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[G. R. No. 19829. November 28, 1922]

MADRIGAL Y COMPANIA ET AL., PLAINTIFFS, VS. THE HONORABLE MARIANO CUI, AS PUBLIC UTILITY COMMISSIONER, AND THE BOARD CONSTITUTED UNDER SECTION 30 OF ACT NO. 2307, AS AMENDED, DEFENDANTS.

D E C I S I O N

STATEMENT

The plaintiffs are shipowners engaged in the transportation of freight and passengers in the coastwise trade of the Philippine Islands. The defendant is the duly appointed, qualified and acting Public Utility Commissioner of the Philippine Islands.

March 16, 1922, the plaintiffs entered into an agreement with the Attorney-General of the Philippine Islands as to the rates which the plaintiffs should charge and receive for freight and passengers to and including October 31, 1922, and it was filed as a part of the record in case No. 268Q then pending before the Board of Public Utility Commissioner, and is as follows;

> "It is hereby agreed between the shipowners, the petitioners herein, and the Attorney-General, in representation of the Government, no other opponent having appeared, that from the 16th day of March, 1922 to the 31st day of October, 1922, the freight rates for first class boats, according to the classification adopted by the Shipowners' Association, shall be those prescribed by Order No, 16 of the then Board of Rate Regulations, as amended, plus an increase of 75 per cent; that the freight rates for second class boats shall be those prescribed in said Order No, 16, as amended, plus an increase of 100 per cent; that the freight rates for third class boats shall be those prescribed in the aforesaid Order No. 16, as amended, plus an increase of 125 per cent; Provided that first class boats shall be those which have a capacity of 401 tons, net, or

> more; those of second class, those which have a capacity of more than 150 tons, net, and less than 401 tons, net, and those of third class, those which have a capacity of 50 tons, net, up to 150 tons, net. It is to be understood that the Attorney-General and the shipowners have entered into this agreement with a view to try the proposed decrease, and to this end the shipowners bind themselves to present on or before the 15th of October following the operating accounts corresponding -to the six months covering the period above fixed which they shall finish on the 30th day of September, 1922, in order to show the result of these new rates. And that this agreement shall be applicable to all the petitions pending in this Commission, relative to the continuation of the increases previously authorized, in which are interested shipowners who are members of the Shipowners' Association of the Philippines."

Pursuant to which, and with the approval of the Commissioner, the agreed schedule of rates has at all times since been in force and effect, except as hereinafter stated.

October 18, 1922, all of the plaintiffs, except one, filed with the Commissioner a written notice that it was their intention to continue such rates in force and effect "until such time as the modification thereof may be shown to be necessary in accordance with the law." Prior to the filing of the notice, each of the plaintiffs filed sworn statements of the operating expense of their respective vessels between April 1st and September 30, 1922, a summary of which was submitted to the Commissioner, with the notice of the intention of plaintiffs "to continue in force their existing rates," a copy of the notice marked Exhibit A, and a copy of the operating expenses, marked Exhibit B, are attached to, and made a part of, the petition. Upon the filing of such papers with the Public Utility Commissioner, they were numbered and treated as case No. 2995, and an order was made citing any and all interested persons to appear before the Commissioner at his office on October 27, 1922, at 3 p. m., and then and there file objections and submit any pertinent evidence, and due publication of the notice was ordered.

October 24, 1922, the plaintiff, Irineo Facundo, filed a separate statement of the operating expenses of his steamer *Tamaraw*, which is marked Exhibit C. October 26, 1922, the Attorney-General appeared and objected to the granting and continuance of the order as prayed for by the plaintiff, and at the hearing on the 28th of October, 1922, on behalf of the Government, requested the Commissioner to make an order directing that on or after November 1, 1922, the plaintiffs "be required and commanded to desist and refrain from

collecting or receiving for the transportation of freight and passengers rates in excess of those established in the year 1912 by Order No. 16 of the former Board of Rate Regulations." Plaintiffs opposed the motion upon the ground that "no authority is vested by existing law in the Public Utility Commissioner to reduce any existing rate until after a hearing has been had and evidence adduced upon which the Commissioner may base his findings of fact as to the necessity of such reduction or diminution of the existing rate and further contended that in the absence of such hearing the respondent Commissioner was without jurisdiction to make the order prayed for by the Attorney- General."

Notwithstanding such objection, the Commissioner made an order dated October 30, 1922, a copy of which is attached to the petition. Plaintiffs at once appealed from the order to the Board of Review, which denied the appeal and confirmed the order. Alleging all of such material facts, the plaintiffs filed the petition herein which they allege that it appears from plaintiffs' Exhibits B and C that the order is confiscatory, and that the present revenues are not sufficient to meet operating expenses; that they have no plain, speedy and adequate remedy, and that, through compliance with the order, they will suffer irreparable injury; that the rates established in the order are unfairly low, "and if proper rates are thereafter established, plaintiffs will have no means whatever of collecting from the persons transported or from the owners of merchandise transported as cargo the difference between such proper rate and the confiscatory rate established by the said order of 30th day of October, 1922."

Wherefore, they pray for an order of this court enjoining and restraining the Commissioner and all parties in interest from enforcing or attempting to enforce the order of October 30, 1922, and from the making of any reduction in plaintiffs' established rates until a full and complete hearing has been had and the evidence submitted, and that the order be declared null and void, and that it was made in excess of jurisdiction.

Based upon the plaintiffs' verified petition for a writ of certiorari and a preliminary injunction, and pending a hearing, it was ordered that the defendants and their agents and employees "are hereby restrained and enjoined from enforcing and attempting to enforce the order of October 30, 1922, in case No. 2995 of the Public Utility Commissioner." The defendants appeared and filed a motion to dissolve the injunction, which was overruled, and by an order of this court of November 8, 1922, they were required to appear within five days and show cause why the order of October 30, 1922, should not be declared null and void without prejudice to the hearing pending before the Public Utility Commissioner. The defendants did not file a demurrer to the petition. Neither did they file a formal answer. It is

labeled "return to the order to show cause," is not verified, is not in form a pleading, and is more in the nature of an argument against the writ.

In such cases, the proper practice is to file a statutory demurrer or a verified answer to which may be attached the argument supporting the demurrer or answer.

To this "return to the order to show cause," the plaintiffs filed a demurrer "upon the ground that the same does not state facts sufficient to constitute a defense," and for such reasons, we will treat this "return to the order to show cause" as an answer to plaintiffs' petition.

JOHNS, J.:

There is no dispute about any of the material facts. Both parties admit the execution of the agreement above quoted, and that as to the specified dates, it has at all times been in force and effect.

The order of the Commissioner, of which the petitioners complain, among other things, recites:

> "On this incidental question the Commission believes that the provision of subsection (*h*) of section 16 of Act No. 2307, as amended by Act No. 2694, is applicable, under which provision the proceeding on the petition for publication of the shipowners, the petitioners herein, was made as in substance the contention of the shipowners, the herein petitioners, involves increases in the standard rates contained in the aforesaid Order No. 16, although these increases which were published are the same ones which will cease after the 31st of this month. And it being necessary to examine and verify the aforesaid statements, this Commission believes it reasonable to make use of its discretionary power conferred upon it by said subsection (*h*) of section 16. Wherefore, the effect of the announcement as to putting again in force the increases which shall cease to have any force on the 31st of this month, must be and is hereby suspended, after the 31st of this month, pending hearing and decision of the principal case, such suspension not to last more than three months from the first of November, 1922.
>
> "So ordered. This order shall take effect on the 1st of November, 1922."

The question involved is the authority of the Commissioner to make the order.

Subsection (*h*) of section 16, of Act No. 2307, is as follows:

> "When any public utility as herein denned shall increase any existing individual rates, joint rates, tolls, charges, or schedules thereof, as well as commutation, mileage, and other special rates, or change or alter any existing classification, the Board shall have power either upon written complaint or upon its own initiative to hear and determine whether the said increase, change, or alteration is just and reasonable. The burden of proof to show that the said increase, change, or alteration is just and reasonable shall be upon the public utility making the same. The Board shall have power pending such hearing and determination to order the suspension of the said increase, change, or alteration until the said Board shall have approved said increase, change, or alteration, not exceeding three months. It shall be the duty of the said Board to approve any such increase, change, or alteration upon being satisfied that the same is just and reasonable."

It will be noted that it says "when any public utility as herein defined shall increase any existing individual rates, etc." "The Board shall have power pending such hearing and determination to order the suspension of the said increase, change, or alteration, etc."

That law was enacted in 1913. In 1917 and by Act No. 2694, subsection (h)t of section 16, of that Act, was amended to read as follows:

> "When any public utility as herein defined proposes to increase or reduce any existing individual rates, joint rates, tolls, charges, or schedules thereof, as well as commutation, mileage, and other special rates, or change or alter any existing classification, it shall send written notice thereof to the Public Utility Commission thirty days prior to the date on which the proposed increase, reduction, change or alteration is to take effect, unless the Commission, by means of an order, consent to a shorter notice, and upon receipt of said notice, the Commission shall be authorized, either upon complaint in writing or by virtue of its office, to see and determine whether said increase, reduction, change or alteration is just and reasonable. The burden of proof to show that the said increase, reduction, change or alteration is just and reasonable shall be upon the public utility making the same. The Commission shall have power pending such hearing and

> determination to order the suspension of the said increase, reduction, change or alteration until the said Commission shall have approved said increase, reduction, change or alteration, not exceeding three months,"

It will be noted that the amended Act reads:

> "When any public utility as herein defined proposes to increase or reduce any existing individual rates, etc. "The Commission shall have power pending such hearing and determination to order the suspension of the said increase, reduction, change or alteration until the said Commission shall have approved said increase, reduction, change Or alteration, not exceeding three months."

Those changes are material and important. Act No. 2307 only applied to a petition for an increase of rates, and the power of the Board to make the order pending the hearing was limited to a petition for an increase, change or alteration. Under Act No. 2694, the petition may be for either an increase or reduction, and pending which the Commission has power to make an order for "the suspension of said increase, reduction, change, or alteration."

It is very apparent from a reading of the original and amended subsections that the purpose of the amendment was to broaden the power of the Commission.

The petitioners contend that their notice was for a continuation of the rates under the agreement, as distinguished from an increase or reduction, and, hence, that the Commission has no power to make the order pending the hearing. This contention gives a narrow construction to the amendment made of the original subsection (*h*) by Act No. 2694. The purpose of that amendment was to vest the Commission with plenary, discretionary power pending the hearing to make the temporary order of which the petitioners complain.

Although the actual facts are not before the court, it is very apparent that the agreement in question was entered into as a result of a hearing which was then pending before the Commissioner for either an increase or reduction of rates. In legal effect, you have here a continuation of the original hearing which was pending before the Commission when the agreement was executed, and we have a legal right from the agreement to assume that the original hearing was either for an increase or reduction of rates.

The legal effect of the agreement was to suspend the hearing which was pending before the

Commission at the time it was executed. Although the parties made that agreement and are bound by it, they are not and cannot be bound beyond the time specified without their mutual consent. The record here shows that the petitioners want the agreement to continue in force and effect after it has expired, and that the Attorney-General, now representing the Government, is opposed to any continuation of the agreement.

The original hearing having been pending and the agreement having expired by its terms, the conditions existing at the time it was made are again restored and become of the same force and effect as they were at the time the agreement was made. Hence, in truth and in fact, the Commission now has pending before it the original petition for either an increase or reduction of rates which brings it squarely within the provisions of the amended statute. Again, it is very apparent that no final order establishing rater was made in the original petition, and that the rates under the agreement were temporary only. If any final order had ever been made, there would be no necessity for a petition to continue in force the rates established by the final order. If the rates were established by a final order, they would ipso facto remain in force and effect until they were changed without an order.

The question before this court is not whether the Commissioner should or should not have made the order of which the petitioners complain. The question before the court is whether the Commissioner had the power and authority to make the order, and under the facts the amended statute gives him that discretionary power.

For such reasons, and following the stipulation, the preliminary order granting the injunction is hereby dissolved, and the petition is dismissed, with costs in favor of the defendants. So ordered.

Araullo, C, J., Johnson, Malcolm, Avanceña, Villamor, Ostrand, and *Romualdez, JJ.,* concur.

DISSENTING

STREET, *J.*,

I regret my inability to concur with my associates in the disposition made of this case, and am constrained to express my reasons for dissenting.

The petition is in the nature of an application for the writ of certiorari to annul an interlocutory order promulgated on October 30, 1922, by the Honorable Mariano Cui, Public Utility Commissioner, in a matter now pending before him relative to the rates for the transportation of passengers and freight in Philippine waters. Upon the filing of the petition a restraining order was granted by the undersigned, as a Justice of this court, requiring the respondent Public Utility Commissioner temporarily to refrain from giving effect to the order which is the subject of attack. The respondents immediately moved to dissolve said restraining order; but on November 8, 1922, the full court denied the motion, and required the respondents to appear and show cause why the order complained of should not be annulled.

The respondents thereupon appeared by the Attorney- General and submitted what is denominated an answer but which, as is observed in the opinion of the court, is a mere argument; as it states no essential fact additional to those already set forth in the petition. Furthermore, this so-called answer contains no denial whatever of anything stated in the petition; and this of course operates as an admission of all the material allegations of the complaint, in conformity with the express provision of paragraph 2 of section 94 of the Code of Civil Procedure.

It appears, then, from the petition, without denial on the part of the respondents, that in March, 1922, there was pending before the Public Utility Commissioner a proceeding known as case No. 2688, to which the Association of Philippine Shipowners was a party, and which was concerned with the question of the rates to be charged for services rendered by the vessels belonging to the members of said association, though it does not appear how or by whom that proceeding had been begun.

In said proceeding the Attorney-General, representing the Government of the Philippine Islands, and the shipowners arrived at an agreement to the effect that, beginning on March 16, 1922, and continuing until October 31, 1922, the freight and passenger tariff should be maintained at a certain level, which was lower than the rates which had been prevailing prior to that time. In this connection we quote the following passage from said agreement:

> "It is understood that the Attorney-General and the shipowners have entered into this agreement in order to test the proposed reduction, and for said purpose the

> shipowners agree to present the operating accounts corresponding to the six months of the period of time above fixed, which will terminate September 30, 1922, on or before the 15th day of October following, in order to show the result of these new rates."

This agreement was approved by the Public Utility Commissioner and made of record in said case No. 2688; and the shipowners continued, during the period contemplated in the agreement, to operate their vessels in conformity with the tariff established thereby.

About the middle of October, 1922, the various petitioners, members of the Philippine Shipowners Association, and to whom we shall hereafter refer as the associated shipowners, submitted to the Public Utility Commissioner the statements of their operating accounts for the six-month period ending September 30, 1922, as they had obligated themselves to do in the agreement above referred to; and at about the same time or a little later they filed with the Commissioner a formal notification of their intention to continue the rates then in effect until such time as a modification thereof might be shown to be necessary in accordance with law (Exhibit A).

The notification thus given by the associated shipowners was entered in the office of the Public Utility Commissioner as case No. 2995, and the matter was formally set for hearing and public notice given; with the result that the Attorney-General appeared and signified his opposition to the indefinite continuation of the rates then in force. He insisted moreover that the shipowners should be required on November 1, to restore the tariff of rates established in order No. 16 of the old Board of Rate Regulation, promulgated in the year 1912.

In support of this proposition the Attorney-General insisted that the proposal of the shipowners to continue the current tariff was in practical effect a proposal to charge *increased* rates and that the Public Utility Commissioner had the power, under subsection (*h*) of section 16 of Act No. 2307, as amended by section 13 of Act No. 2694, to suspend such proposed increase for a period not exceeding three months, pending the investigation into the question of the rates ultimately to be determined upon.

The Utility Commissioner acceded to this suggestion and entered the order which is the subject of attack in this petition, requiring the shipowners to put the old tariff into effect, beginning on November 1, 1922. To the action thus taken, the shipowners excepted and announced their intention to appeal to the Board of Review created by section 30 of Act No.

2307, as amended by section 19 of Act No. 2694. The matter was accordingly brought before said Board, which sustained the action of the Commissioner. The associated shipowners thereupon filed in this court the petition which is now before us.

As stated in the answer of the Attorney-General, the only question involved in the present case is whether or not the Public Utility Commissioner has the power by an interlocutory order to *suspend* the tariff which the shipowners are proposing to maintain, prior to hearing the proof bearing on the propriety of those rates.

All parties of course are agreed that the Commissioner has ample power to make increases or reductions in rates after a proper hearing. The exercise of that power is indeed the chief purpose contemplated in the creation of the office; and if a proper reduction of rates had been ordered after a hearing had taken place, no question could have been made as to the authority of the Commissioner in the premises.

The provision of law defining the power of the Commissioner to make an interlocutory order affecting rates and rate classifications, prior to a hearing, is contained in sub-section (*h*) of section 16 of Act No. 2307, as amended by Act No. 2694, which is reproduced in the opinion written by Mr. Justice Johns. Inspection of that provision will show clearly enough that the Commissioner has the power to suspend any proposed increase or decrease of rates, or any change of rate classification, proposed by any public utility, pending the hearing and determination of the matter. But it is equally obvious that the power to change existing rates by an interlocutory suspensory order has not been conferred.

The question then as to whether the Commissioner had the power to make the interlocutory order, effective November 1, suspending the rates that had been in force up to that date for a period of not more than three months, and pending the hearing on the question of those rates, really resolves itself into the further question whether the associated shipowners are attempting to continue existing rates or are proposing to increase rates.

The Commissioner below acted upon the assumption that the proposition to continue, after October 31, the rates that had been in force up to that date by agreement was in effect a proposal to increase rates after that date. The same insistence is made in this court by the Attorney- General in behalf of the respondents.

The line of argument thus suggested has as its point of departure the well-known fact that all fluctuations in rates prevailing since order No. 16 of the Board of Rate Regulation became effective in 1912 have been computed upon that tariff as a base; and as the rates of

late years have been uniformly higher than that base, it is supposed to follow that the associated shipowners are proposing increased rates. In other words, it is supposed that the anterior status to which the rates should return upon termination of the agreement must be found in the old rates.

The argument is evidently fallacious, involving, as it does, something in the nature of a mere play upon words. Evidently, the mode in which the higher rates prevailing of late years have been computed has nothing to do with their character. When the statute speaks of increasing "existing" rates, it has reference to the rates which,' as a matter of fact, are in force immediately prior to any contemplated change, without necessary reference to the manner in, which they have been computed.

The agreement of March 16, 1922, from which we have already quoted, shows on its face that it was the intention of the parties to try out the tentative rates agreed upon; and it also shows that those rates were lower than the rates that had previously prevailed. The proposal of the associated shipowners, calendared as case No. 2995 in the office of the Public Utility Commissioner, was therefore in fact and in truth merely an announcement of their conformity in the tentative rates and of their intention to continue the same in force. The associated shipowners are therefore trying to maintain existing rates, and the accumulated sophistry of twenty centuries would not suffice to refute so plain and manifest a fact. The conclusion then is very evident that the Public Utility Commissioner has, by order complained of, improperly and prematurely interfered with existing rates, and the petitioners should have relief from said premature order.

But the opinion of the court in this case takes an unexpected turn, in that it plants the decision upon the proposition that the order complained of may be considered as having been made in case No. 2688 in the office of the Public Utility Commissioner, i. e., the case in which the rate agreement was made, and that in making said order the Commissioner was merely resuming activity in that unfinished *expediente*.

A sufficient answer to this suggestion is found in the fact that the very first order which this court made upon the filing of the present petition was to require the Public Utility Commissioner to certify to this court all of the proceedings in case No. 2995, before the Public Utility Commissioner, which was the case in which it was alleged that the improper order had been made. In response to this order said Commissioner certified to this court all the records up to October 31, 1922, in case No. 2995, which is entitled: Members of the Philippine Shipowners' Association, Applicants,—notification of the intention to continue for

an indefinite period the freight and passenger rates established by agreement with the Government, approved March 16,1922. Said *expediente* has its inception in the oft mentioned notification; and it contains the precise order against which relief is now sought.

In the light of these circumstances the court in my opinion should not assume that the order in question pertains to any other proceeding than that thus certified to us.

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