

**BATANGAS LAGUNA TAYABAS BUS COMPANY, PETITIONER, VS.
ASSOCIATE COMMISSIONER JOSUE L. CADIAO, PUBLIC SERVICE
COMMISSION, LAND TRANSPORTATION COMMISSION, AND
EASTERN TAYABAS BUS C...**

G.R. No. L-28725. March 12, 1968

Ponente: FERNANDO, J.

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FERNANDO, J.:

What is sought in this petition for mandamus and contempt with a prayer for the issuance of a restraining order by petitioner Batangas Laguna Tayabas Bus Company, "the holder of several certificates of public convenience for the operation of bus service" in several southern Luzon provinces extending to Manila,[1] is to compel respondent Land Transportation Commission to act on its letters of January 24, February 2 and February 8, 1968,[2] wherein it sought deferment of action on any request of respondent Eastern Tayabas Bus Company, Inc. for the issuance of plates covering units involved in its lease agreement with petitioner, such request being premised on the alleged nullity of an order of respondent Commissioner Cadiao of the Public Service Commission, dated November 2, 1967, granting the petition of respondent Eastern Tayabas Bus Company Inc. to "be allowed to acquire and register units for the operation of the certificates on the ground that its contract of lease of its certificates with the Batangas Laguna Tayabas Bus Company will terminate on March 6, 1968, * * *" with the proviso "that it should not operate the same earlier than March 6, 1968, which is the expiration date of the contract of lease." It was also expressly set forth in this order of respondent Cadiao that it "is without prejudice to the resolution of applicant's contention that under the lease contract it has the right to terminate the lease contract after a 60-day period notice to the Batangas Laguna Tayabas Bus Co., Inc. which is now pending before the regular courts." [3]

Petitioner contends that this order of November 2, 1967 is beyond the jurisdiction of the respondent Public Service Commission, acting through respondent Commissioner Cadiao, on the ground that the matter therein involved is pending resolution in an arbitration proceeding by virtue of a decision of this Court on August 31, 1966, the dispositive portion of which declared that the Public Service Commission was without jurisdiction to continue with cases between then petitioner Batangas Laguna Tayabas Bus Company and then respondent Eastern Tayabas Bus Company, Inc. "until final judgment or order is rendered by the Court of First Instance of Laguna in Civil Case No. SP-600, and, until such time, the restraining order herein issued shall remain effective." [4] By virtue of the above decision of this Court, the parties were heard by the Court of First Instance of Laguna in San Pablo City in the above civil case with a partial decision being thereafter rendered as a result of which the matter before it is now pending resolution by a Board of Arbitrators composed of Atty. Francisco Carreon and Atty. Mamerto R. Villaluz.[5] Petitioner further predicates the alleged nullity of the order of November 2, 1967 on the allegation that in its issuance, procedural due process was not observed, no hearing having been accorded petitioner.

Respondent Eastern Tayabas Bus Co., Inc. immediately signified its intention to file a motion to dismiss. In a resolution of March 1, 1968, this Court required petitioner to serve immediately upon the aforesaid respondent a

copy of its petition for mandamus and contempt with a prayer for the issuance of a restraining order and to give the aforesaid respondent up to March 4, 1968 within which it could file its motion to dismiss. The motion for restraining order as well as the motion to dismiss were both set for hearing on March 5, 1968.

On March 2, 1968, an amended petition for mandamus, contempt, certiorari, prohibition and injunction with a prayer for the issuance of a restraining order was filed by petitioner to the end "that complete relief may be obtained in only one proceeding; * * *." It was alleged that respondent Eastern Tayabas Bus Company Inc. in cooperation with the Land Transportation Commission "has surreptitiously caused the registration of the units for use in the disputed lines, * * *"; that the delay in deciding its petition to vacate the order of November 2, 1967 "is part of the scheme of [such] respondent under which the order of denial would be issued at the last minute to give petitioner no chance to take seasonable action thereon * * *"; that respondent Associate Commissioner Cadiao "has personally intervened in causing the assignment" of the cases then pending in the Public Service Commission to its prejudice, all of which, to justify its amended petition for certiorari was characterized by petitioner as showing that such respondent Associate Commissioner did act in an improper, capricious and arbitrary manner, thus requiring the intervention of this Court. Petitioner would lend a color of plausibility to its plea for a writ of prohibition on the allegation that the actions of respondent officials before this Court "have become, or are without, or in excess of their jurisdiction or with grave abuse of discretion." [6]

The motion to dismiss, dated March 4, 1968 and docketed the same day, of respondent Eastern Tayabas Bus Co., Inc., stated that petitioner "came to this [Court] with unclean hands" and that its petition "does not state a cause of action." After reciting the facts, respondent's motion to dismiss alleged "that the presentation of the petitioner's case in the instant petition leaves much to be desired in completeness and accuracy. What was a graver fault is its deliberate concealment and omission of material facts indispensable to a fair and accurate resolution" of this controversy. [7] Then came the specifications of what it referred to as the incomplete and grossly misleading presentation of the facts by the petitioner, referring to the failure of petitioner to include mention of the lease contract between it and respondent in 1958 as well as its renewal in 1963, the source of the continuing dispute between the parties, to the non-disclosure of the issue involved in it as well as the circumstances surrounding the issuance by this Court of its restraining order in *Batangas Laguna Tayabas Bus Company v. Public Service Commission*, [8] and its omission of a full hearing of the dispute having been conducted on January 24, 1968, with reference to the matter which is embraced in the order of November 2, 1967, there being a previous petition to set aside and to reconsider the same. The motion to dismiss specified likewise why there was no cause of action in the original petition which included a plea for certiorari and prohibition.

The parties were duly heard. The plea for a restraining order and the motion to dismiss were argued on March 5, 1968. No restraining order was issued. No purpose would have been served as the petition should have been dismissed. The Public Service Commission, acting thru respondent Commissioner Cadiao, has jurisdiction there being no substance to the allegation that there was a denial of the right of petitioner to procedural due process.

Petitioner invokes the aforesaid *Batangas Laguna Tayabas Company* decision of this Honorable Court to assail the jurisdiction of the Public Service Commission. There is here a misinterpretation, whether thru inadvertence or otherwise. As the opinion of this Court, speaking thru Justice Bengzon, was careful to point out, the Public Service Commission in that case was restrained from acting "upon the application in question and resolve the dispute of the parties as to the terms of the lease agreement," as to do so "would amount to exercising the functions of a purely judicial tribunal, an act it cannot do." More specifically, the opinion, in the interest of clarity, limited the scope of the holding to "the private aspect of the lease agreement, the private rights of the parties in their relation to each other as lessor and lessee." Relying on an earlier decision, [9] it reaffirmed the doctrine that the "Public Service Commission has no private control over a public utility in its private aspect * * *." There was

a clear intimation that where the matter would "involve the public interest or public aspect" it is the Public Service Commission that has jurisdiction.

That prop failing, no question should exist as to the jurisdiction of the Commission. As was implicit in the above Batangas Laguna Tayabas Bus Company opinion, the earlier ruling in *Garcia v. Bonifacio*,^[10] has not lost its force or cogency. While in that case what was before this Court was the question of whether or not a Court of First Instance has competence over a complaint for the recovery of damages and the conveyance of a certificate of public convenience, questions which according to the opinion could not be inquired into, such issues being for the Public Service Commission to resolve, it was the considered view of this Court that over the respective rights of the parties insofar as the operation of a public utility is concerned, the "Commission is the only entity empowered to withdraw the certificate from [a claimant] and to transfer it to [another] or grant him a new certificate." Similarly, what is involved in this litigation, namely, a "petition to acquire and register the units or trucks required to operate the lines of respondent Eastern Tayabas Bus Company Inc." after it had decided not to renew or extend its Lease contract with petitioner, is properly cognizable by the Public Service Commission. The plea of lack of jurisdiction is therefore unavailing.

That should suffice to dispose of this petition, were it not for the additional allegation that in the issuance of the order of November 2, 1967, there was no hearing accorded petitioner. Such an allegation is without basis as set forth in the motion to dismiss.^[11] Petitioner "did not disclose that the respondent Public Service Commission, through Associate Commissioner Josue L. Cadiao, conducted a full hearing on the dispute under Public Service Commission Case No. 67-7081 on January 24, 1968." What was not disclosed was specifically set forth in the motion to dismiss thus: "On the very next day after the petitioner filed its Petition to Set Aside And To Reconsider or on November 17, 1967, the respondent Commission issued a Notice of Hearing therefor * * * setting the same for Friday, November 24, 1967 at 9 a. m. Thereafter, the respondent Commission, on the petitioner's own request, held a session en banc on December 7, 1967, again to consider the said Petition To Set Aside And To Reconsider. The respective lawyers of [petitioner] and [respondent Eastern Tayabas Bus Co.], Domingo de Lara and Manuel O. Chan, actually argued extensively during this meeting en banc of the respondent Commission. Thereafter, and as was agreed upon by the parties in the course of the said hearing, the case was returned to the First Division which promptly issued another Notice of Hearing dated January 10, 1968 (* * *) scheduling a full hearing on January 24, 1968, during which the petitioner * * * and the herein respondent [Eastern Tayabas Bus Co.] argued and presented pertinent evidence."^[12]

While it is true then that the order of November 2, 1967 was issued ex parte, it is equally true that whatever objections could have been raised by petitioner were in fact set forth in its petition to set aside and to reconsider and were inquired into in a hearing held on January 24, 1968. As far back as 1935,^[13] it has already been a settled doctrine that a plea of denial of procedural due process does not lie where a defect consisting of an absence of notice of hearing was thereafter cured by the alleged aggrieved party having had the opportunity to be heard on a motion for reconsideration. "What the law prohibits is not the absence of previous notice, but the absolute absence thereof and lack of opportunity to be heard."^[14] There is then no occasion to impute deprivation of property without due process where the adverse party was heard on a motion for reconsideration constituting as it does "sufficient opportunity" for him to inform the Tribunal concerned of his side of the controversy.^[15] As was stated in a recent decision,^[16] what "due process contemplates is freedom from arbitrariness and what it requires is fairness or justice, the substance rather than the form being paramount," the conclusion being that the hearing on a motion for reconsideration meets the strict requirement of due process.

This is all then that this petition presents. Clearly it should be dismissed for it is bereft of any support in law. A word more however is required in view of the conspicuous failure of petitioner's counsel to exhibit the candor

required of an officer of the Court. The petition, as shown in the motion to dismiss and in the course of the oral argument, left out many facts within the knowledge of the petitioner with the evident purpose of imparting a semblance of plausibility to a petition otherwise clearly lacking merit. While counsel is expected to exhibit the utmost zeal on behalf of a client, it is likewise imperative if the rule of law were to be truly meaningful that the orders of this Court be based on a full and candid disclosure of relevant matters, so that whatever action may thereafter be taken be warranted by the events as they did transpire. Members of the Bar would then be remiss in their duty towards a court of justice if in their undoubtedly earnest efforts to serve their client's cause, there is, as in this case, a failure to live up to their exacting responsibility to exert the utmost diligence that their pleadings submitted reflect the facts with truth and accuracy.

WHEREFORE, this petition is dismissed. With costs.

Reyes, Acting C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.
Concepcion, C.J., on official leave.

[1] Par. 1, Petition.

[2] Annexes J, K and L, Petition.

[3] Annex E, Petition.

[4] Par. 3, Petition.

[5] Pars. 4 and 5, Petition.

[6] Pars. 17-20, Amended Petition.

[7] Motion to Dismiss, pp. 10 and 11.

[8] G.R. No. L-25994, August 31, 1966.

[9] *City of Manila v. Meralco*, 36 Phil. 89 (1917).

[10] 104 Phil. 656 (1958).

[11] Motion to Dismiss, p. 16.

[12] *Id.*, p. 17.

[13] *In re De Borja v. Flores*, 62 Phil. 106, cited with approval in *Flash Taxicab Co. v. Cruz*, G.R. No. L-15464, March 30, 1963.

[14] *De Borja v. Tan*, 93 Phil. 167 (1953).

[15] *Embate v. Penolio*, 93 Phil. 702 (1953).

[16] *Caltex (Phil) Inc. v. Castillo*, G.R. No. L-24657, Nov. 27, 1967.

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