

THIRD DIVISION

[G.R. No. 139583, May 31, 2000]

**CRUSADERS BROADCASTING SYSTEM, INC., PETITIONER, VS.
NATIONAL TELECOMMUNICATIONS COMMISSION AND COURT
OF APPEALS, RESPONDENTS.**

D E C I S I O N

PURISIMA, J.:

At bar is a petition for review under Rule 45 of the Rules of Court seeking to nullify the Decision^[1] of the Court of Appeals which affirmed the decision of the National Telecommunications Commission (NTC, for brevity) denying petitioner's request for renewal of its temporary permit to operate DWCD-FM, and recalling its assigned frequency.

Undisputed are the pertinent facts, to wit:

The petitioner, Crusaders Broadcasting System, Inc. (Crusaders, for short), was the grantee of Temporary Permit No. BSD-0459-92 to operate 10-KW DWCD-FM at a frequency of 97.9 Mhz.

On July 12, 1994, Mr. Cesar A. Dumlao, Chairman of Crusaders, sent to the Commission a letter (Exh. "A") requesting permission to stop the broadcast of DWCD-FM for around a month starting July 12, 1994, so as to renovate its 20-year old Broadcast Booth and the entire facilities of the station.

Subsequently, upon application of Crusaders, NTC renewed Temporary Permit No. BSD-0814-94, dated December 14, 1994, covering the period from January 1, 1995 to December 31, 1996. Again, on December 12, 1996, Crusaders applied for another renewal of its Temporary Permit.

Acting on subject application, the NTC caused the inspection of the radio station of Crusaders and per report of NTC-National Capital Region, which conducted such ocular inspection on February 21, 1997, the station of Crusaders was inoperative. Acting upon such finding, the Broadcast Service Division of the NTC recommended the cancellation and revocation of the permit of Crusaders and the recall of its frequency 97.9 Mhz.

Thus, on April 25, 1997 the Commission wrote Chairman Cesar A. Dumlao of Crusaders, informing the latter of the denial of his application for the renewal of Crusaders' Temporary Permit.

Crusaders presented a motion for reconsideration, thru its counsel, Atty. Felino Ganai, explaining that Crusaders was not able to resume its operations because of the institution of Civil Case No. 64739 before the Regional Trial Court of Pasig,

Branch 163, by Conamor Broadcasting Corporation (Conamor, for brevity), against Crusaders Broadcasting System, Inc. and of the issuance of an order of injunction by the said Court enjoining Crusaders from operating its radio station.

On July 14, 1997, the Commission issued a show-cause Order directing Crusaders to explain: (1) Why its application for renewal of Temporary Permit for station DWCD-FM should not be denied; (2) Why its station, DWCD-FM, should not be ordered closed; and (3) Why its station DWCD-FM assigned frequency should not be recalled.

On August 5, 1997, Atty. Felino Ganal filed an "Urgent Motion For Extension" for the filing of Crusaders' answer/explanation. Such motion was followed by a second "Urgent Motion For Extension", dated August 15, 1997, and a third motion for extension, dated August 22, 1997.

On August 28, 1997, for failure of Crusaders to submit a responsive pleading, the Commission issued an order declaring Crusaders in default, and, thereafter, handed down its decision recalling the assigned frequency of Crusaders.

The following day, or on February 29, 1997, to be precise, Atty. Ganal filed an Answer, averring that the show-cause order was served upon him and not upon his client Crusaders and therefore, it was only upon the filing of its answer that Crusaders should be deemed to have voluntarily submitted itself to the jurisdiction of the Commission. It was further alleged that Crusaders is a grantee of a congressional franchise (RA No. 8091) but it could not yet resume its operation because its transmitter was taken by Conamor by virtue of an order of injunction issued by the Regional Trial Court of Pasig City in Civil Case No. 64739; that it has already applied with Commission for authority to acquire an additional transmitter; that the said injunction was already lifted and set aside by the same trial court, in an Order dated August 27, 1997; that it has mobilized its resources towards the operation of its radio station and that it has, in fact, made a test broadcast.

On September 22, 1997, Crusaders filed an "urgent Motion for New Trial and/or Reconsideration" praying for the lifting of the order of default, setting aside of the decision, and for the reopening of the case.

After hearing, the Commission granted the motion for new trial and/or reconsideration and declared the case reopened for reception of evidence by Crusaders in order to afford it ample opportunity to be heard and to substantiate its defense as regards the show-cause order issued by the Commission. The initial evidence presented in support of the motion for new trial and/or reconsideration was later adopted as Crusaders evidence in the main case.

Then, the Commission came out with its assailed decision, disposing thus:

"WHEREFORE, in light of all the foregoing, the Commission believes and so holds that respondent's request for renewal of its temporary permit to operate DWCD-FM should be, as it is, hereby DENIED.

Consequently, respondent's assigned frequency, 97.9 Mhz, is hereby withdrawn and recalled, the same to be assigned without reasonable delay to the best qualified applicant.

SO ORDERED."^[2]

Crusaders' next step was to go to the Court of Appeals, which dismissed its petition for lack of merit.

Undaunted, Crusaders found its way to this Court via the present petition for review.

It is petitioner's submission that the NTC committed a grave reversible error in considering as untenable the temporary stoppage of Crusaders' broadcast. Petitioner insists that were it not for the order of injunction issued by the Regional Trial Court of Pasig City, which prohibited it from broadcasting, and caused the seizure of its transmitter, antenna, and other equipment, its station could have resumed operations.

Petitioner contends further that had the NTC approved its application, dated December 12, 1995, for the acquisition of a new transmitter, it could have re-started to operate DWCD-FM despite the Court's injunction order. In short, petitioner maintains that its failure to operate is not unjustified because the stoppage of its broadcasting was not due to its own fault or negligence.

It is likewise petitioner's stance that the Court of Appeals erred:

1. In upholding the finding of NTC that the "Programming and Marketing Agreement" with Conamor Broadcasting Corporation "to be one for a joint venture, which is a flagrant violation of Radio laws in that it would allow a non-franchise grantee to operate a public utility;"
2. In finding, in general terms, that "the findings of the respondent NTC are supported by substantial evidence and, therefore, should be "accorded respect and finality"; and
3. In upholding the NTC decision under the so-called "doctrine of primary jurisdiction."

Crusaders likewise assigned some substantive and procedural errors on the part of the NTC but the same were affirmed by the Court of Appeals.

Petitioner theorizes that the Court of Appeals gravely erred in affirming the decision of NTC, which denied the renewal of its temporary permit to operate DWCD-FM and caused the withdrawal of its assigned frequency.

On the other hand, respondent NTC, through the Office of Solicitor General (OSG), countered that the NTC was justified in denying petitioner's application for renewal of temporary permit and in recalling its assigned frequency. Anent the issue of the shifting of burden of proof, it alleges that the show-cause order dated July 14, 1997 was based on the inspection reports, dated February 21, 1997 and July 11, 1997, respectively, which indicated that petitioner failed to rehabilitate its broadcast booth and other facilities. Consequently, the burden of proof shifted to the petitioner.

Respondent also contends that subject inspection reports need not be authenticated and identified by competent witnesses, the same being public documents; citing Section 23, Rule 132 of the Rules of Court, which provides that "Documents