

JOSE A. BELTRAN, VICENTE B. MAGADIA, AND JOSE O. STA. ROMANA, PETITIONERS, VS. HONORABLES ENRIQUE MEDINA AND ISIDRO TAYAG, FIRST DIVISION, PUBLIC SERVICE COMMISSION, RESPONDENTS.

G.R. No. L-25798. April 30, 1970

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

Petition for certiorari, with a prayer for the issuance of a writ of preliminary injunction, filed by Jose A. Beltran, Vicente B. Magadia, and Jose O. Sta. Romana against Commissioners Enrique Medina and Isidro Tayag of the First Division, Public Service Commission, some twenty-nine members of the Bus Operators Association of the Philippines (BOAP), and the BOAP itself, to enjoin the enforcement and implementation of the Commissioners orders dated December 8, 1965 and January 17, 1966, respectively, and, after due notice and hearing, to declare them null and void for being contrary to law.

On April 24, 1964 the respondent bus operators (hereinafter referred to as the respondent operators), through the BOAP, filed with the Public Service Commission (hereinafter referred to as the Commission) an application for the increase of bus fares (docketed therein as Case 64-2365). More specifically, they prayed for authority (1) to increase by one centavo per passenger per kilometer one-way whatever fares they were then authorized to charge, and (2) to charge a minimum fare of fifteen centavos (PO.15) per passenger.

On August 11, 1964 the Commission scheduled for September 16, 1964 the first hearing on the above application. In connection with the said hearing, the Commission required the respondent operators to notify all municipal mayors and councils, provincial governors and boards, and city mayors and councils throughout the Philippines about the aforesaid application by furnishing them copies thereof as well as of the notice of hearing issued there under, at least 15 days beforehand. This was apart from the general notice by publication made by the respondent operators in compliance with the Commission's order for the publication of the said application in two newspapers of general circulation.

On September 16, 1964, despite the publication and the notices by mail sent to all municipal, provincial and city authorities by the respondent operators, only the provinces of Sorsogon, Camarines Sur, Batangas, Quezon, Nueva Ecija, and the City of Manila registered their formal opposition to the application.

The petitioner Magadia, in his capacity as a resident of Project 6, Quezon City, and as president of the Project 6 Residents Association, filed an opposition on March 24, 1965. The Toro Hills Homeowners Association (Quezon City), through counsel likewise filed an opposition on June 2, 1965. Finally, by letter dated September 29, 1965, the petitioner Beltran registered in his and in behalf of his co-residents of Project 4, Quezon City, a similar opposition.

By notice dated March 15, 1965, pursuant to section 3 of the Public Service Act, as amended, the application for

rate increase was assigned to Commissioner Josias K. Guinto.

On February 26, 1965, after about four members of the applicant BOAP had presented their evidence in support of the application and rested their case, an urgent ex parte petition for provisional authority to adjust passenger rates was filed jointly by the respondents La Mallorca and Pampanga Bus Co., Inc. Pursuant to the Commission's order, the aforesaid urgent petition was published on March 4, 1965 in the Daily Mirror and the Manila Times. On March 8, 1965 a similar petition was filed jointly by the respondents Laguna Tayabas Bus Co., Inc. and the Batangas Transportation Co., Inc., followed by another filed on March 24, 1965 by the respondents Philippine Rabbit Bus Lines, Inc. and the Pangasinan Transportation Co., Inc. The latter two petitions were not published, but they were filed in the very same proceeding in which the La Mallorca-Pambusco petition was filed, i. e., PSC Case 64-2365.

The oppositors in PSC Case 64-2365 actually began presenting their evidence on May 4, 1965 when the counsel for the municipality of Calatagan, Batangas, presented his first witness.

On May 10, 1965 the petitioner Beltran, in behalf of the oppositor Project Residents Association, filed an ex parte motion, which was adopted by the other oppositors, for the auditing and examination of the books and accounts of the respondents bus operators by the General Auditing Office' pursuant to section 1 of Com. Act 325. A similar motion dated May 17, 1965 was filed by the counsel for the oppositor municipality of Calatagan, Batangas. Against these motions, the respondents Laguna Tayabas Bus Co. and Batangas Transportation Co. filed an opposition on May 24, 1965, upon the grounds that the respondent operators had already submitted to the Commission their financial statements for the years 1963 and 1964, as well as their income tax returns, and that there were on file with the Commission copies of their annual reports, to all of which interested parties may refer for the purpose of verifying the respondent operators, true financial conditions. The same opposition contended that Com. Act 625 did not impose on the Commission an obligation to order the audit and examination of the books, records and accounts of the respondent operators. Both motions were denied in an undated order of Commissioner Guinto who adopted the arguments embodied in the opposition.

On July 27, 1965 a motion for reconsideration of the afore-cited order of denial was filed by the petitioner Beltran for the oppositor Project Residents Association, with a prayer that the same be submitted for the resolution of the Commission en banc.

On October 22, 1965 the Commission, through respondent Commissioner Medina, set the case for hearing on October 29, 1965 at 900 a. m.

On October 29, 1965 a memorandum was issued by the acting Secretary of the Commission, through the administrative officer thereof, re-assigning the case to respondent Commissioner Medina.

On November 19, 1965 Commissioner Guinto issued a memorandum transmitting the case to the sala of respondent Commissioner Medina for continuation of the hearing, upon the ground that it was a rate-case which properly belonged to the sala of the latter.

On December 8, 1965 Commissioner Medina issued an order, concurred in by Commissioner Tayag, granting provisional authority to the respondent bus operators and "all operators who are situated in the same area and are operating under the same conditions" to increase the bus rates, as follows: (a) minimum charge, for less than seven (7) kms. P0.15; (b) basic charge, per kilometer - P0.02; and (c) maximum charge in sub-standard roads per km. - P0.025, and making the same immediately effective. Commissioner Gregorio C. Panganiban, the third member of the First Division to which respondent Commissioners Medina and Tayag belonged, dissented on the ground that no urgent need to grant the petition for increase of rates had been shown on the basis of the evidence

presented. There were filed several motions to reconsider the foregoing order, one of which was that filed ex parte by the petitioners as counsel for the oppositors, Project Residents Association and the Confederation of PHHC Housing Residents Association.

Hearing on the said motions for reconsideration was set for January 17, 1966 at which date, extensive arguments were raised by the parties, including a manifestation by the counsel for the respondent operators that the latter were amenable to a re-turn to the old minimum rate of P0.10 for not more than five kilo-meters. After the hearing, Commissioner Medina, with the concurrence of Commissioner Tayag, issued an order affirming their provisional order of December 8, 1965, with the modification that the minimum charge for distances of five kilometers or less should be reverted to the former rate of P0.10. Commissioner Pangani-ban dissented and voted to return to the old rate until the termination of the case.

Hence the present petition for certiorari which impugns the Jurisdiction of the respondent Commissioners, acting as members of the First Division, to issue the orders of December 8, 1965 and January 17, 1966, respectively, because:

"(1) Only the Commission en banc can render a decision in connection with cases involving the fixing of rates and petitions for reconsideration of orders or resolutions, as provided by the Public Service Act.

"(2) Even granting that there was such power the respondent Commissioners failed to observe a mandatory provision of law, i.e., Sec. 1, Com. Act 325, before granting the said provisional increase.

"(3) The First Division of the Public Service Commission, of which the respondent Commissioners are members, is not empowered by any law to extend the provisional authority to increase rates to the bus operators which were not applicants, because this is contrary to the requirements of the Public Service Act relative to the fixing of rates only upon proper notice and hearing; and that consequently, the aforesaid orders are null and void because they authorized other bus operators which were not applicants to increase their rates.

"(4) Assuming arguendo that the First Division of the Public Service Commission had jurisdiction over the petitions for provisional authority to increase rates, the order of December 8, 1965 is arbitrary because it was immediately implemented contrary to the requirement that within thirty (30) days, said petition to increase provisionally the rates must be published and notice given to the affected parties."

We have carefully leafed through the record of this case and have been unable to find any indication that the various motions to reconsider the order dated December 8, 1965 granting provisional authority to the respondent bus operators and others similarly situated to increase their rates, were submitted for decision or resolution to the Commission en banc. Upon the other hand, the record shows that the order dated December 8, 1965 and the order dated January 17, 1966 denying the motions to reconsider the former order, were both resolved by a division of three Commissioners, one of whom dissented from both orders. The first order, however, was non-interlocutory because immediately executory pursuant to section 33 of the Public Service Act which provides, inter alia, that –

"... All orders of the Commission to continue an existing service or prescribing rate to be charged shall be immediately operative; x x x (emphasis supplied)

Thus, any and all motions to reconsider the same should have been lodged with and resolved by the Commission en banc as directed by section 3 of the said Act which states -

"... 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 for the promulgation of a final decision or order resolving such motion for reconsideration."

This Court cannot consider and will not resolve the pre sent petition to enjoin the enforcement and implementation of two orders of-the Public Service Commission, one of which was beyond the jurisdiction of a mere division of three Commissioners to issue. This case should be remanded to the Public Service Commission en banc so that the latter can act on and resolve all the issues raised in the various motions to reconsider the order dated December 8, 1965, and take such actions as it may see fit in accordance with law and with the environmental milieu now obtaining.

ACCORDINGLY, let this case be remanded to the Public Service Commission en banc for further proceedings as herein indicated. No costs.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Fernando, and Villamor, JJ., concur.

Teehankee, J., concurs in this and in a separate opinion.

Barredo, J., took no part.

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CONCURRING OPINION

TEEHANKEE, J.:

I concur with the main opinion of Justice Castro that peti-tioners' motion for reconsideration of the First Division's Order of December 8, 1965 granting provisional authority to the respon-dent bus operators to increase their rates was beyond the First Division's jurisdiction to consider and deny, and that the case should be remanded to the Public Service Commission en banc for its proper determination and resolution.

Four salient facts in the case have struck my attention:

1. This is a mass application for increase of bus rates throughout the Philippines by twenty nine members of the Bus Operators Association of the Philippines (BOAP) and the BOAP itself;
2. Only six operators headed by La Mallorca and Pambusco filed urgent ex-parte petitions for provisional authority to increase their rates, but the first Division granted the provisional increase of rates not only to the applicants but en masse to "all operators who are situated in the same area and are operating under the same conditions; "
3. There is strong indication of precipitateness and lack of regard for the interest of the general traveling public in the mass increase authorized by the First Division, for its authorization of a minimum fee of fifteen centavos (P0.15) per passenger was quickly withdrawn in its Order of January 17, 1966, denying (without jurisdiction) the motion for reconsideration, but reverting to the former rate of ten centavos 00. 10) per passenger for distances of five kilometers or less, after counsel for respondent bus operators had manifested at the "rehearing" their amenability thereto;.
4. Commissioner Panganiban had throughout dissented against the provisional increase voted by his colleagues (Commissioners Medina and Tayag) on the ground that no urgent need therefor had been shown on the basis of the evidence presented and that the old rates should therefore be maintained until the termination of the case on

the merits.

5. I believe under such circumstances, that as provided in Section 1 of Commonwealth Act No. 325, the public interests demand that there should first be a prior examination of the financial condition of the respondent bus operators and the Commission en banc's action on petitioners' motion for reconsideration, as remanded by the Court, should await the outcome of such examination by the Auditor General.

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