352 Phil. 153

EN BANC

[G.R. No. 132922, April 21, 1998]

TELECOMMUNICATIONS AND BROADCAST ATTORNEYS OF THE PHILIPPINES, INC. AND GMA NETWORK, INC., PETITIONERS, VS. THE COMMISSION ON ELECTIONS, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

In *Osmeña v. COMELEC,* G.R. No. 132231, decided March 31, 1998,[1] we upheld the validity of §11(b) of R.A. No. 6646 which prohibits the sale or donation of print space or air time for political ads, except to the Commission on Elections under §90, of B.P. No. 881, the Omnibus Election Code, with respect to print media, and §92, with respect to broadcast media. In the present case, we consider the validity of §92 of B.P. Blg. No. 881 against claims that the requirement that radio and television time be given free takes property without due process of law; that it violates the eminent domain clause of the Constitution which provides for the payment of just compensation; that it denies broadcast media the equal protection of the laws; and that, in any event, it violates the terms of the franchise of petitioner GMA Network, Inc.

Petitioner Telecommunications and Broadcast Attorneys of the Philippines, Inc. is an organization of lawyers of radio and television broadcasting companies. They are suing as citizens, taxpayers, and registered voters. The other petitioner, GMA Network, Inc., operates radio and television broadcasting stations throughout the Philippines under a franchise granted by Congress.

Petitioners challenge the validity of §92 on the ground (1) that it takes property without due process of law and without just compensation; (2) that it denies radio and television broadcast companies the equal protection of the laws; and (3) that it is in excess of the power given to the COMELEC to supervise or regulate the operation of media of communication or information during the period of election.

The Question of Standing

At the threshold of this suit is the question of standing of petitioner Telecommunications and Broadcast Attorneys of the Philippines, Inc. (TELEBAP). As already noted, its members assert an interest as lawyers of radio and television broadcasting companies and as citizens, taxpayers, and registered voters.

In those cases[2] in which citizens were authorized to sue, this Court upheld their standing in view of the “transcendental importance” of the constitutional question raised which justified the granting of relief. In contrast, in the case at bar, as will presently be shown, petitioners’ substantive claim is without merit. To the extent, therefore, that a party’s standing is determined by the substantive merit of his case or a preliminary estimate thereof, petitioner TELEBAP must be held to be without standing.

Indeed, a citizen will be allowed to raise a constitutional question only when he can show that he has personally suffered some actual or threatened injury as a result of the allegedly illegal conduct of the government; the injury is fairly traceable to the challenged action; and the injury is likely to be redressed by a favorable action.[3] Members of petitioner have not shown that they have suffered harm as a result of the operation of §92 of B.P. Blg. 881.

Nor do members of petitioner TELEBAP have an interest as registered voters since this case does not concern their right of suffrage. Their interest in §92 of B.P. Blg. 881 should be precisely in upholding its validity.

Much less do they have an interest as taxpayers since this case does not involve the exercise by Congress of its taxing or spending power.[4] A party suing as a taxpayer must specifically show that he has a sufficient interest in preventing the illegal expenditure of money raised by taxation and that he will sustain a direct injury as a result of the enforcement of the questioned statute.

Nor indeed as a corporate entity does TELEBAP have standing to assert the rights of radio and television broadcasting companies. Standing *jus tertii* will be recognized only if it can be shown that the party suing has some substantial relation to the third party, or that the third party cannot assert his constitutional right, or that the right of the third party will be diluted unless the party in court is allowed to espouse the third party's constitutional claim. None of these circumstances is here present. The mere fact that TELEBAP is composed of lawyers in the broadcast industry does not entitle them to bring this suit in their name as representatives of the affected companies.

Nevertheless, we have decided to take this case since the other petitioner, GMA Network, Inc., appears to have the requisite standing to bring this constitutional challenge. Petitioner operates radio and television broadcast stations in the Philippines affected by the enforcement of §92 of B.P. Blg. 881 requiring radio and television broadcast companies to provide free air time to the COMELEC for the use of candidates for campaign and other political purposes.

Petitioner claims that it suffered losses running to several million pesos in providing COMELEC Time in connection with the 1992 presidential election and the 1995 senatorial election and that it stands to suffer even more should it be required to do so again this year. Petitioner's allegation that it will suffer losses again because it is required to provide free air time is sufficient to give it standing to question the validity of §92.[5]

Airing of COMELEC Time, a Reasonable Condition for Grant of Petitioner's Franchise

As pointed out in our decision in *Osmeña v. COMELEC*, §11(b) of R.A. No. 6646 and §90 and §92 of B.P. Blg. 881 are part and parcel of a regulatory scheme designed to equalize the opportunity of candidates in an election in regard to the use of mass media for political campaigns. These statutory provisions state in relevant parts:

R.A. No. 6646

SEC. 11. *Prohibited Forms of Election Propaganda*. - In addition to the forms of election propaganda prohibited under Section 85 of Batas Pambansa Blg. 881, it shall be unlawful:

. . . .

(b) for any newspapers, radio broadcasting or television station, or other mass media, or any person making use of the mass media to sell or to give free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Section 90 and 92 of Batas Pambansa Blg. 881. Any mass media columnist, commentator, announcer or personality who is a candidate for any elective public office shall take a leave of absence from his work as such during the campaign period.

B.P. Blg. 881, (Omnibus Election Code)

SEC. 90. *Comelec space*. - The Commission shall procure space in at least one newspaper of general circulation in every province or city: *Provided, however,* That in the absence of said newspaper, publication shall be done in any other magazine or periodical in said province or city, which shall be known as "Comelec Space" wherein candidates can announce their candidacy. Said space shall be allocated, free of charge, equally and impartially by the Commission among all candidates within the area in which the newspaper is circulated. (Sec. 45, 1978 EC).

SEC. 92. *Comelec time*. - The Commission shall procure radio and television time to be known as "Comelec Time" which shall be allocated equally and impartially among the candidates within the area of coverage of all radio and television stations. For this purpose, the franchise of all radio broadcasting and television stations are hereby amended so as to provide radio or television time, free of charge, during the period of the campaign. (Sec. 46, 1978 EC)

Thus, the law prohibits mass media from selling or donating print space and air time to the candidates and requires the COMELEC instead to procure print space and air time for allocation to the candidates. It will be noted that while §90 of B.P. Blg. 881 requires the COMELEC to procure print space which, as we have held, should be paid for, §92 states that air time shall be procured by the COMELEC free of charge.

Petitioners contend that §92 of BP Blg. 881 violates the due process clause[6] and the eminent domain provision[7] of the Constitution by taking air time from radio and television broadcasting stations without payment of just compensation. Petitioners claim that the primary source of revenue of the radio and television stations is the sale of air time to advertisers and that to require these stations to provide free air time is to authorize a taking which is not "a de minimis temporary limitation or restraint upon the use of private property." According to petitioners, in 1992, the GMA Network, Inc. lost P22,498,560.00 in providing free air time of one (1) hour every morning from Mondays to Fridays and one (1) hour on Tuesdays and Thursdays from 7:00 to 8:00 p.m. (prime time) and, in this year's elections, it stands to lose P58,980,850.00 in view of COMELEC's requirement that radio and television stations provide at least 30 minutes of prime time daily for the COMELEC Time.[8]

Petitioners' argument is without merit. All broadcasting, whether by radio or by television stations, is licensed by the government. Airwave frequencies have to be allocated as there are more individuals who want to broadcast than there are frequencies to assign.[9] A franchise is thus a privilege subject, among other things, to amendment by Congress in accordance with the constitutional provision that "any such

franchise or right granted . . . shall be subject to amendment, alteration or repeal by the Congress when the common good so requires."[10]

The idea that broadcast stations may be required to provide COMELEC Time free of charge is not new. It goes back to the Election Code of 1971 (R.A. No. 6388), which provided:

> SEC. 49. *Regulation of election propaganda through mass media*. - (a) The franchises of all radio broadcasting and television stations are hereby amended so as to require each such station to furnish free of charge, upon request of the Commission [on Elections], during the period of sixty days before the election not more than fifteen minutes of prime time once a week which shall be known as "Comelec Time" and which shall be used exclusively by the Commission to disseminate vital election information. Said "Comelec Time" shall be considered as part of the public service time said stations are required to furnish the Government for the dissemination of public information and education under their respective franchises or permits.

This provision was carried over with slight modification by the 1978 Election Code (P.D. No. 1296), which provided:

> SEC. 46. *COMELEC Time*. - The Commission [on Elections] shall procure radio and television time to be known as "COMELEC Time" which shall be allocated equally and impartially among the candidates within the area of coverage of said radio and television stations. For this purpose, the franchises of all radio broadcasting and television stations are hereby amended so as to require such stations to furnish the Commission radio or television time, free of charge, during the period of the campaign, at least once but not oftener than every other day.

Substantially the same provision is now embodied in §92 of B.P. Blg. 881.

Indeed, provisions for COMELEC Time have been made by amendment of the franchises of radio and television broadcast stations and, until the present case was brought, such provisions had not been thought of as taking property without just compensation. Art. XII, §11 of the Constitution authorizes the amendment of franchises for "the common good." What better measure can be conceived for the common good than one for free air time for the benefit not only of candidates but even more of the public, particularly the voters, so that they will be fully informed of the issues in an election? "[I]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount."[11]

Nor indeed can there be any constitutional objection to the requirement that broadcast stations give free air time. Even in the United States, there are responsible scholars who believe that government controls on broadcast media can constitutionally be instituted to ensure diversity of views and attention to public affairs to further the system of free expression. For this purpose, broadcast stations may be required to give free air time to candidates in an election.[12] Thus, Professor Cass R. Sunstein of the University of Chicago Law School, in urging reforms in regulations affecting the broadcast industry, writes:

> *Elections*. We could do a lot to improve coverage of electoral campaigns. Most important, government should ensure free media time for candidates. Almost all European nations make such provision; the United States does not. Perhaps

> government should pay for such time on its own. Perhaps broadcasters should have to offer it as a condition for receiving a license. Perhaps a commitment to provide free time would count in favor of the grant of a license in the first instance. Steps of this sort would simultaneously promote attention to public affairs and greater diversity of view. They would also help overcome the distorting effects of "soundbites" and the corrosive financial pressures faced by candidates in seeking time on the media.[13]

In truth, radio and television broadcasting companies, which are given franchises, do not own the airwaves and frequencies through which they transmit broadcast signals and images. They are merely given the temporary privilege of using them. Since a franchise is a mere privilege, the exercise of the privilege may reasonably be burdened with the performance by the grantee of some form of public service. Thus, in *De Villata v. Stanley*,[14] a regulation requiring interisland vessels licensed to engage in the interisland trade to carry mail and, for this purpose, to give advance notice to postal authorities of date and hour of sailings of vessels and of changes of sailing hours to enable them to tender mail for transportation at the last practicable hour prior to the vessel's departure, was held to be a reasonable condition for the state grant of license. Although the question of compensation for the carriage of mail was not in issue, the Court strongly implied that such service could be without compensation, as in fact under Spanish sovereignty the mail was carried free. [15]

In *Philippine Long Distance Telephone Company v. NTC,*[16] the Court ordered the PLDT to allow the interconnection of its domestic telephone system with the international gateway facility of Eastern Telecom. The Court cited (1) the provisions of the legislative franchise allowing such interconnection; (2) the absence of any physical, technical, or economic basis for restricting the linking up of two separate telephone systems; and (3) the possibility of increase in the volume of international traffic and more efficient service, at more moderate cost, as a result of interconnection.

Similarly, in the earlier case of *PLDT v. NTC*,[17] it was held:

> Such regulation of the use and ownership of telecommunications systems is in the exercise of the plenary police power of the State for the promotion of the general welfare. The 1987 Constitution recognizes the existence of that power when it provides:

"Sec. 6. The use of property bears a social function, and all economic agents shall contribute to the common good. Individuals and private groups, including corporations, cooperatives, and similar collective organizations, shall have the right to own, establish, and operate economic enterprises, subject to the duty of the State to promote distributive justice and to intervene when the common good so demands" (Article XII).

> The interconnection which has been required of PLDT is a form of "intervention" with property rights dictated by "the objective of government to promote the rapid expansion of telecommunications services in all areas of the Philippines, . . . to maximize the use of telecommunications facilities available, . . . in recognition of the vital role of communications in nation building . . . and *to ensure that all users of the public telecommunications service have access to all other users of the service wherever they may be within the Philippines at an acceptable standard of service and at reasonable cost*" (DOTC Circular No. 90-248). Undoubtedly, the encompassing objective is the common good. The NTC, as the regulatory agency of