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**SECOND DIVISION**

[G.R. Nos. 170270 & 179411. April 2, 2009]

**NEWSOUNDS BROADCASTING NETWORK INC. and CONSOLIDATED BROADCASTING SYSTEM, INC.,** *petitioners, vs.* **HON. CEASAR G. DY, FELICISIMO G. MEER, BAGNOS MAXIMO, RACMA FERNANDEZ-GARCIA and THE CITY OF CAUAYAN,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; BILL OF RIGHTS; FREEDOM OF SPEECH, EXPRESSION AND THE PRESS; NATURE. —** Free speech and free press may be identified with the liberty to discuss publicly and truthfully any matter of public interest without censorship and punishment. There is to be no previous restraint on the communication of views or subsequent liability whether in libel suits, prosecution for sedition, or action for damages, or contempt proceedings unless there be a clear and present danger of substantive evil that Congress has a right to prevent.

**2. ID.; ID.; ID.; ID.; ID.; PRIOR RESTRAINT; DEFINED. —** Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination. While any system of prior restraint comes to court bearing a heavy burden against its constitutionality, not all prior restraints on speech are invalid.

**3. ID.; ID.; ID.; ID.; ID.; ID.; ANY SYSTEM OF PRIOR RESTRAINTS BEARS A HEAVY PRESUMPTION AGAINST ITS CONSTITUTIONALITY. —** There is a long-standing tradition of special judicial solicitude for free speech, meaning that governmental action directed at expression must satisfy a greater burden of justification than governmental action directed at most other forms of behavior. We had said in *SWS v. COMELEC*: "Because of the preferred status of the constitutional rights of speech, expression, and the press, such a measure is vitiated by a weighty presumption of invalidity. Indeed, 'any system of prior restraints of expression comes

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to this Court bearing a heavy presumption against its constitutional validity. . . . The Government 'thus carries a heavy burden of showing justification for the enforcement of such restraint.' There is thus a reversal of the normal presumption of validity that inheres in every legislation."

**4. ID.; ID.; ID.; ID.; ID.; CONTENT-NEUTRAL REGULATION AND CONTENT-BASED RESTRAINT, DISTINGUISHED. —** [J]urisprudence distinguishes between a **content-neutral** regulation, *i.e.*, merely concerned with the incidents of the speech, or one that merely controls the time, place or manner, and under well defined standards; and a **content-based** restraint or censorship, *i.e.*, the restriction is based on the subject matter of the utterance or speech. Content-based laws are generally treated as more suspect than content-neutral laws because of judicial concern with discrimination in the regulation of expression. Content-neutral regulations of speech or of conduct that may amount to speech, are subject to lesser but still heightened scrutiny.

**5. REMEDIAL LAW; CIVIL PROCEDURE; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; NOTICE AND HEARING; MANDATORY IF PRELIMINARY INJUNCTION SHOULD BE GRANTED BUT NOT IF SUCH PROVISIONAL RELIEF WERE TO BE DENIED. —** Section 5 of Rule 58 prescribes a mandatory hearing and prior notice to the party or person sought to be enjoined **if preliminary injunction should be granted**. It imposes no similar requirement if such provisional relief were to be denied. We in fact agree with the Court of Appeals that "if on the face of the pleadings, the applicant for preliminary injunction is not entitled thereto, courts may outrightly deny the motion without conducting a hearing for the purpose." The Court is disinclined to impose a mandatory hearing requirement on applications for injunction even if on its face, injunctive relief is palpably without merit or impossible to grant. Otherwise, our trial courts will be forced to hear out the sort of litigation-happy attention-deprived miscreants who abuse the judicial processes by filing complaints against real or imaginary persons based on trivial or inexistent slights.

**6. ID.; ID.; ID.; ID.; GUIDELINES ON PROVISIONAL RELIEF IN FREE EXPRESSION CASES. —** The application of the strict scrutiny analysis to petitioners' claims for provisional

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relief warrants the inevitable conclusion that the trial court cannot deny provisional relief to the party alleging a *prima facie* case alleging government infringement on the right to free expression without hearing from the infringer the cause why its actions should be sustained provisionally. Such acts of infringement are presumptively unconstitutional, thus the trial court cannot deny provisional relief outright since to do so would lead to the sustention of a presumptively unconstitutional act. It would be necessary for the infringer to appear in court and somehow rebut against the presumption of unconstitutionality for the trial court to deny the injunctive relief sought for in cases where there is a *prima facie* case establishing the infringement of the right to free expression. Those above-stated guidelines, which pertain most particularly to the *ex parte* denial of provisional relief in free expression cases, stand independently of the established requisites for a party to be entitled to such provisional reliefs. With respect to writs of preliminary injunction, the requisite grounds are spelled out in Section 3 of Rule 58 of the Rules of Court.

**7. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION; MUNICIPAL LICENSE; ESSENTIALLY A GOVERNMENT RESTRICTION UPON PRIVATE RIGHTS AND IS VALID ONLY IF BASED UPON AN EXERCISE BY THE MUNICIPALITY OF ITS POLICE OR TAXING POWERS.** — The LGC authorizes local legislative bodies to enact ordinances authorizing the issuance of permits or licenses upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the LGU. A municipal or city mayor is likewise authorized under the LGC to "issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance." Generally, LGUs have exercised its authority to require permits or licenses from business enterprises operating within its territorial jurisdiction. A municipal license is essentially a governmental restriction upon private rights and is valid only if based upon an exercise by the municipality of its police or taxing powers. The LGC subjects the power of *sanggunians* to enact ordinances requiring licenses or permits within the parameters of Book II of the Code, concerning "Local Taxation and Fiscal Matters." It also necessarily follows that the exercise of this power should

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also be consistent with the Constitution as well as the other laws of the land. Nothing in national law exempts media entities that also operate as businesses such as newspapers and broadcast stations such as petitioners from being required to obtain permits or licenses from local governments in the same manner as other businesses are expected to do so. While this may lead to some concern that requiring media entities to secure licenses or permits from local government units infringes on the constitutional right to a free press, we see no concern so long as such requirement has been duly ordained through local legislation and content-neutral in character, *i.e.*, applicable to all other similarly situated businesses. Indeed, there are safeguards within the LGC against the arbitrary or unwarranted exercise of the authority to issue licenses and permits. As earlier noted, the power of *sanggunians* to enact ordinances authorizing the issuance of permits or licenses is subject to the provisions of Book Two of the LGC. The power of the mayor to issue license and permits and suspend or revoke the same must be exercised pursuant to law or ordinance.

**8. CIVIL LAW; OBLIGATIONS AND CONTRACTS; DOCTRINE OF ESTOPPEL; EXPLAINED. —** [D]espite the general rule that the State cannot be put in estoppel by the mistake or errors of its officials or agents, we have also recognized, thus: **"Estoppels against the public are little favored. They should not be invoked except in a rare and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations . . ., the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals."** Thus, when there is no convincing evidence to prove irregularity or negligence on the part of the government official whose acts are being disowned other than the bare assertion on the part of the State, we have declined to apply State immunity from estoppel.

**9. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WHEN CONSIDERED AS A PROPER RELIEF. —** *Mandamus* lies as the proper relief whenever a public officer unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law.

**10. CIVIL LAW; DAMAGES; TEMPERATE DAMAGES; GRANTED WHEN THE COURT FINDS THAT SOME PECUNIARY LOSS HAS BEEN SUFFERED BUT ITS AMOUNT CANNOT, FROM THE NATURE OF THE CASE, BE PROVED WITH CERTAINTY. —** Temperate damages avail when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be proved with certainty. The existence of pecuniary injury at bar cannot be denied. Petitioners had no way of knowing it when they filed their petition, but the actions of respondents led to the closure of their radio stations from June 2004 until this Court issued a writ of preliminary injunction in January 2006. The lost potential income during that one and a half year of closure can only be presumed as substantial enough. Still, despite that fact, possibly unanticipated when the original amount for claimed temperate damages was calculated, petitioners have maintained before this Court the same amount, ₱8 Million, for temperate damages. The said amount is "reasonable under the circumstances."

**11. ID.; ID.; EXEMPLARY DAMAGES; CAN BE AWARDED WHEN TEMPERATE DAMAGES ARE AVAILABLE; CASE AT BAR. —** Exemplary damages can be awarded herein, since temperate damages are available. Public officers who violate the Constitution they are sworn to uphold embody "a poison of wickedness that may not run through the body politic." Respondents, by purposely denying the commercial character of the property in order to deny petitioners' the exercise of their constitutional rights and their business, manifested bad faith in a wanton, fraudulent, oppressive and malevolent manner. The amount of exemplary damages need not be proved where it is shown that plaintiff is entitled to temperate damages, and the sought for amount of ₱1 Million is more than appropriate.

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**APPEARANCES OF COUNSEL**

*Mary Marilyn Hechanova-Santos* and *Edgar S. Orro* for petitioners.

*City Legal Officer (Cauayan City*) for respondent City.

*Constante A. Foronda, Jr*. for Hon. C.G. Dy, F.G. Meer, B. Maximo, and R. Fernandez-Garcia.

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

**TINGA, *J.*:**

Whenever the force of government or any of its political subdivisions bears upon to close down a private broadcasting station, the issue of free speech infringement cannot be minimized, no matter the legal justifications offered for the closure. In many respects, the present petitions offer a textbook example of how the constitutional guarantee of freedom of speech, expression and of the press may be unlawfully compromised. Tragically, the lower courts involved in this case failed to recognize or assert the fundamental dimensions, and it is our duty to reverse, and to affirm the Constitution and the most sacred rights it guarantees.

Before us are two petitions for review involving the same parties, the cases having been consolidated by virtue of the Resolution of this Court dated 16 June 2008.[1] Both petitions emanated from a petition for *mandamus*[2] filed with the Regional Trial Court (RTC) of Cauayan City docketed as Special Civil Action No. Br. 20-171, the petition having been dismissed in a Decision dated 14 September 2004 by the Cauayan City RTC, Branch 20.[3] Consequently, petitioners filed with the Court of Appeals a petition for *certiorari* under Rule 65 and an appeal to the RTC decision. The appellate court ruled against petitioners

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[1] *Rollo* (G.R. No. 179411) pp. 1351-1352.

[2] *Id.* at 166-190.

[3] *Id.* at 296-302. Decision penned by Judge Henedino P. Eduarte.

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in both instances. The petition in G.R. No. 170270 assails the 27 October 2005 decision of the Court of Appeals in CA-G.R. SP No. 87815,[4] while the petition in G.R. 179411 assails the 30 May 2007 decision of the Court of Appeals in C.A.-G.R. SP No. 88283.[5]

*I.*

Bombo Radyo Philippines ("Bombo Radyo") operates several radio stations under the AM and FM band throughout the Philippines. These stations are operated by corporations organized and incorporated by Bombo Radyo, particularly petitioners Newsounds Broadcasting Network, Inc. ("Newsounds") and Consolidated Broadcasting System, Inc. ("CBS"). Among the stations run by Newsounds is Bombo Radyo DZNC Cauayan (DZNC), an AM radio broadcast station operating out of Cauayan City, Isabela. CBS, in turn, runs Star FM DWIT Cauayan ("Star FM"), also operating out of Cauayan City, airing on the FM band. The service areas of DZNC and Star FM extend from the province of Isabela to throughout Region II and the Cordillera region.[6]

In 1996, Newsounds commenced relocation of its broadcasting stations, management office and transmitters on property located in Minante 2, Cauayan City, Isabela. The property is owned by CBS Development Corporation (CDC), an affiliate corporation under the Bombo Radyo network which holds title over the properties used by Bombo Radyo stations throughout the country.[7] On 28 June 1996, CDC was issued by the then municipal government of Cauayan a building permit authorizing the construction of a commercial establishment on the property.[8]

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[4] *Id.* at 636-662. Decision penned by Court of Appeals Associate Justice E. Sundiam, concurred in by Associate Justice M. Villarama, Jr. and J. Dimaampao.

[5] Decision penned by Court of Appeals Associate Justice F. Lampas Peralta and concurred in by Associate Justices E. Cruz and N. Pizarro.

[6] *Rollo* (G.R. No. 179411), p. 13.

[7] *Id.*

[8] *Id.* at 90.

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On 5 July 1996, the Housing and Land Use Regulatory Board (HLURB) issued a Zoning Decision certifying the property as commercial.[9] That same day, the Office of the Municipal Planning and Development Coordinator (OMPDC) of Cauayan affirmed that the commercial structure to be constructed by CDC conformed to local zoning regulations, noting as well that the location "is classified as a Commercial area."[10] Similar certifications would be issued by OMPDC from 1997 to 2001.[11]

A building was consequently erected on the property, and therefrom, DZNC and Star FM operated as radio stations. Both stations successfully secured all necessary operating documents, including mayor's permits from 1997 to 2001.[12] During that period, CDC paid real property taxes on the property based on the classification of the land as commercial.[13]

All that changed beginning in 2002. On 15 January of that year, petitioners applied for the renewal of the mayor's permit. The following day, the City Assessor's Office in Cauayan City noted on CDC's Declaration of Real Property filed for 2002 confirmed that based on the existing file, CDC's property was classified as "commercial."[14] On 28 January, representatives of petitioners formally requested then City Zoning Administrator-Designate Bagnos Maximo (Maximo) to issue a zoning clearance for the property.[15] Maximo, however, required petitioners to submit "either an approved land conversion papers from the Department of Agrarian Reform (DAR) showing that the property was converted from prime agricultural land to commercial land, or an approved resolution from the *Sangguniang Bayan* or

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[9] *Id.* at 91.

[10] *Id.* at 92.

[11] *Id.* at 93-97.

[12] *Id.* at 98-102.

[13] *Id.* at 103-110.

[14] *Id.* at 103.

[15] *Id.* at 111.

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*Sangguniang Panglungsod* authorizing the re-classification of the property from agricultural to commercial land."[16] Petitioners had never been required to submit such papers before, and from 1996 to 2001, the OMPDC had consistently certified that the property had been classified as commercial.

Due to this refusal by Maximo to issue the zoning clearance, petitioners were unable to secure a mayor's permit. Petitioners filed a petition for *mandamus*[17] with the Regional Trial Court (RTC) of Cauayan City to compel the issuance of the 2002 mayor's permit. The case was raffled to Branch 19 of the Cauayan City RTC. When the RTC of Cauayan denied petitioners' accompanying application for injunctive relief, they filed a special civil action for *certiorari* with the Court of Appeals,[18] but this would be dismissed by the appellate court due to the availability of other speedy remedies with the trial court. In February of 2003, the RTC dismissed the *mandamus* action for being moot and academic.[19]

In the meantime, petitioners sought to obtain from the DAR Region II Office a formal recognition of the conversion of the CDC property from agricultural to commercial. The matter was docketed as Adm. Case No. A-0200A-07B-002. Then DAR Region II Director Abrino L. Aydinan (Director Aydinan) granted the application and issued an Order that stated that "there remains no doubt on the part of this Office of the non-agricultural classification of subject land before the effectivity of Republic Act No. 6657 otherwise known as the Comprehensive Agrarian Reform Law of 1988."[20] Consequently, the DAR Region II Office ordered the formal exclusion of the property from the Comprehensive Agrarian Reform Program, and the waiver of

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[16] *Id.* at 18-19.

[17] *Supra* note 2. Docketed as Spl. Civil Action No. 19-124 with the Regional Trial Court of Cauayan City, Branch 19.

[18] See *rollo* (G.R. No. 170270), p. 21; Docketed as C.A. G.R. No. 70361.

[19] *Rollo*, p. 22.

[20] *Id.* at 111.

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any requirement for formal clearance of the conversion of the subject land from agricultural to non-agricultural use."[21]

On 16 January 2003, petitioners filed their applications for renewal of mayor's permit for the year 2003, attaching therein the DAR Order. Their application was approved. However, on 4 March 2003, respondent Felicisimo Meer, Acting City Administrator of Cauayan City, wrote to petitioners claiming that the DAR Order was spurious or void, as the Regional Center for Land Use Policy Planning and Implementation (RCLUPPI) supposedly reported that it did not have any record of the DAR Order. A series of correspondences followed wherein petitioners defended the authenticity of the DAR Order and the commercial character of the property, while respondent Meer demanded independent proof showing the authenticity of the Aydinan Order. It does not appear though that any action was taken against petitioners by respondents in 2003, and petitioners that year paid realty taxes on the property based on the classification that said property is commercial.[22]

The controversy continued into 2004. In January of that year, petitioners filed their respective applications for their 2004 mayor's permit, again with the DAR Order attached to the same. A zonal clearance was issued in favor of petitioners. Yet in a letter dated 13 January 2004, respondent Meer claimed that no record existed of DAR Adm. Case No. A-0200A-07B-002 with the Office of the Regional Director of the DAR or with the RCLUPPI.[23] As a result, petitioners were informed that there was no basis for the issuance in their favor of the requisite zoning clearance needed for the issuance of the mayor's permit.[24]

Another series of correspondences ensued between Meer and the station manager of DZNC, Charmy Sabigan (Sabigan). Sabigan

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[21] *Id.* at 115.

[22] *Rollo* (G.R. No. 179411), pp. 21-22.

[23] *Rollo*, p. 171.

[24] *Id.*

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reiterated the authenticity of the DAR Order and the commercial character of the property, while Meer twice extended the period for application of the mayor's permit, while reminding them of the need to submit the certifications from the DAR or the *Sangguniang Panlalawigan* that the property had been duly converted for commercial use.

The deadline for application for the mayor's permit lapsed on 15 February 2004, despite petitioners' plea for another extension. On 17 February 2004, respondents Meer and Racma Fernandez-Garcia, City Legal Officer of Cauayan City, arrived at the property and closed the radio stations. Petitioners proceeded to file a petition with the Commission on Elections (COMELEC) seeking enforcement of the Omnibus Election Code, which prohibited the closure of radio stations during the then-pendency of the election period. On 23 March 2004, the COMELEC issued an order directing the parties to maintain the status prevailing before 17 February 2004, thus allowing the operation of the radio stations, and petitioners proceeded to operate the stations the following day. Within hours, respondent Mayor Ceasar Dy issued a Closure Order dated 24 March 2004, stating therein that since petitioners did not have the requisite permits before 17 February 2004, the *status quo* meant that the stations were not in fact allowed to operate.[25] Through the intervention of the COMELEC, petitioners were able to resume operation of the stations on 30 March 2004. On 9 May 2004, or two days before the general elections of that year, the COMELEC denied the petition filed by petitioners and set aside the status quo order.[26] However, this Resolution was reconsidered just 9 days later, or on 16 May 2004, and the COMELEC directed the maintenance of the *status quo* until 9 June 2004, the date of the end of the election period.

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[25] *Id.* at 198.

[26] *Id.* at 203-208. Resolution signed by Chairman Benjamin S. Abalos, Sr., and Commissioners Rufino S.B. Javier, Mehol K. Sadain, Resurreccion Z. Borra, Florentino A. Tuason, Jr., and Virgilio O. Garcillano. Commisioner Manuel A. Barcelona dissented.

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Petitioners were thus able to continue operations until 10 June 2004, the day when respondents yet again closed the radio stations. This closure proved to be more permanent.

By this time, the instant legal battle over the sought-after mayor's permits had already been well under way. On 15 April 2004, petitioners filed a petition for *mandamus*, docketed as SCA No. 20-171, with the RTC of Cauayan City, Branch 20. The petition was accompanied by an application for the issuance of temporary restraining order and writ of preliminary prohibitory injunction, both provisional reliefs being denied by the RTC through an Order dated 20 April 2004. Respondents duly filed an Answer with Counterclaims on 3 May 2004. Due to the aforementioned closure of the radio stations on 10 June 2004, petitioners filed with the RTC a Motion for the Issuance of a Writ of Preliminary Mandatory Injunction dated 15 June 2004, praying that said writ be issued to allow petitioners to resume operations of the radio stations. No hearing would be conducted on the motion, nor would it be formally ruled on by the RTC.

On 14 September 2004, the RTC rendered a Decision denying the petition for *mandamus*.[27] The RTC upheld all the arguments of the respondents, including their right to deny the sought after mayor's permit unless they were duly satisfied that the subject property has been classified as commercial in nature. The Decision made no reference to the application for a writ of preliminary mandatory injunction. Petitioners filed a motion for reconsideration,[28] citing the trial court's failure to hear and act on the motion for preliminary mandatory injunction as a violation of the right to due process, and disputing the RTC's conclusions with respect to their right to secure the mayor's permit. This motion was denied in an Order dated 1 December 2004.

Petitioners initiated two separate actions with the Court of Appeals following the rulings of the RTC. On 13 December

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[27] *Id.* at 339-348.

[28] *Id.* at 349-379.

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2004, they filed a Petition for *Certiorari* under Rule 65, docketed as CA G.R. No. 87815, raffled to the Fourteenth Division.[29] This petition imputed grave abuse of discretion on the part of the RTC for denying their application for preliminary mandatory injunction. On the same day, petitioners also filed a Notice of Appeal with the RTC, this time in connection with the denial of their petition for *mandamus*. This appeal was docketed as CA G.R. SP No. 88283 and raffled to the Eleventh Division.

Petitioners lost both of their cases with the Court of Appeals. On 27 October 2005, the Court of Appeals in CA G.R. No. 87815 dismissed the Petition for *Certiorari*, ruling that the RTC did not commit any grave abuse of discretion in impliedly denying the application for preliminary mandatory injunction. On 30 May 2007, the Court of Appeals in CA-G.R. SP No. 88283 denied the appeal by *certiorari*, affirming the right of the respondents to deny petitioners their mayor's permits. On both occasions, petitioners filed with this Court respective petitions for review under Rule 45 — the instant petitions, now docketed as G.R. Nos. 170270 and 179411.

On 23 January 2006, the Court in G.R. No. 170270 issued a writ of preliminary injunction, "enjoining respondents from implementing the closure order dated March 24, 2005, or otherwise interfering with the operations of Bombo Radyo DZNC Cauayan (NBN) and STAR FM DWIT Cauayan (CBS) in Cauayan City until final orders from this Court."[30] On 21 January 2008, the Court resolved to consolidate G.R. No. 170270 with G.R. No. 179411, which had been initially dismissed outright but was reinstated on even date.[31]

*Certiorari* lies in both instances.

*II.*

The fundamental constitutional principle that informs our analysis of both petitions is the freedom of speech, of expression

[29] *Id.* at 386-449.

[30] *Rollo* (G.R. No. 170270), pp. 677-678.

[31] *Rollo* (G.R. No. 179411), p. 1198.

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or the press.[32] Free speech and free press may be identified with the liberty to discuss publicly and truthfully any matter of public interest without censorship and punishment. There is to be no previous restraint on the communication of views or subsequent liability whether in libel suits, prosecution for sedition, or action for damages, or contempt proceedings unless there be a clear and present danger of substantive evil that Congress has a right to prevent.[33]

Petitioners have taken great pains to depict their struggle as a textbook case of denial of the right to free speech and of the press. In their tale, there is undeniable political color. They admit that in 2001, Bombo Radyo "was aggressive in exposing the widespread election irregularities in Isabela that appear to have favored respondent Dy and other members of the Dy political dynasty."[34] Respondent Ceasar Dy is the brother of Faustino Dy, Jr., governor of Isabela from 2001 until he was defeated in his re-election bid in 2004 by Grace Padaca, a former assistant station manager at petitioners' own DZNC Bombo Radyo.[35] A rival AM radio station in Cauayan City, DWDY, is owned and operated by the Dy family.[36] Petitioners likewise direct our attention to a 20 February 2004 article printed in the Philippine Daily Inquirer where Dy is quoted as intending "to file disenfranchisement proceedings against DZNC-AM."[37]

The partisan component of this dispute will no doubt sway many observers towards one opinion or the other, but not us.

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[32] Article 3, Sec. 4.

[33] *Gonzales v. COMELEC*, 137 Phil. 471, 492 (1969).

[34] *Rollo* (G.R. No. 170270), p. 27.

[35] See TJ Burgonio, "*Isabela gov who ended a dynasty wins RM prize*," Philippine Daily Inquirer (1 August 2008), at http://opinion.inquirer.net/inquireropinion/letterstotheeditor/view /20080801-151950/Isabela-gov-who-ended-a-dynasty-wins-RM-prize.

[36] *Rollo* (G.R. No. 170270), p. 17.

[37] *Rollo* (G.R. No. 179411), p. 142.

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The comfort offered by the constitutional shelter of free expression is neutral as to personality, affinity, ideology and popularity. The judges tasked to enforce constitutional order are expected to rule accordingly from the comfort of that neutral shelter.

Still, it cannot be denied that our Constitution has a systemic bias towards free speech. The absolutist tenor of Section 4, Article III testifies to that fact. The individual discomforts to particular people or enterprises engendered by the exercise of the right, for which at times remedies may be due, do not diminish the indispensable nature of free expression to the democratic way of life.

The following undisputed facts bring the issue of free expression to fore. Petitioners are authorized by law to operate radio stations in Cauayan City, and had been doing so for some years undisturbed by local authorities. Beginning in 2002, respondents in their official capacities have taken actions, whatever may be the motive, that have impeded the ability of petitioners to freely broadcast, if not broadcast at all. These actions have ranged from withholding permits to operate to the physical closure of those stations under color of legal authority. While once petitioners were able to broadcast freely, the weight of government has since bore down upon them to silence their voices on the airwaves. An elementary school child with a basic understanding of civics lessons will recognize that free speech animates these cases.

Without taking into account any extenuating circumstances that may favor the respondents, we can identify the bare acts of closing the radio stations or preventing their operations as an act of prior restraint against speech, expression or of the press. Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination.[38] While any system of prior restraint

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[38] *Chavez v. Gonzales*, G.R. No. 168338, 15 February 2008, 545 SCRA 441, 491.

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comes to court bearing a heavy burden against its constitutionality,[39] not all prior restraints on speech are invalid.[40]

Nonetheless, there are added legal complexities to these cases which may not be necessarily accessible to the layperson. The actions taken by respondents are colored with legal authority, under the powers of local governments vested in the Local Government Code (LGC), or more generally, the police powers of the State. We do not doubt that Local Government Units (LGU) are capacitated to enact ordinances requiring the obtention of licenses or permits by businesses, a term defined elsewhere in the LGC as "trade or commercial activity regularly engaged in as a means of livelihood or with a view to profit."

And there is the fact that the mode of expression restrained in these cases — broadcast — is not one which petitioners are physically able to accomplish without interacting with the regulatory arm of the government. Expression in media such as print or the Internet is not burdened by such requirements as congressional franchises or administrative licenses which bear upon broadcast media. Broadcast is hampered by its utilization of the finite resources of the electromagnetic spectrum, which long ago necessitated government intervention and administration to allow for the orderly allocation of bandwidth, with broadcasters agreeing in turn to be subjected to regulation. There is no issue herein that calls into question the authority under law of petitioners to engage in broadcasting activity, yet these circumstances are well worth pointing out if only to provide the correct perspective that broadcast media enjoys a somewhat lesser degree of constitutional protection than print media or the Internet.

It emerges then that there exists tension between petitioners' right to free expression, and respondents' authority by law to

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[39] *Social Weather Stations, Inc. v. COMELEC*, 409 Phil. 571, 585 (2001); citing *New York Times v. United States*, 403 U.S. 713, 714, 29 L. Ed. 2d 822, 824 (1971).

[40] *Chavez v. Gonzales*, G.R. No. 168335, 15 February 2008, 545 SCRA 441, 492.

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regulate local enterprises. What are the rules of adjudication that govern the judicial resolution of this controversy?

*B.*

That the acts imputed against respondents constitute a prior restraint on the freedom of expression of respondents who happen to be members of the press is clear enough. There is a long-standing tradition of special judicial solicitude for free speech, meaning that governmental action directed at expression must satisfy a greater burden of justification than governmental action directed at most other forms of behavior.[41] We had said in *SWS v. COMELEC*: "Because of the preferred status of the constitutional rights of speech, expression, and the press, such a measure is vitiated by a weighty presumption of invalidity. Indeed, 'any system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity. . . . The Government 'thus carries a heavy burden of showing justification for the enforcement of such restraint.' There is thus a reversal of the normal presumption of validity that inheres in every legislation."[42]

At the same time, jurisprudence distinguishes between a **content-neutral** regulation, *i.e.*, merely concerned with the incidents of the speech, or one that merely controls the time, place or manner, and under well-defined standards; and a **content-based** restraint or censorship, *i.e.*, the restriction is based on the subject matter of the utterance or speech.[43] Content-based laws are generally treated as more suspect than content-neutral laws because of judicial concern with discrimination in the regulation of expression.[44] Content-neutral regulations of speech or of conduct that may amount to speech, are subject to lesser but still heightened scrutiny.[45]

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[41] GUNTHER, *et al.*, *CONSTITUTIONAL LAW* (14th ed., 2001), at 964.

[42] *SWS v. COMELEC*, *supra* note 39.

[43] *Chavez v. Gonzales*, G.R. No. 168338, 15 February 2008, 545 SCRA 441, 493.

[44] GUNTHER, *et al.*, *supra* note 44.

[45] *Id.* at 957.

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Ostensibly, the act of an LGU requiring a business of proof that the property from which it operates has been zoned for commercial use can be argued, when applied to a radio station, as content-neutral since such a regulation would presumably apply to any other radio station or business enterprise within the LGU.

However, the circumstances of this case dictate that we view the action of the respondents as a content-based restraint. In their petition for *mandamus* filed with the RTC, petitioners make the following relevant allegations:

> 6.1. With specific reference to DZNC, Newsounds, to this date, is engaged in discussing public issues that include, among others, the conduct of public officials that are detrimental to the constituents of Isabela, including Cauayan City. In view of its wide coverage, DZNC has been a primary medium for the exercise of the people of Isabela of their constitutional right to free speech. Corollarily, DZNC has always been at the forefront of the struggle to maintain and uphold freedom of the press, and the people's corollary right to freedom of speech, expression and petition the government for redress of grievances.
>
> 6.2. Newsound's only rival AM station in Cauayan and the rest of Isabela, DWDY, is owned and operated by the family of respondent Dy.[46]
>
> x x x x x x x x x
>
> 35. Respondents closure of petitioners' radio stations is clearly tainted with ill motives.
>
> 35.1. It must be pointed out that in the 2001 elections, Bombo Radyo was aggressive in exposing the widespread election irregularities in Isabela that appear to have favored respondent Dy and other members of the Dy political dynasty. It is just too coincidental that it was only after the 2001 elections (*i.e.*, 2002) that the Mayor's Office started questioning petitioners' applications for renewal of their mayor's permits.
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> 35.2. In an article found in the Philippine Daily inquirer dated 20 February 2004, respondent Dy was quoted as saying that he will "disenfranchise the radio station." Such statement

[46] *Rollo* (G.R. No. 179411), p. 170.

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> manifests and confirms that respondents' denial of petitioners' renewal applications on the ground that the Property is commercial is merely a pretext and that their real agenda is to remove petitioners from Cauayan City and suppress the latter's voice. This is a blatant violation of the petitioners' constitutional right to press freedom.
>
> A copy of the newspaper article is attached hereto as Annex "JJ".
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> 35.3. The timing of respondents' closure of petitioners' radio stations is also very telling. The closure comes at a most critical time when the people are set to exercise their right of suffrage. Such timing emphasizes the ill motives of respondents.[47]

In their Answer with Comment[48] to the petition for *mandamus*, respondents admitted that petitioners had made such exposes during the 2001 elections, though they denied the nature and truthfulness of such reports.[49] They conceded that the Philippine Daily Inquirer story reported that "Dy said he planned to file disenfranchisement proceedings against [DZNC]-AM."[50] While respondents assert that there are other AM radio stations in Isabela, they do not specifically refute that station DWDY was owned by the Dy family, or that DZNC and DWDY are the two only stations that operate out of Cauayan.[51]

Prior to 2002, petitioners had not been frustrated in securing the various local government requirements for the operation of their stations. It was only in the beginning of 2002, after the election of respondent Ceasar Dy as mayor of Cauayan, that the local government started to impose these new requirements substantiating the conversion of CDC's property for commercial use. Petitioners admit that during the 2001 elections, Bombo Radyo "was aggressive in exposing the widespread election irregularities in Isabela that appear to have favored Respondent

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[47] *Id.* at 178-179.

[48] *Id.* at 204-239.

[49] *Id.* at 207.

[50] *Id.*

[51] *Id.* at 205.

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Dy and other members of the Dy political dynasty."[52] Respondents' efforts to close petitioners' radio station clearly intensified immediately before the May 2004 elections, where a former employee of DZNC Bombo Radyo, Grace Padaca, was mounting a credible and ultimately successful challenge against the incumbent Isabela governor, who happened to be the brother of respondent Dy. It also bears notice that the requirements required of petitioners by the Cauayan City government are frankly beyond the pale and not conventionally adopted by local governments throughout the Philippines.

All those circumstances lead us to believe that the steps employed by respondents to ultimately shut down petitioner's radio station were ultimately content-based. The United States Supreme Court generally treats restriction of the expression of a particular point of view as the paradigm violation of the First Amendment.[53] The facts confronting us now could have easily been drawn up by a constitutional law professor eager to provide a plain example on how free speech may be violated.

The Court is of the position that the actions of the respondents warrant heightened or strict scrutiny from the Court, the test which we have deemed appropriate in assessing content-based restrictions on free speech, as well as for laws dealing with freedom of the mind or restricting the political process, of laws dealing with the regulation of speech, gender, or race as well as other fundamental rights as expansion from its earlier applications to equal protection.[54] The immediate implication of the application of the "strict scrutiny" test is that the burden falls upon respondents as agents of government to prove that their actions do not infringe upon petitioners' constitutional rights. As content regulation cannot be done in the absence of any compelling reason,[55] the burden lies with the government to establish such compelling reason to infringe the right to free expression.

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[52] *Id.* at 26.

[53] GUNTHER, *et al.*, *supra* note 44.

[54] See *White Light v. Court of Appeals*, G.R. No. 122846, 20 January 2009.

[55] *Osmeña v. COMELEC*, 351 Phil. 692, 711 (1998).

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*III.*

We first turn to whether the implicit denial of the application for preliminary mandatory injunction by the RTC was in fact attended with grave abuse of discretion. This is the main issue raised in G.R. No. 170270.

To recall, the RTC on 20 April 2004 issued an order denying the prayer for the issuance of a writ of preliminary injunction, claiming that "[t]here is insufficiency of allegation…[t]here is no certainty that after the election period, the respondents will interfere with the operation of the radio stations x x x which are now operating by virtue of the order of the COMELEC."[56] Petitioners filed a motion for reconsideration, which the RTC denied on 13 May 2004. The refusal of the RTC to grant provisional relief gave way to the closure of petitioners' radio stations on 10 June 2004, leading for them to file a motion for the issuance of a writ of preliminary mandatory injunction on 25 June 2004. This motion had not yet been acted upon when on 14 September 2004, the RTC promulgated its decision denying the petition for *mandamus*.

Among the arguments raised by petitioners in their motion for reconsideration before the RTC was against the implied denial of their motion for the issuance of a writ of preliminary mandatory injunction, claiming in particular that such implicit denial violated petitioners' right to due process of law since no hearing was conducted thereupon. However, when the RTC denied the motion for reconsideration in its 1 December 2004 Order, it noted that its implied denial of the motion for a writ of preliminary mandatory injunction was not a ground for reconsideration of its decision.

Petitioners maintain that the RTC acted with grave abuse of discretion when it impliedly denied their motion for the issuance of a writ of preliminary mandatory injunction without any hearing. The Court of Appeals pointed out that under Section 5 of Rule 58 of the 1997 Rules of Civil Procedure, it is the granting of a

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[56] *Rollo* (G.R. No. 179411), p. 191.

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writ of preliminary injunction that mandatorily requires a hearing. The interpretation of the appellate court is supported by the language of the rule itself:

> Sec. 5. Preliminary injunction not granted without notice; exception. — No preliminary injunction shall be granted without hearing and prior notice to the party or person sought to be enjoined. If it shall appear from facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the matter can be heard on notice, the court to which the application for preliminary injunction was made, may issue *ex parte* a temporary restraining order to be effective only for a period of twenty (20) days from service on the party or person sought to be enjoined, except as herein provided. x x x

Section 5 of Rule 58 prescribes a mandatory hearing and prior notice to the party or person sought to be enjoined **if preliminary injunction should be granted**. It imposes no similar requirement if such provisional relief were to be denied. We in fact agree with the Court of Appeals that "if on the face of the pleadings, the applicant for preliminary injunction is not entitled thereto, courts may outrightly deny the motion without conducting a hearing for the purpose."[57] The Court is disinclined to impose a mandatory hearing requirement on applications for injunction even if on its face, injunctive relief is palpably without merit or impossible to grant. Otherwise, our trial courts will be forced to hear out the sort of litigation-happy attention-deprived miscreants who abuse the judicial processes by filing complaints against real or imaginary persons based on trivial or inexistent slights.

We do not wish though to dwell on this point, as there is an even more fundamental point to consider. Even as we decline to agree to a general that the denial of an application for injunction requires a prior hearing, we believe in this case that petitioners deserved not only a hearing on their motion, but the very writ itself.

As earlier stated, the burden of presuming valid the actions of respondents sought, fraught as they were with alleged violations

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[57] *Rollo* (G.R. No. 170270), p. 120.

on petitioners' constitutional right to expression, fell on respondents themselves. This was true from the very moment the petition for *mandamus* was filed. It was evident from the petition that the threat against petitioners was not wildly imagined, or speculative in any way. **Attached to the petition itself was the Closure Order dated 13 February 2004 issued by respondents against petitioners.**[58] **There was no better evidence to substantiate the claim that petitioners faced the live threat of their closure**. Moreover, respondents in their Answer admitted to issuing the Closure Order.[59]

At the moment the petition was filed, there was no basis for the RTC to assume that there was no actual threat hovering over petitioners for the closure of their radio stations. The trial court should have been cognizant of the constitutional implications of the case, and appreciated that the burden now fell on respondents to defend the constitutionality of their actions. From that mindset, the trial court could not have properly denied provisional relief without any hearing since absent any extenuating defense offered by the respondents, their actions remained presumptively invalid.

Our conclusions hold true not only with respect to the implied denial of the motion for preliminary injunction, but also with the initial denial without hearing on 20 April 2004 of the prayer for a writ of preliminary injunction and temporary restraining order. Admittedly, such initial denial is not the object of these petitions, yet we can observe that such action of the RTC was attended with grave abuse of discretion, the trial court betraying ignorance of the constitutional implications of the petition. With respect to the subsequent "implied denial" of the writ of preliminary mandatory injunction, the grave abuse of discretion on the part of the trial court is even more glaring. **At that point, petitioners' radio stations were not merely under threat of closure, they were already actually closed. Petitioners' constitutional rights were not merely under threat of infringement, they were already definitely infringed.**

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[58] *Rollo* (G.R. No. 179411), p. 210.

[59] *Id.* at 247.

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The application of the strict scrutiny analysis to petitioners' claims for provisional relief warrants the inevitable conclusion that the trial court cannot deny provisional relief to the party alleging a *prima facie* case alleging government infringement on the right to free expression without hearing from the infringer the cause why its actions should be sustained provisionally. Such acts of infringement are presumptively unconstitutional, thus the trial court cannot deny provisional relief outright since to do so would lead to the sustention of a presumptively unconstitutional act. It would be necessary for the infringer to appear in court and somehow rebut against the presumption of unconstitutionality for the trial court to deny the injunctive relief sought for in cases where there is a *prima facie* case establishing the infringement of the right to free expression.

Those above-stated guidelines, which pertain most particularly to the *ex parte* denial of provisional relief in free expression cases, stand independently of the established requisites for a party to be entitled to such provisional reliefs. With respect to writs of preliminary injunction, the requisite grounds are spelled out in Section 3 of Rule 58 of the Rules of Court.

It may be pointed out that the application for preliminary mandatory injunction after petitioners' radio stations had been closed was mooted by the RTC decision denying the petition for *mandamus*. Ideally, the RTC should have acted on the motion asking for the issuance of the writ before rendering its decision. Given the circumstances, petitioners were entitled to immediate relief after they filed their motion on 25 June 2004, some two and a half months before the RTC decision was promulgated on 14 September 2004. It is not immediately clear why the motion, which had been set for hearing on 2 July 2004, had not been heard by the RTC, so we have no basis for imputing bad faith on the part of the trial court in purposely delaying the hearing to render it moot with the forthcoming rendition of the decision. Nonetheless, given the gravity of the constitutional question involved, and the fact that the radio stations had already been actually closed, a prudent judge would have strived to hear the motion and act on it accordingly independent of the ultimate decision.

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Since the prayer for the issuance of a writ of mandatory injunction in this case was impliedly denied through the decision denying the main action, we have no choice but to presume that the prayer for injunction was denied on the same bases as the denial of the petition for *mandamus* itself. The time has come for us to review such denial, the main issue raised in G.R. No. 179411.

*IV.*

The perspective from which the parties present the matter for resolution in G.R. No. 179411 is whether the property of CDC had been duly converted or classified for commercial use, with petitioners arguing that it was while respondents claiming that the property remains agricultural in character. This perspective, to our mind, is highly myopic and implicitly assumes that the requirements imposed on petitioners by the Cauayan City government are in fact legitimate.

The LGC authorizes local legislative bodies to enact ordinances authorizing the issuance of permits or licenses upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the LGU.[60] A municipal or city mayor is likewise authorized under the LGC to "issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance."[61] Generally, LGUs have exercised its authority to require permits or licenses from business enterprises operating within its territorial jurisdiction.

A municipal license is essentially a governmental restriction upon private rights and is valid only if based upon an exercise by the municipality of its police or taxing powers.[62] The LGC

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[60] LOCAL GOVERNMENT CODE (1991), Secs. 447(3) & 458(3).

[61] See note 43.

[62] ANGELES, *RESTATEMENT OF THE LAW ON LOCAL GOVERNMENTS* (2005 ed.), at 124; citing 9 MCQUILLIN, *THE LAW OF MUNICIPAL CORPORATIONS*, § 26.01.10 (3rd ed.); *In re Wan Yin*, 22 F 701; *Father Basil's Lodge, Inc. v. Chicago*, 393 Ill 246, 65 NE2d 805.

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subjects the power of *sanggunians* to enact ordinances requiring licenses or permits within the parameters of Book II of the Code, concerning "Local Taxation and Fiscal Matters." It also necessarily follows that the exercise of this power should also be consistent with the Constitution as well as the other laws of the land.

Nothing in national law exempts media entities that also operate as businesses such as newspapers and broadcast stations such as petitioners from being required to obtain permits or licenses from local governments in the same manner as other businesses are expected to do so. While this may lead to some concern that requiring media entities to secure licenses or permits from local government units infringes on the constitutional right to a free press, we see no concern so long as such requirement has been duly ordained through local legislation and content-neutral in character, *i.e.*, applicable to all other similarly situated businesses.

Indeed, there are safeguards within the LGC against the arbitrary or unwarranted exercise of the authority to issue licenses and permits. As earlier noted, the power of *sanggunians* to enact ordinances authorizing the issuance of permits or licenses is subject to the provisions of Book Two of the LGC. The power of the mayor to issue license and permits and suspend or revoke the same must be exercised pursuant to law or ordinance.[63]

In the case of *Cauayan City*, the authority to require a mayor's permit was enacted through Ordinance No. 92-004, enacted in 1993 when Cauayan was still a municipality. We quote therefrom:

> Sec. 3A.01. *Imposition of Fee*. — There shall be imposed and collected an annual fee at the rates provided hereunder for the issuance of Mayor's Permit to every person that shall conduct business, trade or activity within the Municipality of Cauayan.
>
> The permit fee is payable for every separate or distinct establishment or place where the business trade or activity is conducted. One line of business or activity does not become exempt

[63] See note 43.

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by being conducted with some other business or activity for which the permit fee has been paid.

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Sec. 3A.03. *Application for Mayor's Permit False Statements.* — A written application for a permit to operate a business shall be filed with the Office of the Mayor in three copies. The application form shall set forth the name and address of the applicant, the description or style of business, the place where the business shall be conducted and such other pertinent information or data as may be required.

Upon submission of the application, it shall be the duty of the proper authorities to verify if the other Municipal requirements regarding the operation of the business or activity are complied with. The permit to operate shall be issued only upon such compliance and after the payment of the corresponding taxes and fees as required by this revenue code and other municipal tax ordinances.

Any false statement deliberately made by the applicant shall constitute sufficient ground for denying or revoking the permit issued by the Mayor, and the applicant or licensee may further be prosecuted in accordance with the penalties provided in this article.

A Mayor's Permit shall be refused to any person:

(1) Whose business establishment or undertaking does not conform with zoning regulations and safety, health and other requirements of the Municipality; (2) that has an unsettled tax obligations, debt or other liability to the Municipal Government; and (3) that is disqualified under any provision of law or ordinance to establish, or operate the business for which a permit is being applied.[64]

Petitioners do not challenge the validity of Ordinance No. 92-004. On its face, it operates as a content-neutral regulation that does not impose any special impediment to the exercise of the constitutional right to free expression. Still, it can be seen how under the veil of Ordinance No. 92-004 or any other similarly oriented ordinance, a local government unit such as Cauayan City may attempt to infringe on such constitutional rights.

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[64] *Rollo* (G.R. No. 179411), pp. 300-301.

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A local government can quite easily cite any of its regulatory ordinances to impose retaliatory measures against persons who run afoul it, such as a business owned by an opponent of the government, or a crusading newspaper or radio station. While the ill-motives of a local government do not exempt the injured regulatory subject from complying with the municipal laws, such laws themselves do not insulate those ill-motives if they are attended with infringements of constitutional rights, such as due process, equal protection and the right to free expression. Our system of laws especially frown upon violations of the guarantee to free speech, expression and a free press, vital as these are to our democratic regime.

Nothing in Ordinance No. 92-004 requires, as respondents did, that an applicant for a mayor's permit submit "either an approved land conversion papers from the DAR showing that its property was converted from prime agricultural land to commercial land, or an approved resolution from the *Sangguniang Bayan* or *Sangguniang Panglungsod* authorizing the re-classification of the property from agricultural to commercial land."[65] The aforecited provision which details the procedure for applying for a mayor's permit does not require any accompanying documents to the application, much less those sought from petitioners by respondents. Moreover, Ordinance No. 92-004 does not impose on the applicant any burden to establish that the property from where the business was to operate had been duly classified as commercial in nature.

According to respondents, it was only in 2002 that "the more diligent Respondent Bagnos Maximo" discovered "the mistake committed by his predecessor in the issuance of the Petitioners' Zoning Certifications from 1996 to 2001."[66] Assuming that were true, it would perhaps have given cause for the local government in requiring the business so affected to submit additional requirements not required of other applicants related to the classification of its property. Still, there are multitude of

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[65] *Supra* note 16.

[66] *Rollo* (G.R. No. 179411), p. 771.

circumstances that belie the claim that the previous certifications issued by the OMPDC as to the commercial character of CDC's property was incorrect.

On 5 July 1996, the HLURB issued a Zoning Decision that classified the property as Commercial.[67] The HLURB is vested with authority to "review, evaluate and approve or disapprove . . . the zoning component of . . . subdivisions, condominiums or estate development projects including industrial estates, of both the public and private sectors."[68] In exercising such power, the HLURB is required to use Development Plans and Zoning Ordinances of local governments herein.[69] There is no reason to doubt that when the HLURB acknowledged in 1996 that the property in question was commercial, it had consulted the development plans and zoning ordinances of Cauayan.

Assuming that respondents are correct that the property was belatedly revealed as non-commercial, it could only mean that even the HLURB, and not just the local government of Cauayan erred when in 1996 it classified the property as commercial. Or, that between 1996 to 2002, the property somehow was reclassified from commercial to agricultural. There is neither evidence nor suggestion from respondents that the latter circumstance obtained.

Petitioners are also armed with six certifications issued by the OMPDC for the consecutive years 1996 to 2001, all of which certify that the property is "classified as commercial area . . . in conformity with the Land Use Plan of this municipality and does not in any way violate the existing Zoning Ordinance of Cauayan, Isabela."[70] In addition, from 1997 to 2004, petitioners paid real property taxes on the property based on the classification of the property as commercial, without any objections raised

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[67] *Rollo,* p. 91.

[68] See Executive Order No. 648 (1991), Article IV, Sec. 5(b).

[69] *Id.*

[70] *Rollo* (G.R. No. 179411), pp. 92-97.

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by respondents.[71] These facts again tend to confirm that contrary to respondents' assertions, the property has long been classified as commercial.

Petitioners persuasively argue that this consistent recognition by the local government of Cauayan of the commercial character of the property constitutes estoppel against respondents from denying that fact before the courts. The lower courts had ruled that "the government of Cauayan City is not bound by estoppel," but petitioners point out our holding in *Republic v. Sandiganbayan*[72] where it was clarified that "this concept is understood to refer to acts and mistakes of its officials especially those which are irregular."[73] Indeed, despite the general rule that the State cannot be put in estoppel by the mistake or errors of its officials or agents, we have also recognized, thus:

> **Estoppels against the public are little favored. They should not be invoked except in a rare and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations . . ., the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals.**[74]

Thus, when there is no convincing evidence to prove irregularity or negligence on the part of the government official whose acts are being disowned other than the bare assertion on the part of the State, we have declined to apply State immunity from

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[71] *Id.* at 103-107, 126-127, 140-141.

[72] G.R. No. 108292, 10 September 1993, 226 SCRA 314.

[73] *Id.* at 325-326. See also *Republic v. Court of Appeals*, 361 Phil. 319 (1999); *PCGG v. Sandiganbayan*, 353 Phil. 80 (1998); H. de Leon, *PHILIPPINE CONSTITUTIONAL LAW*, at 781.

[74] *Republic v. Court of Appeals*, *supra* note 76 at 329; citing 31 CJS 675-676.

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estoppel.[75] Herein, there is absolutely no evidence other than the bare assertions of the respondents that the Cauayan City government had previously erred when it certified that the property had been zoned for commercial use. One would assume that if respondents were correct, they would have adduced the factual or legal basis for their contention, such as the local government's land use plan or zoning ordinance that would indicate that the property was not commercial. Respondents did not do so, and the absence of any evidence other than bare assertions that the 1996 to 2001 certifications were incorrect lead to the ineluctable conclusion that respondents are estopped from asserting that the previous recognition of the property as commercial was wrong.

The RTC nonetheless asserted that the previous certifications, issued by Deputy Zoning Administrator Romeo N. Perez (Perez), were incorrect as "he had no authority to make the conversion or reclassification of the land from agricultural to commercial."[76] Yet contrary to the premise of the RTC, the certifications issued by Perez did no such thing. Nowhere in the certifications did it state that Perez was exercising the power to reclassify the land from agricultural to commercial. What Perez attested to in those documents was that the property "is classified as Commercial area," "in conformity with the Land Use Plan of this municipality and does not in any way violate the existing Zoning Ordinance of Cauayan, Isabela." What these certifications confirm is that according to the Land Use Plan and existing zoning ordinances of Cauayan, the property in question is commercial.

Compounding its error, the RTC also stated that following Section 65[77] of Rep. Act No. 6657, or the Comprehensive Agrarian

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[75] *PCGG v. Sandiganbayan*, *supra* note 76.

[76] *Rollo* (G.R. No. 179411), p. 302.

[77] "SECTION 65. *Conversion of Lands*. — After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with

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Reform Law, "only the DAR, upon proper application . . . can authorize the reclassification or conversion of the use of the land from agricultural to residential, commercial or industrial." The citation is misleading. Section 4 of the same law provides for the scope of the agrarian reform program under the CARL as covering "all public and private agricultural lands, as provided in Proclamation No. 131 and Executive Order No. 229, including other lands of the public domain suitable for agriculture."[78] Section 3(c) defines agricultural lands as "land devoted to agricultural activity as defined in this Act and not classified as mineral, forest, residential, commercial or industrial land."[79] Obviously, if the property had already been classified as commercial land at the time of the enactment of the CARL, it does not fall within the class of agricultural lands which may be subject of conversion under Section 65 of that law. Section 65, as relied upon by the trial court, would have been of relevance only if it had been demonstrated by respondents that the property was still classified as agricultural when the CARL was enacted.

It is worth emphasizing that because the acts complained of the respondents led to the closure of petitioners' radio stations, at the height of election season no less, respondents actions warrant strict scrutiny from the courts, and there can be no presumption that their acts are constitutional or valid. In discharging the burden of establishing the validity of their actions, it is expected that respondents, as a condition *sine qua non*, present the legal basis for their claim that the property was not zoned commercially — the proclaimed reason for the closure of the radio stations. The lower courts should have known better than to have swallowed respondents' unsubstantiated assertion hook, line and sinker.

We can also point out that aside from the evidence we have cited, petitioners' contention that the property had been duly

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due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: provided, that the beneficiary shall have fully paid his obligation."

[78] Republic Act No. 6657 (1988), Sec. 4.

[79] Republic Act No. 6657 (1988), Sec. 3(c).

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classified for commercial use finds corroboration from the Order dated 14 March 2002 issued by DAR Region II Director Aydinan in Adm. Case No. A-0200A-07B-002. The Order stated, *viz*:

> Official records examined by this Office indicate continued use of subject land for purposes other than agricultural since 1986. Back when Cauayan was still a municipality, the Office of the Planning and Development Coordinator documented subject land under a commercial classification. The Zoning Administrator deputized by the Housing and Land Use Regulatory Board certified in 1998 that subject land's attribution to the Commercial Zone "is in conformity with the Land Use Plan of this municipality and does not in any way violate any existing Zoning Ordinance of Cauayan, Isabela" adding the stipulation that a 15 meter setback from the centerline of the National Road has to be observed.
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> If the area in which subject land is found was already classified non-agricultural even before urban growth saw Cauayan became a city in 2001, assuming its reversion to the agricultural zone now taxes logic. In any case, such a dubious assumption can find no support in any current land use plan for Cauayan approved by the National Economic Development Authority.[80]

Petitioners' citation of this Order has been viciously attacked by respondents, with approval from the lower courts. Yet their challenges are quite off-base, and ultimately irrelevant.

The Order has been characterized by respondents as a forgery, based on a certification issued by the Head of the RCLUPPI Secretariat that his office "has no official record nor case docketed of the petition filed by CBS Development Corporation, represented by Charmy Sabigan and the order issued bearing Docket No. ADM. Case No. A-02200A-07B-002 of the subject case, did not emanate from RCLUPPI which has its own docketing system to applications for conversion/exemption under DOJ Opinion No. 44, Series of 1990."[81] Respondents thus hint at a scenario where petitioners scrambled to create the Order out of nowhere in order to comply with the sought-after requirements. However,

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[80] *Id.* at 113-114.

[81] See CA *rollo* (G.R. No. 170270), p. 234.

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an examination of the Order reveals an explanation that attests to the veracity of the Order without denigrating from the truthfulness of the RCLUPPI certification.

The Order notes that the petition had been filed by CDC with the DAR Region II "to, in effect, officially remove from the agrarian reform sub-zone, in particular, and the broad agricultural, in general, Petitioner's land holding embraced by Transfer Certificate of Title No. T-254786 which is located in [B]arangay Minante II of Cauayan City x x x."[82] It goes on to state:

> Herein petition can go through the normal procedure and, after the submission of certain documentary supports that have to be gathered yet from various agencies, should be granted as a matter of course. However, a new dimension has been introduced when the unformalized conversion of the use of subject land from an agricultural to a non-agricultural mode has provided an excuse to some official quarters to disallow existing commercial operation, nay, the broadcast activities of Petitioner and, thus, perhaps threaten an essential freedom in our democratic setting, the liberty of mass media organizations to dispense legitimate information to the public unhampered by any extraneous obstacles. Hence, overarching public interest has made an official declaration of subject landholding's removal from the agricultural zone most urgent and, thus immediate action on the case imperative.
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> To the extent that legitimate social interest are unnecessarily prejudiced otherwise, procedural rules laid down by Government must yield to the living reason and to common sense in the concrete world as long as the underlying principles of effective social-justice administration and good governance are not unduly sacrificed. Thus, it is incumbent upon the Department of Agrarian Reform, or DAR for brevity, to take into account in decision-making with respect to the case at hand more basic principles in order to uphold the cause of conscientious and timely public service.
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> Needless to say, this Office, given the latitude of discretion inherent to it, can simultaneously address the Petition and the procedural concerns collateral to it when subordinate offices tend

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[82] *Rollo* (G.R. No. 179411), p. 112.

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to treat such concerns as factors complicating the essential question or questions and view the Petition as one that it is not amenable to ready problem-solving and immediate decision-making. To forestall a cycle of helpless inaction or indecisive actions on the part of the subordinate offices as customarily happens in cases of this nature, this Office shall proceed to treat the petition at hand as a matter of original jurisdiction in line with its order of Assumption of Direct Jurisdiction of 03 December 2001, a prior action taken, in general, by this Office over cases of Land-Tenure Improvement, Failure, Problematic Coverage, Land-Owners' and Special Concerns, Other Potential Flash Points of Agrarian Conflict, and Long-Standing Problems Calling for Discretionary Decision Making.[83]

In so many words, DAR Region II Director Aydinan manifested that he was assuming direct jurisdiction over the petition, to the exclusion of subordinate offices such as that which issued the certification at the behest of the respondents, the RCLUPPI of the DAR Region II Office. Thus, the RCLUPPI could have validly attested that "the subject case did not emanate from the RCLUPPI which has its own docketing system to applications for conversion/exemption under DOJ Opinion No. 44, Series of 1990." One could quibble over whether Director Aydinan had authority to assume direct jurisdiction over CDC's petition to the exclusion of the RCLUPPI, but it would not detract from the apparent fact that the Director of the DAR Region II Office did issue the challenged Order. Assuming that the Order was issued without or in excess of jurisdiction, it does not mean that the Order was forged or spurious, it would mean that the Order is void.

How necessary is it for us to delve into the validity or efficacy of the Aydinan Order? Certainly, any conclusions we draw from the said Order are ultimately irrelevant to the resolution of these petitions. The evidence is compelling enough that the property had already been duly classified for commercial use long before the Aydinan Order was issued. Respondents, who had the burden of proving that they were warranted in ordering the closure of the radio stations, failed to present any evidence to dispute the

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[83] *Id.* at 112-113.

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long-standing commercial character of the property. The inevitable conclusion is that respondents very well knew that the property, was commercial in character, yet still proceeded without valid reason and on false pretenses, to refuse to issue the mayor's permit and subsequently close the radio stations. There is circumstantial evidence that these actions were animated by naked political motive, by plain dislike by the Cauayan City powers-that-be of the content of the broadcast emanating in particular from DZNC, which had ties to political opponents of the respondents. Respondents were further estopped from disclaiming the previous consistent recognition by the Cauayan City government that the property was commercially zoned unless they had evidence, which they had none, that the local officials who issued such certifications acted irregularly in doing so.

It is thus evident that respondents had no valid cause at all to even require petitioners to secure "approved land conversion papers from the DAR showing that the property was converted from prime agricultural land to commercial land." That requirement, assuming that it can be demanded by a local government in the context of approving mayor's permits, should only obtain upon clear proof that the property from where the business would operate was classified as agricultural under the LGU's land use plan or zoning ordinances and other relevant laws. No evidence to that effect was presented by the respondents either to the petitioners, or to the courts.

*V.*

Having established that respondents had violated petitioners' legal and constitutional rights, let us now turn to the appropriate reliefs that should be granted.

At the time petitioners filed their special civil action for *mandamus* on 15 April 2004, their radio stations remained in operation despite an earlier attempt by respondents to close the same, by virtue of an order rendered by the COMELEC. The *mandamus* action sought to compel respondents to immediately issue petitioners' zoning clearances and mayor's permit for 2004. During the pendency of the action for *mandamus*, respondents finally succeeded in closing the radio stations, and it was possible

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at that stage for petitioners to have likewise sought the writs of prohibition and/or *certiorari*. Petitioners instead opted to seek for a writ or preliminary mandatory injunction from the trial court, a viable recourse albeit one that remains ancillary to the main action for *mandamus*.

We had previously acknowledged that petitioners are entitled to a writ of preliminary mandatory injunction that would have prevented the closure of the radio stations. In addition, we hold that the writ of *mandamus* lies. *Mandamus* lies as the proper relief whenever a public officer unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law.[84] For the year 2004, petitioners had duly complied with the requirements for the issuance of the same mayor's permit they had obtained without issue in years prior. There was no basis for respondents to have withheld the zoning clearances, and consequently the mayor's permit, thereby depriving petitioners of the right to broadcast as certified by the Constitution and their particular legislative franchise.

We turn to the issue of damages. Petitioners had sought to recover from respondents ₱8 Million in temperate damages, ₱1 Million in exemplary damages, and ₱1 Million in attorney's fees. Given respondents' clear violation of petitioners' constitutional guarantee of free expression, the right to damages from respondents is squarely assured by Article 32 (2) of the Civil Code, which provides:

> Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another person shall be liable to the latter for damages:
>
> x x x x x x x x x
>
> (2) Freedom of speech;

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[84] RULES OF CIVIL PROCEDURE (1997), Rule 65, Sec. 3.

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We noted in *Lim v. Ponce de Leon* that "[p]ublic officials in the past have abused their powers on the pretext of justifiable motives or good faith in the performance of their duties . . . [and] the object of [Article 32 of the Civil Code] is to put an end to official abuse by plea of the good faith."[85] The application of Article 32 not only serves as a measure of pecuniary recovery to mitigate the injury to constitutional rights, it likewise serves notice to public officers and employees that any violation on their part of any person's guarantees under the Bill of Rights will meet with final reckoning.

The present prayer for temperate damages is premised on the existence of pecuniary injury to petitioner due to the actions of respondents, the amount of which nevertheless being difficult to prove.[86] Temperate damages avail when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be proved with certainty.[87] The existence of pecuniary injury at bar cannot be denied. Petitioners had no way of knowing it when they filed their petition, but the actions of respondents led to the closure of their radio stations from June 2004 until this Court issued a writ of preliminary injunction in January 2006.[88] The lost potential income during that one and a half year of closure can only be presumed as substantial enough. Still, despite that fact, possibly unanticipated when the original amount for claimed temperate damages was calculated, petitioners have maintained before this Court the same amount, ₱8 Million, for temperate damages. The said amount is "reasonable under the circumstances."[89]

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[85] 160 Phil. 991, 1001 (1975). See also *MHP Garments, Inc., v. Court of Appeals*, G.R. No. 86720, 2 September 1994, 236 SCRA 227, 235.

[86] *Rollo* (G.R. No. 179411), p. 183.

[87] See CIVIL CODE, Art. 2224.

[88] According to an article posted on the official website of Bombo Radyo, DZNC accordingly resumed broadcast on 8 February 2006. See http://www.bomboradyo.com/archive/ new/stationprofile /bombocauayan/index.htm (last visited, 6 March 2009).

[89] See CIVIL CODE, Art. 2225.

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Exemplary damages can be awarded herein, since temperate damages are available. Public officers who violate the Constitution they are sworn to uphold embody "a poison of wickedness that may not run through the body politic."[90] Respondents, by purposely denying the commercial character of the property in order to deny petitioners' the exercise of their constitutional rights and their business, manifested bad faith in a wanton, fraudulent, oppressive and malevolent manner.[91] The amount of exemplary damages need not be proved where it is shown that plaintiff is entitled to temperate damages,[92] and the sought for amount of ₱1 Million is more than appropriate. We likewise deem the prayer for ₱1 Million in attorney's fees as suitable under the circumstances.

**WHEREFORE,** the petitions are *GRANTED*. The assailed decisions of the Court of Appeals and the Regional Trial Court of Cauayan City, Branch 24, are hereby *REVERSED* and *SET ASIDE*.

**SO ORDERED.**

*Quisumbing (Chairperson), Carpio Morales, Velasco, Jr.,* and *Peralta,*[*] *JJ.,* concur.

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[90] [Exemplary damages] are an antidote so that the poison of wickedness may not run through the body politic." *Octot v. Ybañez, etc., et al.*, 197 Phil. 76, 82 (1982).

[91] "[The award of exemplary damages] would be allowed only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner." *Octot v. Ybañez*, *supra* note 87, at 85; citing *Ong Yiu v. CA*, 91 SCRA 223.

[92] *Patricio v. Hon. Leviste*, G.R. No. 51832, 26 April 1989.

[*] Additional member as replacement of Justice Arturo D. Brion who is on official leave per Special Order No. 587.