of a particular frequency. That end, desirable as it is among broadcasters, can only be accomplished if the industry itself is subjected to a regime of government regulation whereby broadcasters receive entitlement to exclusive use of their respective or particular frequencies, with the State correspondingly able by force of law to confine all broadcasters to the use of the frequencies assigned to them.

Still, the dominant jurisprudential rationale for state regulation of broadcast media is more sophisticated than a mere recognition of a need for the orderly administration of the airwaves. After all, a united broadcast industry can theoretically achieve that goal through determined self-regulation. The key basis for regulation is rooted in empiricism - "that broadcast frequencies are a scarce resource whose use could be regulated and rationalized only by the Government." This concept was first introduced in jurisprudence in the U.S. case of *Red Lion v. Federal Communications Commission*.[26]

Red Lion enunciated the most comprehensive statement of the necessity of government oversight over broadcast media. The U.S. Supreme Court observed that within years from the introduction of radio broadcasting in the United States, "it became apparent that broadcast frequencies constituted a scarce resource whose use could be regulated and rationalized only by the Government... without government control, the medium would be of little use because of the cacophonyof competing voices, none of which could be clearly and predictably heard."The difficulties posed by spectrum scarcity was concretized by the U.S. High Court in this manner:

> Scarcity is not entirely a thing of the past. Advancesin technology, such as microwave transmission, have led to more efficient utilization of the frequency spectrum, but uses for that spectrum have also grown apace. Portions of the spectrum must be reserved for vital uses unconnected with human communication, such as radio-navigational aids used by aircraft and vessels. Conflicts have even emerged between such vital functions as defense preparedness and experimentation in methods of averting midair collisions through radio warning devices. "Land mobile services" such as police, ambulance, fire department, public utility, and other communications systems have been occupying an increasingly crowded portion of the frequency spectrumand there are, apart from licensed amateur radio operators' equipment, 5,000,000 transmitters operated on the "citizens' band" which is also increasingly congested. Among the various uses for radio frequency space, including marine,aviation, amateur, military, and common carrier users, there are easily enough claimants to permit use of the whole with an even smaller allocation to broadcast radio and television uses than now exists. (citations omitted)[27]

After interrelating the premise of scarcity of resources with the First Amendment rights of broadcasters, *Red Lion* concluded that government regulation of broadcast media was a necessity:

> Where there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every

individual to speak, write, or publish. If 100 persons want broadcast[395 U.S. 367, 389]licenses but there are only 10 frequencies to allocate, all of them may have the same "right" to a license; but if there is to be any effective communication by radio, only a few can be licensed and the rest must be barred from the airwaves. It would be strange if the First Amendment, aimed at protecting and furthering communications, prevented the Government from making radio communication possible by requiring licenses to broadcast and by limiting the number of licenses so as not to overcrowd the spectrum.

This has been the consistent view of the Court. Congress unquestionably has the power to grant and deny licenses and to eliminate existing stations. No one has a First Amendment right to a license or to monopolize a radio frequency; to deny a station license because "the public interest" requires it "is not a denial of free speech."

By the same token, as far as the First Amendment is concerned those who are licensed stand no better than those to whom licenses are refused. A license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizens. There is nothing in the First Amendment which prevents the Government from requiring a licensee to share his frequency with others and to conduct himself as a proxy or fiduciary with obligations to present those views and voices which are representative of his community and which would otherwise, by necessity, be barred from the airwaves.[28]

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Rather than confer frequency monopolies on a relatively small number of licensees, in a Nation of 200,000,000, the Government could surely have decreed that each frequency should be shared among all or some of those who wish to use it, each being assigned a portion of the broadcast day or the broadcast week. The ruling and regulations at issue here do not go quite so far. They assert that under specified circumstances, a licensee must offer to make available a reasonable amount of broadcast time to those who have a view different from that which has already been expressed on his station. The expression of a political endorsement, or of a personal attack while dealing with a controversial public issue, simply triggers this time sharing. As we have said, the First Amendment confers no right on licensees to prevent others from broadcasting on "their" frequencies and no right to an unconditional monopoly of a scarce resource which the Government has denied others the right to use.

In terms of constitutional principle, and as enforced sharing of a scarce resource, the personal attack and political editorial rules are indistinguishable from the equal-time provision of §315, a specific enactment of Congress requiring stations to set aside reply time under specified circumstances and to which the fairness doctrine and these constituent regulations are important complements. That provision, which has been part of the law since 1927, Radio Act of 1927, §18, 44 Stat. 1170, has been held valid by this Court as an obligation of the