

[1988–90 Gib LR 96]

ATTORNEY-GENERAL v. GIBRALTAR BROADCASTING CORPORATION and BRITISH FORCES BROADCASTING SERVICES LIMITED

SUPREME COURT (Kneller, C.J.): May 16th, 1988

Injunctions—jurisdiction—territorial jurisdiction—injunction preventing reporting of allegedly prejudicial material applicable only to media within Gibraltar as other sources outside court’s jurisdiction—injunction not nullity and Gibraltar media not excused from compliance merely because information already available within Gibraltar through foreign media

Inquests—fair hearing—media reporting—injunction may restrain broadcasting of information revealing or commenting on evidence of witnesses at proposed inquest—only to be lifted if circumstances radically change—inquest jury to be protected from reaching conclusions without hearing all evidence—to ensure that witnesses not reluctant to testify

The applicants sought the discharge of an injunction restraining the disclosure of allegedly prejudicial material, previously made and varied by the court.

The court had made an order prohibiting the import, broadcast, printing or publication of material that would reveal or comment on the evidence of witnesses prior to an inquest into the deaths of three Irish nationals in Gibraltar; this order had later been varied in order to allow such material to be printed and imported, following an undertaking by the applicants that they would not do so. The applicants, who had been forced to stop relaying news broadcasts from the B.B.C. by the order, sought to have the remaining prohibitions in the injunction lifted.

The applicants submitted that (a) the order was unreasonable, in that it prevented them from relaying any B.B.C. news broadcast because of the possibility that the subject-matter of the order might be discussed; (b) B.B.C. policy, which had been made clear to the applicants by the B.B.C. since the making of the order, prevented the applicants from delaying and editing the broadcasts, so compliance with the order meant stopping the relay altogether, which was unreasonable; and (c) given that the B.B.C. news and comment were available on other broadcasting frequencies in Gibraltar, and that the ban on importing and printing news and comment relating to the subject-matter of the order had been lifted, making it possible for anyone in Gibraltar to obtain such news and comment through

SUPREME CT.

ATT.-GEN. V. G.B.C. (Kneller, C.J.)

the local and foreign imported press, the order was ineffective and ought to be lifted.

The respondent submitted in reply that (a) since not all the information restrained was already in the public domain, the broadcast of what witnesses were likely to say at the inquest or of comment on their potential testimony would interfere with the administration of justice, as it might influence jurors and witnesses; (b) the public was not being unreasonably deprived of news and comment as the applicants sought to depict, as this was available through foreign media; (c) the clarification of policy by the B.B.C. did not constitute a sufficient change in the circumstances surrounding the injunction for it to be varied or discharged; and (d) events occurring outside Gibraltar were not a matter for the court, as it lacked jurisdiction over the English and Spanish media and the fact that news and comment relating to the subject-matter of the injunction were available from these sources was not relevant, and therefore the injunction should remain in place.

Held, dismissing the application:

(1) The circumstances surrounding the injunction had not changed sufficiently for it to be lifted. Not all the material relevant to the inquest, or to any criminal proceedings that might be brought, was in the public domain, and relaxing the restrictions on its dissemination would increase the likelihood of its coming to the attention of the public. To ensure the fair administration of justice, it was necessary that the injunction remain in place in order to prevent jurors reaching their own conclusions without an opportunity to hear all the evidence, and in order to ensure that witnesses did not become reluctant to testify truthfully or at all (para. 6).

(2) The fact that news and comment were available from sources outside Gibraltar did not mean that the law ought not to be applied to the Gibraltar media. The court's jurisdiction did not extend outside Gibraltar; it could, and should, however, regulate those matters concerning the administration of justice that were within its power (paras. 7-8).

A.V. Stagnetto, Q.C. for the applicants;

K. Harris, Senior Crown Counsel, for the respondent.

1 **KNELLER, C.J.:** The Gibraltar Broadcasting Corporation ("G.B.C.") and British Forces Broadcasting Services Ltd. ("B.F.B.S.") ask this court to discharge an order that it made on April 29th and varied on May 5th of this year. The Attorney-General opposes the application. The first order was an *ex parte* one which restrained G.B.C. and B.F.B.S. from importing, broadcasting, publishing or printing in whole or in part on television or wireless any material or comment on it which would reveal the evidence of any witness at an inquest to held into the deaths here in Gibraltar of Sean Savage, David McCann and Mairead Farrell, or at any criminal proceedings instituted upon the direction of the Attorney-General arising

from the circumstances of those deaths, until the conclusion of the inquest and, if there is one, the trial. The second order was made *inter partes* and lifted the ban on importing and printing such material or comment. G.B.C. and B.F.B.S. gave assurances they would not do so. The ban on broadcasting and publishing was limited to the beginning of the inquest.

2 G.B.C. and B.F.B.S. are at pains to declare that they will not broadcast or publish any Gibraltarian material about those deaths, but each simultaneously relays in Gibraltar B.B.C. news and comment at certain times of day, and they wish to carry on doing so whether or not the B.B.C. reveals or comments on the evidence of any witness or any likely witness to be called at the inquest. They have been providing this service to their listeners for years, but have ceased doing so since April 29th, which is the date of the *ex parte* injunction.

3 They make this application on two grounds. First, they are not permitted by the B.B.C. to delay, edit or monitor the bulletins. B.B.C. policy insists that they must be re-broadcast entirely and simultaneously to prevent mischievous editing, inaccuracies, imbalance and misrepresentation. Recording for transmission later, the B.B.C. explains, may lead to errors being repeated rather than corrected at once, or to inadequate reporting of later developments. 120 radio stations in the world relay these World Service News Bulletins and accept those conditions. Secondly, G.B.C. and B.F.B.S. submit, it is unreasonable to deprive the G.B.C.- and B.F.B.S.-listening public of these B.B.C. bulletins when anyone in Gibraltar can hear them on their wireless sets and read the same news in the British papers which are imported into Gibraltar.

4 Counsel for the Attorney-General asks what has changed since the order and variation were made. Mr. Stagnetto's reply for G.B.C. and B.F.B.S. is that we now know that the B.B.C. will not allow them to tamper with or delay their news and comment programming, and we have seen that the listening public can find it on different wavelengths or in the imported newspapers.

5 The application comes to the court under the liberty to apply reserved in a paragraph of the *inter partes* injunction; the court has jurisdiction to discharge the order on application. The test is whether or not there has been a radical change in the circumstances sufficient to persuade the court to discharge the injunctions.

6 All along, the court has to balance these principles or facts. The freedom to broadcast and to publish news is a very important one. It should not be restrained unless it is necessary to do so. It is not, however, absolute. The issues to be raised in the inquest are important and of public interest. They are to be answered according to law. But laymen, witnesses or jury, may be open to influence or pressure which might impair their impartiality or lead them to form pre-conceived views as to the issues and

SUPREME CT.

ATT.-GEN. V. G.B.C. (Kneller, C.J.)

events. Witnesses may be unwilling to give evidence truthfully—or at all—if what they may say at the inquest and comment on it is broadcast or published beforehand. It is important to ensure that justice is done and seen to be done: the public's confidence in the due administration of it by the established courts of law should not be sapped. It is therefore also very important that the issues and evidence should not be pre-judged before the inquest.

7 The B.B.C., Thames Television, Spanish television and British and Spanish newspapers have already devoted much time and space both to the events which are alleged to have led to these deaths and to some of those who are said to have seen what happened. The inquest is being held not in Britain or Spain but here. And the court's jurisdiction does not reach beyond Gibraltar and its territorial waters or the people here. It would probably be unworkable and ineffective to prevent anyone from watching or reading those items.

8 The law here is that what witnesses or likely witnesses may testify to in any inquest—or comment on it—may not be broadcast or published before that testimony is given, because this might interfere with the due administration of justice. This court must uphold that law.

9 So far, the court is not persuaded that all the evidence to be led and tested before the Coroner is public knowledge in Gibraltar. Any appreciable increase in the spreading of such material here in Gibraltar would interfere with the administration of justice.

10 Whilst acknowledging that G.B.C. and B.F.B.S. wish to provide their viewers and listeners with all the latest news and views, and the predicament that these injunctions cause them, this court finds that no radical change of circumstances has been established to warrant their discharge.

Application dismissed.