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THIRD DIVISION

[G.R. No. 144109, February 17, 2003]

ASSOCIATED COMMUNICATIONS & WIRELESS SERVICES – UNITED BROADCASTING NETWORKS, PETITIONER, VS. NATIONAL TELECOMMUNICATIONS COMMISSION, RESPONDENT.

DECISION

PUNO, J.:

For many years now, there has been a "pervading confusion in the state of affairs of the broadcast industry brought about by conflicting laws, decrees, executive orders and other pronouncements promulgated during the Martial Law regime."[1] The question that has taken a long life is whether the operation of a radio or television station requires a congressional franchise. The Court shall now lay to rest the issue.

This is a petition for review on certiorari of the Court of Appeals' January 31, 2000 decision and February 21, 2000 resolution affirming the January 13, 1999 decision of the National Telecommunications Commission (NTC for brevity).

First, the facts.

On November 11, 1931, Act No. 3846, entitled "An Act Providing for the Regulation of Radio Stations and Radio Communications in the Philippines and for Other Purposes," was enacted. Sec. 1 of the law reads, *viz*:

> "Sec. 1. No person, firm, company, association, or corporation shall construct, install, establish, or operate a radio transmitting station, or a radio receiving station used for commercial purposes, or a radio broadcasting station, without having first obtained a franchise therefor from the Congress of the Philippines..."

Pursuant to the above provision, Congress enacted in 1965 R.A. No. 4551, entitled "An Act Granting Marcos J. Villaverde, Jr. and Winfred E. Villaverde a Franchise to Construct, Install, Maintain and Operate Public Radiotelephone and Radiotelegraph Coastal Stations, and Public Fixed and Public Based and Land Mobile Stations within the Philippines for the Reception and Transmission of Radiotelephone and Radiotelegraph for Domestic Communications and Provincial Telephone Systems in Certain Provinces." It gave the grantees a 50-year franchise.[2] In 1969, the franchise was transferred to petitioner Associated Communications & Wireless Services – United Broadcasting Network, Inc. (ACWS for brevity) through Congress' Concurrent Resolution No. 58.[3] Petitioner ACWS then engaged in the installation and operation of several radio stations around the country.

In 1974, P.D. No. 576-A, "Regulating the Ownership and Operation of Radio and

Television Stations and for other Purposes" was issued, with the following pertinent provisions on franchise of radio and television broadcasting systems:

> "Sec. 1. No radio station or television channel may obtain a franchise unless it has sufficient capital on the basis of equity for its operation for at least one year, including purchase of equipment.
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> x x x x x x x x x
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> 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 broadcasting system; 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."

A few years later or in 1979, E.O. No. 546[4] was issued. It integrated the Board of Communications and the Telecommunications Control Bureau under the Integrated Reorganization Plan of 1972 into the NTC. Among the powers vested in the NTC under Sec. 15 of E.O. No. 546 are the following:

> "a. Issue Certificate of Public Convenience for the operation of communication utilities and services, radio communications systems, wire or wireless telephone or telegraph system, radio and television broadcasting system and other similar public utilities;
>
> x x x x x x x x x
>
> c. Grant permits for the use of radio frequencies for wireless telephone and telegraph systems and radio communication systems including amateur radio stations and radio and television broadcasting systems; . . . "

Upon termination of petitioner's franchise on December 31, 1981 pursuant to P.D. No. 576-A, it continued operating its radio stations under permits granted by the NTC.

As these presidential issuances relating to the radio and television broadcasting industry brought about confusion as to whether the NTC could issue permits to radio and television broadcast stations without legislative franchise, the NTC sought the opinion of the Department of Justice (DOJ) on the matter. On June 20, 1991, the DOJ rendered Opinion No. 98, Series of 1991, *viz*:

> "We believe that under P.D. No. 576-A dated November 11, 1974 and prior to the issuance of E.O No. 546 dated July 23, 1979, the NTC, then Board of Communications, had no authority to issue permits or

authorizations to operate radio and television broadcasting systems without a franchise first being obtained pursuant to Section 1 of Act No. 3846, as amended. A close reading of the provisions of Sections 1 and 6 of P.D. No. 576-A, supra, does not reveal any indication of a legislative intent to do away with the franchising requirement under Section 1 of Act No. 3846. In fact, a mere reading of Section 1 would readily indicate that a franchise was necessary for the operation of radio and television broadcasting systems as it expressly provided that no such franchise may be obtained unless the radio station or television channel has 'sufficient capital on the basis of equity for its operation for at least one year, including purchase of equipment.'

It is believed that the termination of all franchises granted for the operation of radio and television broadcasting systems effective December 31, 1981 and the vesting of the power to authorize the operation of any radio or television station upon the Board of Communications and the Secretary of Public Works and Communications and their successors under Section 6 of P.D. No. 576-A does not necessarily imply the abrogation of the requirement of obtaining a franchise under Section 1 of Act No. 3846, as amended, in the absence of a clear provision in P.D. No. 576-A providing to this effect.

It should be noted that under Act No. 3846, as amended, a person, firm or entity desiring to operate a radio broadcasting station must obtain the following: (a) a franchise from Congress (Sec. 1); (b) a permit to construct or install a station from the Secretary of Commerce and Industry (Sec. 2); and (c) a license to operate the station also from the Secretary of Commerce and Industry (id.). The franchise is the privilege granted by the State through its legislative body and is subject to regulation by the State itself by virtue of its police power through its administrative agencies (RCPI vs. NTC, 150 SCRA 450). The permit and license are the administrative authorizations issued by the administrative agency in the exercise of regulation. It is clear that what was transferred to the Board of Communications and the Secretary of Commerce and Industry under Section 6 of P.D. No. 576-A was merely the regulatory powers vested solely in the Secretary of Commerce and Industry under Section 2 of Act No. 3846, as amended. The franchising authority was retained by the then incumbent President as repository of legislative power under Martial Law, as is clearly indicated in the first WHEREAS clause of P.D. No. 576-A to wit:

> 'WHEREAS, the President of the Philippines is empowered under the Constitution to review and approve franchises for public utilities.'

Of course, under the Constitution, said power (the power to review and approve franchises), belongs to the lawmaking body (Sec. 5, Art. XIV, 1973 Constitution; Sec. 11, Art. XII, 1987 Constitution).

The corollary question to be resolved is: Has E.O. No 546 (which is a law issued pursuant to P.D. No. 1416, as amended by P.D. No. 1771, granting the then President continuing authority to reorganize the administrative

structure of the national government) modified the franchising and licensing arrangement for radio and television broadcasting systems under P.D. No. 576-A?

We believe so.

E.O. No. 546 integrated the Board of Communications and the Telecommunications Bureau into a single entity known as the NTC (See Sec. 14), and vested the new body with broad powers, among them, the power to issue Certificates of Public Convenience for the operation of communications utilities, including radio and televisions broadcasting systems and the power to grant permits for the use of radio frequencies (Sec. 14[a] and [c], *supra*). Additionally, NTC was vested with broad rule making authority 'to encourage a larger and more effective use of communications, radio and television broadcasting facilities, and to maintain effective competition among private entities in these activities whenever the Commission finds it reasonably feasible' (Sec. 15[f]).

In the recent case of Albano vs. Reyes (175 SCRA 264), the Supreme Court held that 'franchises issued by Congress are not required before each and every public utility may operate.' Administrative agencies may be empowered by law 'to grant licenses for or to authorize the operation of certain public utilities.' The Supreme Court stated that the provision in the Constitution (Art. XII, Sec. 11) 'that the issuance of a franchise, certificate or other form of authorization for the operation of a public utility shall be subject to amendment, alteration or repeal by Congress, does not necessarily imply . . . that only Congress has the power to grant such authorization. Our statute books are replete with laws granting specified agencies in the Executive Branch the power to issue such authorization for certain classes of public utilities.'

We believe that E.O. No. 546 is one law which authorizes an administrative agency, the NTC, to issue authorizations for the operation of radio and television broadcasting systems without need of a prior franchise issued by Congress.

Based on all the foregoing, we hold the view that NTC is empowered under E.O. No. 546 to issue authorization and permits to operate radio and television broadcasting system."[5]

However, on May 3, 1994, the NTC, the Committee on Legislative Franchises of Congress, and the Kapisanan ng mga Brodkaster sa Pilipinas of which petitioner is a member of good standing, entered into a Memorandum of Understanding (MOU) that requires a congressional franchise to operate radio and television stations. The MOU states, *viz*:

"WHEREAS, under the provisions of Section 1 of Act No. 3846 (Radio Laws of the Philippines, as amended), only radio and television broadcast stations with legislative franchise are authorized to operate.

WHEREAS, Executive Order No. 546, which created the National Telecommunications Commission (NTC) and abolished the Board of

Communications (BOC) and the Telecommunications Control Bureau (TCB), and integrated the functions and prerogative of the latter two agencies into the National Telecommunications Commission (NTC);

WHEREAS, the National Telecommunications Commission (NTC) is authorized to issue certificate of public convenience for the operation of radio and television broadcast stations;

WHEREAS, there is a pervading confusion in the state of affairs of the broadcast industry brought about by conflicting laws, decrees, executive orders and other pronouncements promulgated during the Martial Law regime, the parties in their common desire to rationalize the broadcast industry, promote the interest of public welfare, avoid a vacuum in the delivery of broadcast services, and foremost to better serve the ends of press freedom, the parties hereto have agreed as follows:

> 'The NTC shall continue to issue and grant permits or authorizations to operate radio and television broadcast stations within their mandate under Section 15 of Executive Order No. 546, provided that such temporary permits or authorization to operate shall be valid for two (2) years within which the permittee shall be required to file an application for legislative franchise with Congress not later than December 31, 1994; provided finally, that if the permittee of the temporary permit or authorization to operate fails to secure the legislative franchise with Congress within this period, the NTC shall not extend or renew its permit or authorization to operate any further.'"[6]

Prior to the December 31, 1994 deadline set by the MOU, petitioner filed with Congress an application for a franchise on December 20, 1994. Pending its approval, the NTC issued to petitioner a temporary permit dated July 7, 1995 to operate a television station via Channel 25 of the UHF Band from June 29, 1995 to June 28, 1997.[7] In 1996, the NTC authorized petitioner to increase the power output of Channel 25 from 1.0 kilowatt to 25 kilowatts after finding it financially and technically capable;[8] it also granted petitioner a permit to purchase radio transmitters/transceivers for use in its television Channel 25 broadcasting.[9] Shortly before the expiration of its temporary permit, petitioner applied for its renewal on May 14, 1997.[10]

On October 28, 1997, the House Committee on Legislative Franchises of Congress replied to an inquiry of the NTC's Broadcast Division Chief regarding the franchise application of ACWS filed on December 20, 1994. The Committee certified that petitioner's franchise application was not deliberated on by the 9th Congress because petitioner failed to submit the required supporting documents. In the next Congress, petitioner did not re-file its application.[11]

The following month or on November 17, 1997, the NTC's Broadcast Service Department wrote to petitioner ordering it to submit a new congressional franchise for the operation of its seven radio stations and informing it that pending compliance, its application for temporary permits to operate these radio stations