

CLEMENTE M. SORIANO, COMPLAINANT, VS. ENRIQUE MEDINA AS COMMISSIONER, PUBLIC SERVICE COMMISSION, RESPONDENT.*Adm. Case No. 95. October 20, 1970*

Ponente: MAKALINTAL, J.

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This is an administrative case filed on May 6, 1965 by Atty. Clemente M. Soriano, as lawyer for Tita C. Bayhon charging Hon. Enrique Medina, Public Service Commissioner,* with: (1) serious misconduct thru falsification of public documents; (2) serious misconduct and inefficiency thru gross ignorance of the law, partiality and corrupt practices; and (3) serious misconduct thru corrupt practices.

Respondent Commissioner filed his answer on June 15, 1965, after which the case was assigned to Hon. Juan P. Enriquez, Associate Justice of the Court of Appeals, for investigation, report and recommendation.

On February 2, 1966 Justice Enriquez submitted to this Court his report, the pertinent portions of which read:

"1. In support of the first charge, complainant has established that on June 1, 1962 respondent was nominated by the President of the Philippines to the position of Commissioner of Public Service Commission. In connection therewith, the Commission on Appointments required respondent to accomplish and submit to it an information sheet, which the re-spondent did under oath on May 6, 1963 at Manila, Exhibit A. Question No. 4 of Exhibit A reads, 'Record of court and/or administrative case against you if there is any; status of the same.' No criminal nor administrative case is pending against him.' It, however, appears that on December 17, 1956, a decision was rendered by the municipal court of Dumaguete against respondent for slight physical injuries committed by respondent against his wife, imposing upon him P50.00 fine, Exhibit B. Respondent proffered the explanation that he understood the question to refer to unfinished cases in 1963, and so his answer refers to pending cases only; and that there was no intention to evade the question.

Under the facts, the offense charged has not been established.

2. The evidence shows that by virtue of a provisional permit issued on October 27, 1964, applicant Tita C. Bayhon started operation of five units of PU cars sometime in November, 1964. However, on December 7, 1964, Rodrigo Lim wired re-spondent Commissioner a complaint charging Bayhon with collecting fare by distance instead of per hour, in not issuing stub receipt and without being provided with BIR and municipal licenses and requesting suspension of her provisional permit. Respondent referred the telegram to the Chief, Transportation Division, for 'possible action'. On December 10, respondent instructed by telegram PSC inspector Leoncio Paredes in Cagayan de Oro to investigate the charges and on December 14, Paredes wired back that according to operator Bayhon and her men they were charging per person, al-though he has 'personal knowledge that all PU operators in the city of Cagayan de Oro, are charging P2.00 per head from the city of Cagayan de Oro proper to the airport and vice-versa, a distance of more than twelve (12) kilometers', that is, P2.00 per head per twelve kilometers covered in fifteen (15) minutes, thus overcharging the public four times the authorized fare. More-over, in proceedings before the City Fiscal held on December 3, 1964, operator Bayhon admitted operating without issuing receipt to passengers, operating in violation of city ordinances and operating without painting the authorized rates on the wind-shield of the vehicles, pleading however that she

had just started operation with the promise to correct the deficiencies pointed out above, respondent suspended Bayhon's operation on December 18, 1964 ordering her at the same time to 'show cause why her certificate of public convenience (issued December 15, 1964) should not be cancelled'. On January 4, 1965, Bayhon presented a motion for reconsideration directed to the PSC en banc, and after hearing the PSC en banc issued on January 18, 1964 an order maintaining the order of suspension, setting aside the decision granting Tita Bayhon authority to operate and ordering a new trial of the case. During the hearing of this administrative case, the case of Bayhon appears to be still pending action.

On the other hand, Bayhon wired respondent on December 10, 1964 requesting immediate investigation of Rodrigo Lim's taxicab for being dilapidated and operated with tampered meters and without toplights and color scheme, Exhibit D. On January 8, 1965, Bayhon filed a formal complaint thereon and pressed her demand for immediate investigation, enclosing therewith photographs of Lim's taxicabs, Exhibit E. Upon respondent's telegraphic order of December 18, 1964, Leoncio Paredes, PSC inspector, investigated the charges against Lim and found them to be true and correct on January 28, 1965, Exhibits G and L. So on January 29, 1965, Paredes filed with the PSC seven (7) verified complaints against public convenience granted same operator. Confirmation of the charges is contained in the letter of February 2, 1965 of acting registrar Felizardo E. Factura, Exhibit H, his certificate of August 13, 1965, Exhibits R and R-1, letter of PSC inspector Jesus V. Agana, March 31, 1965, Exhibit 5, respondent's order of April 5, 1965, Exhibit M, and by herein complainant as late as August 12, 1965, Exhibits P and Q.

Examination of the evidence will show that the alleged disregard of Section 16 (n) of the Public Service Law has not been shown. Respondent's suspension of Bayhon's operation is based on the report of PSC inspector Paredes and the very admissions of Bayhon, which up to now have not been denied nor explained away. At any rate, the order of the PSC en banc of January 18, 1965 confirmed respondent's order of December 18, 1964, thus purging it of whatever technical defect it may have suffered from.

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3. On September 4, 1964 the Public Service Commission in a decision penned by respondent granted a certificate of public convenience and necessity to Juan Sierra to operate 30 units of taxicabs in the metropolitan area, Annex 27. Juan Sierra's wife is the sister of the wife of Angel Medina, brother of respondent and who was a witness at the hearing on the application and subsequently appointed manager of the taxicabs operated by Sierra.

In his defense respondent alleges that the decision, Annex 27, was based on the overwhelming evidence of financial competence and qualifications of Juan Sierra and after proper deliberation; that he did not advise Paredes to go slow with respect to Rodrigo Lim because the latter is his compadre, since no such relationship ever existed between them.

Complainant charges respondent with a violation of Section 3(d) of Republic Act 3019, which reads: 'Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof, or within one year after its termination.' While a certificate of public convenience was granted to Juan Sierra while respondent is Commissioner of PSC and that respondent's brother who is Sierra's brother-in-law became manager of Sierra's taxicab business, there is no showing that respondent had his brother accept such employment. If he was so employed, it must be because of the relationship existing between the brothers-in-law, with which respondent has nothing to do."

While recommending respondent's exoneration on two counts the investigator found him guilty of partiality and recommended that a reprimand with admonition be administered, on the ground that despite the findings of two PSC inspectors and the MVO registrar, the operation of Lim's taxicabs was not suspended, in contrast to the action taken by respondent in connection with Lim's complaint against Tita Bayhon. There was, apparently, a difference in the treatment awarded the two operators. They mutually charged each other, but suspension was

meted out to only one. It must be noted, however, that Tita Bayhon's operation of her PU cars was pursuant to a provisional permit issued by the Commission in its order dated October 27, 1964 (Exh. S). Violations of some of the terms and conditions of said provisional permit were admitted by her in her testimony during the investigation conducted by Fiscal Pantaleon de la Peña (Annex 8) and confirmed by the letter-report of inspector Leoncio Paredes (Annex 6). Said provisional permit pro-vides, among other things, that "the first violation of these prohibitions, duly proven, shall be sufficient cause for the cancellation of this provisional permit"; that "the provisional permit hereby granted may be cancelled or revoked by the Commission at anytime"; and that "failure of the applicant to comply with any of the foregoing re-quirements will be considered cause for this Commission to withdraw the authority herein granted."

In fact, the order of suspension was, upon the filing of a motion for reconsideration by counsel for Tita Bayhon, submitted to the Commission en banc, which, on January 18, 1965, after hearing, denied the said motion.

On the other hand, Rodrigo Lim was the holder of a regular certificate of public convenience, and he denied the charges against him. Although it is true that two PSC inspectors and the MVO registrar reported that violations had been committed by Lim, the Commission has no power, except in specified instances, to suspend or revoke the certificate of public convenience without proper notice and hearing. The Public Service Act provides:

"SEC. 16. Proceedings of the Commission, upon notice and hearing.- The Commission shall have the power, upon proper notice and hearing in accordance with the rules and provisions of this Act, subject to the limitations and exceptions mentioned and saving provisions to the contrary:

x x x x x x x x

(n) To suspend or revoke any certi-ficate issued under the provisions of this Act whenever the holder thereof has violated or willfully and contumaciously refused to comply with any order, rule or regulation of the Commission or any provision of this Act: Provided, That the Commission, for good cause, may, prior to the hearing suspend for a period not to exceed thirty days any certificate or the exercise of any right or authority issued or granted under this Act by order of the Commission, whenever such step shall in the judg-ment of the Commission be necessary to avoid serious and irreparable damage or inconvenience to the public or to private interests."

The non-suspension of Lim's operation before notice and hearing does not necessarily show partiality on the part of respondent. The requirement of notice and hearing may be dispensed with only when in the opinion of the Commission the remedy of suspension before hearing is necessary to avoid serious and irreparable damage or inconvenience to the public or to private interests. This consideration obviously contemplates the exercise of sound discretion.

The record shows that after receipt of the telegram-complaint of Tita Bayhon, dated December 10, 1964, respondent, on December 18, directed inspector Leoncio Paredes to investigate the operation of Rodrigo Lim and to submit his report and recommendation immediately (Annex 14). However, due to Lim's protest against the arbitrariness and partiality of Paredes, respondent designated Atty. Dionisio Eltanal, special assistant of the Commission, to investigate said protest and, later on, the complaint of Bayhon against Lim (Annexes 18 and 19).

Meanwhile, on January 29, 1965 Paredes filed seven (7) identical complaints filed against Lim, in effect relinquishing his role as investigator for the Com-mission. These complaints were brought to respondent's attention only on May 17, 1965. On the same date respondent referred them to the Chief of the Complaints and Enforcement Section for appropriate action and required the receiving clerk to explain why the said complaints had not been brought to his attention earlier (Annex 21). Anyway they were calendared for hearing on June 30, 1965, but upon motion of Paredes the hearing was postponed to July 12, 1965 (Annex 25). However, before that

date the instant administrative case was filed against respondent, whereupon he inhibited himself from hearing the complaints and assigned them instead to Associate Commissioner Josias K. Guinto, who in turn re-assigned them, for certain personal reasons, to Commissioner Alex F. de Guzman. Commissioner de Guzman, on his part, ran for Congress on November 9, 1965 and hence was not able to conduct the investigation. The cases were then reassigned to Commissioner Sunga, but on the date of hearing Paredes did not appear despite notice to him and so on motion of Lim's counsel the cases were dismissed for lack of interest.

In view of all the foregoing, this Court finds that the charges against respondent have not been substantiated and accordingly resolves to dismiss the same.

Dizon, Zaldivar, Ruiz Castro, Fernando, Barredo, Villamor, and Makasiar, JJ., concur.

Concepcion, C.J., on leave.

Reyes, J.B.L., Acting C.J., and Teehankee, J., no part.

* Commissioner Medina is now retired from the service.

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