

TACLOBAN ELECTRIC & ICE PLANTS CO., INC., PETITIONER, VS. COMMISSIONER ENRIQUE MEDINA AND PUBLIC SERVICE COMMISSION, RESPONDENTS.

G.R. No. L-24362. February 26, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On November 28, 1961, the Public Service Commission (henceforth referred to as Commission) received Resolution No. 86 of the Municipal Board of Tacloban City pursuing previous requests for reduction of electric rates charged by the Tacloban Electric Light & Ice Plants Company (henceforth referred to as the Plant), holder of a certificate of public convenience under Case No. 59811 of the Commission. The resolution stated that the present rates were too high and that the exemption from all taxes granted to the Plant by Republic Act 2995 enables it to make such a reduction. Later, at the hearing on the audit report of the Auditor General's Office for the year 1959 (Case No. 61-7099), it was agreed that the Plant's financial statements for 1961 should be used as basis for the proposed reduction after an independent audit shall have been made.

Almost a year later, on November 9, 1962, Acting Commissioner of Customs Norberto Romualdez wrote the Commission requesting for a reduction of rates charged by the Plant. Consequently, on November 26, 1962, PSC Commissioner Enrique Medina required the Plant, in Case No. 59811 to show cause why the present rates should not be reduced. At the hearing held on December 13, 1962, the present case - No. 59811 - and Case No. 61-7099 were consolidated.

The Commission, in a decision dated May 3, 1963 penned by Commissioner Enrique Medina and concurred in by Associate Commissioners Francisco Perfecto and Gregorio Panganiban, ordered the Plant to reduce its rates by 10% effective June, 1963.

The Plant, on December 11, 1963,[1] claiming that the new rates were, unreasonable and confiscatory, and furthermore were determined without due process of law, filed a motion for reconsideration. Later, on February 25, 1965, the Plant filed a supplemental motion thereto.

On February 3, 1965, the motion for reconsideration was denied.[2] The order of denial was signed by Commissioner Enrique Medina, and Associate Commissioners Josias Guinto and Alex de Guzman. Three Associate Commissioners dissented: Commissioners Francisco Perfecto and Jose A. Fornier in separate dissenting opinions with Commissioner Gregorio Panganiban concurring with Commissioner Perfecto. The supplemental motion was also denied on March 12, 1965 with only Commissioner Medina signing the order of denial.[3]

The subsequent motions by the Plant, the motion dated March 19, 1965 to set aside, for being allegedly void, promulgation orders dated February 3 and March 12, 1965, and the motion dated March 24, 1965, to break the tie vote, were not set for hearing upon order of Commissioner Medina who believed the motions to be merely elusive efforts to prevent enforcement of the decision dated May 3, 1963.

The Plant, in a petition for certiorari, prohibition and mandamus with preliminary injunction, seeks before Us to set aside the promulgation orders of February 3, and March 12, 1965, to enjoin the enforcement of the decision of May 3, 1963, to order the breaking of the tie vote and to suspend the period for appeal from the decision.

The petition raises the following issues:

(a) Was the promulgation of the order of February 3, 1965 denying the motion for reconsideration and the order of March 12, 1965 denying the supplemental motion, impro-per in the absence of four (4) concurring Commissioners as required by Section 3, last paragraph, Public Service Act, as amended?

(b) Is the enforcement of the decision of May 3, 1963 on error?

With regard to the validity of the promulgation of the February 3, 1965 order, it is pertinent to consider the provisions of Section 3, paragraph 3 of the Public Service Act as amended by Republic Act 2677:

"That any motion for reconsideration of a decision or non-interlocutory order of any commissioner or division shall be heard directly by the Commission en banc and the concurrence of at least four commissioners shall be necessary or the promulgation of a final decision or order resolving such motion for reconsideration."
(Underscoring ours)

This provision of law clearly provides that four (4) Commissioners should at least concur before a final decision or order resolving a motion for reconsideration may be promulgated. Obviously, then, the promulgation of the order of February 3, 1955 with a 3 to 3 vote was improper. It is not correct to argue that there is no such thing as a tie vote the Commission and that the effect was a denial of the motion for reconsideration. The last sentence of the first paragraph of section 3 of the Act, as amended, provides for the procedure in case of inability of the requisite number of Commissioners to render a decision:

"In the event of a tie vote among the Commissioners, the Secretary of Justice may designate such number of Judges of the Courts of First Instance or such number of Attorneys of the legal division of the Commission, as may be necessary, to sit temporarily as Commissioners in the Public Service Commission."

The tie referred to here can only be when the Commission sits en banc and is equally divided. Commissioner Medina should not have promulgated the order of February 3, 1965, for the Commission should have tried to resolve the impasse and if it failed, should have referred the matter to the Secretary of Justice for action on his part under the law.

The denial of the supplemental motion was merely the consequence of the denial of the motion for reconsideration which, as stated, was improper,

Regarding the enforcement of the decision dated May 3, 1963, We find that Commissioner Medina was well within his authority to do so. Section 33, last part of the Public Service Act, as amended, provides:

"All orders of the Commission to continue an existing service or prescribing rates to be charged shall immediately be operative; all other orders shall become effective upon the dates specified therein."

Thus, in one case^[4] where a division of Commissioners ordered the increase of electric light rates charged by the Meralco, We held that under Section 33 of the law as amended, the Commission has no discretion to suspend the effectivity of the order continuing existing service or prescribing rates, for only the Supreme Court may do so.

WHEREFORE the orders of February 3, 1965 and March 12, 1965 are hereby annulled and the case is remanded to the Public Service Commission for further deliberation and, if necessary, for reference to the Secretary of Justice under Sec. 3, first paragraph, of the Public Service Act, without prejudice to the immediate effectivity -

that is, as of June 1963, of the decision of May 3, 1963. No costs.

SO ORDERED.

Concepcion, Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Copy of the PSC decision was allegedly received by the Plant only on Dec. 4, 1963.

[2] Annex I, pp. 52 of the Record.

[3] Annex L, pp. 47 of the Record.

[4] Manila Electric Co. v. PSC, L-24406, June 29, 1965.

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