

**GENEROSO VILLANUEVA TRANSIT CO., INC., PETITIONER, VS.
DOLLY C. JAVELLANA, PUBLIC SERVICE COMMISSION,
RESPONDENTS.***G.R. No. L-29467. June 30, 1970*

Ponente: ZALDIVAR, J.

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Petition for review of the decision of the Public Service Commission, in its Case No. 67-1712, granting the application of respondent Dolly C. Javellana for a certificate of public convenience to operate a taxicab automobile service in the island of Negros.

Respondent Dolly C. Javellana filed with the Public Service Commission an application to operate a taxicab automobile service in Bacolod City, and from the said City to any point in the island of Negros open to motor vehicle traffic, and vice-versa, with the use of thirty (30) units. In her application said respondent alleged, among others, that she is of legal age, a Filipino citizen, financially capable to operate the proposed service, and that public necessity and convenience demands the approval of the application.[1]

Petitioner Generoso Villanueva Transportation Co., Inc. and Vicente Tañedo, through counsel, opposed the application. At the hearing, however, only oppositor Generoso Villanueva Transportation Co., Inc. appeared through counsel, and so the opposition of the other oppositor was dismissed for lack of interest. Herein petitioner (oppositor below) premised its opposition on the grounds, namely, (1) that oppositor with other taxicab service operators are rendering adequate, efficient, and satisfactory service in the territory covered by the application; (2) that applicant is not financially capable to operate and maintain the proposed service; and (3) that the grant of the application would cause ruinous competition.[2]

At the hearing on June 7, 1968 applicant presented her evidence, oral and documentary, after which she rested her case. Counsel for herein petitioner, however, without pre-senting any evidence, orally moved for the dismissal of the application upon the ground that the applicant failed to prove her Filipino citizenship and her financial capacity, and asked for time to submit a written memorandum in support of his motion. At that juncture, counsel for herein petitioner was admonished by the Commissioner hearing the case that an adverse resolution of his motion to dismiss would imperil his client's case for he would be barred from introducing evidence in support of the opposition. Notwithstanding the admonition, counsel submitted his memorandum, praying "that this application be ordered dismissed, and in the alternative this case be set for hearing for the, presentation of the evidence of oppositor." [3]

On August 26, 1968, respondent Public Service Commission rendered its decision, denying herein petitioner's motion to dismiss, and at the same time - in the same decision - approved the application. It is this decision that is now sought to be reviewed in the instant case.

In its petition for certiorari with writ of preliminary mandatory injunction, which this Court has considered as a petition for review,[4] petitioner prayed that the decision be set aside and that respondents Public Service

Commission and Dolly C. Javellana be directed to "desist and refrain from carrying out in any manner the decision in question, particularly the registration thereof, upon posting by the petitioner herein of such bond as this Honorable Court should require." [5]

On September 26, 1968, petitioner filed a petition before this Court praying for the issuance of a writ of preliminary injunction restraining the respondent Public Service Commission from issuing an order extending the period of the registration of the thirty taxicab units asked by respondent Javellana, and that the latter be also enjoined from registering said units in the Land Transportation Commission Agency, Bacolod City, and from operating under taxi denomination the 30 units authorized in the decision. Acting on the petition this Court, on October 1, 1968, issued a temporary restraining order prohibiting respondent Public Service Commission "from issuing an order extending the period of time for the registration and operation of the thirty (30) taxicab units of herein respondent Dolly C. Javellana" - ... and respondent Javellana "from operating under taxi denomination the thirty (30) taxi units authorized in the decision..." [6]

On November 6, 1968 respondent Javellana filed a motion to lift the temporary restraining order, and also her answer to the petition wherein she questions the propriety of the petition for certiorari, on the ground that petitioner had a plain, speedy, and adequate remedy which was a motion for re-consideration of the decision, but which was not availed of; that petitioner cannot complain of having been deprived of its day in court because it waived said right when it agreed to have the application case submitted for decision without presenting evidence to support its opposition; that petitioner never questioned the citizenship of applicant in its opposition; and that applicant is, as per finding of fact of the Commission, financially capable to maintain and operate the proposed service. In a resolution, dated November 19, 1968, this Court denied the motion to lift the temporary restraining order.

On February 6, 1969 respondent Javellana filed a motion for the dissolution of the temporary restraining order issued on October 1, 1968, on the ground that petitioner had not filed a bond. By resolution, dated February 12, 1969, this Court resolved to issue a writ of preliminary injunction upon petitioner's posting a bond of P2,000.00.

On May 24, 1969 respondent Javellana filed a motion for the dissolution of the preliminary injunction, alleging the insufficiency of petitioner's bond and offering to put up a counterbond double the amount of the bond filed by petitioner. This Court denied the motion for dissolution of the preliminary injunction, but required petitioner to increase his bond to P8,000.00.

On July 10, 1969, petitioner filed a motion to declare respondent Javellana in contempt of court upon the ground that in spite of the writ of preliminary injunction, said respondent had persistently operated two taxicab units for the year 1969. In her comments on the motion, respondent Javellana admitted having registered two units on September 3 and September 25, 1968, that is, prior to the temporary restraining order which was issued by this Court on October 1, 1968; and that the renewal of the registration in 1969 was not covered by the injunction. In reply to the explanation, petitioner argued that both the temporary restraining order of October 1, 1968 and the writ of preliminary injunction of February 19, 1969 restrained respondent Javellana "from registering" and also "from operating under taxi denomination" the 30 taxi units. The motion for contempt has not been resolved.

In its brief, petitioner assigns the following errors, allegedly committed by respondent Public Service Commission:

I. The Public Service Commission erred in denying the motion to dismiss in the decision itself and granting the certificate of public convenience in question without giving an opportunity to petitioner to present its evidence in opposition depriving it of its day in court.

II. The Public Service Commission erred in holding that respondent Javellana has proven that she is a Filipino

citizen.

III. The Public Service Commission erred in issuing the certificate of public convenience in question considering that on the evidence and re-cords of this case respondent is unquestionably financially incapable of operating and maintaining the proposed service.

The instant case may be disposed of by resolving the issue raised in the first error assigned.

In support of the first assignment of error, petitioner argues that the motion to dismiss should have been denied in an order separate from the decision, in order to give petitioner an opportunity to file a motion for reconsideration of the order of denial; that in rendering its decision, denying therein the motion to dismiss and not allowing petitioner to present evidence in support of its opposition, the Public Service Commission barred the petitioner from presenting evidence in support of its opposition, and thus violated Section 1 of Rule 35 of the Rules of Court, and denied petitioner the due process of law.

Respondent Javellana, on the other hand, argues that petitioner cannot complain of having been denied its day in court because it waived its right to present evidence in support of its opposition, and preferred to file a memorandum to substantiate its motion to dismiss instead of presenting evidence, and its counsel even expressed his preference to take the risk of the result of his motion to dismiss, in spite of the admonition of the Commission that he had better present his evidence.

We sustain the stand of petitioner. The right of a defendant who files a motion to dismiss for insufficiency of plaintiff's evidence, or a demurer to the evidence, is specifically provided for in Rule 35, of the Rules of Court, the lone section of which provides as follows:

"Section 1. Effect of judgment on demurer to evidence. After the plaintiff has completed the presentation of his evidence, the defendant without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. However, if the motion is granted and the order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf."

This Court applied this rule in the case of *Director of Lands vs. Ceniza*[7], wherein the Director of Lands, as oppositor to the application for registration, orally moved, thru counsel, after the applicant had presented his evidence, for the dismissal of the application upon the ground of insufficiency of evidence. The trial court denied the motion to dismiss, and considered the case submitted for decision without allowing the opposition to present evidence. Alleging before this Court that the respondent judge neglected to perform an act which the law specifically enjoined as a duty resulting from his office, and that said judge excluded him from the enjoyment of a right to which he was entitled -- the duty to give every party to a litigation a reasonable opportunity to be heard and his right to present his side, this Court held that under Section 1, Rule 35 of the Rules of Court it was "evident that the respondent court, in the case at bar, after denying the motion to dismiss, for insufficiency of evidence (demurer to evidence), should have permitted the petitioner--defendant to present his own evidence, notwithstanding its failure or omission to make a reservation to that effect; more so, as in this particular case, when the petitioner-defendant had asked to be given a day in court in order to defend the government's title to a 78-hectare parcel of land".

In *Siyngco vs. Costibolo*,[8] the issue on the legal effects and consequences of the defendant's motion to dismiss, or demurer to evidence, was raised. The trial court therein ruled that the defendants, after moving to dismiss the case after the presentation, of plaintiff's evidence, were understood to have waived their right to present their evidence, notwithstanding their reservation, and plaintiff could take judgment according to the evidence already on record. Petitioners in that case complained that they had been deprived of their day in court.

This Court, speaking through Mr. Justice Teehankee, reaffirmed the doctrine laid down in *Director of Lands vs. Ceniza* supra, and gave the rationale behind Section 1, Rule 35 of the Rules of Court, saying:

"The rationale behind the rule and doctrine is simple and logical. The defendant is permitted, without waiving his right to offer evidence in the event that his motion is not granted, to move for a dismissal (i.e., demur to the plaintiff's evidence) on the ground that upon the facts as thus established and the applicable law, the plaintiff has shown no right to relief. If the trial court denies the dismissal motion, i.e., finds that plaintiff's evidence is sufficient for an award of judgment in the absence of contrary evidence, the case still remains before the trial court which should then proceed to hear and receive the defendant's evidence so that all the facts and evidence of the contending parties may be properly placed before it for adjudication as well as before the appellate courts, in case of appeal. Nothing is lost. The doctrine is but in line with the established procedural precepts in the conduct of trials that the trial court liberally receive all proffered evidence at the trial to enable it to render its decision with all possibly relevant proofs in the record, thus assuring that the appellate courts upon appeal have all the material before them necessary to make a correct judgment, and avoiding the need of remanding the case for retrial or reception of improperly excluded evidence, with the possibility thereafter of still another appeal, with all the concomitant delays. The rule, however, imposes the condition by the same token that if his demurer is granted by the trial court, and the order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf and he shall have been deemed to have elected to stand on the insufficiency of plaintiff's case and evidence. In such event, the appellate court which reverses the order of dismissal shall proceed to render judgment on the merits on the basis of plaintiff's evidence.

The Public Service Commission's disregard of Rule 35 cannot be justified on the ground that the Commission is not strictly bound by the technical rules of procedure and evidence. A rule of procedure such as that provided in Rule 35, Section 1, concerning the opportunity of a litigant to present his evidence in support of his side on matters before the court, which may affect his rights, can hardly be classified as a technical rule. The process requires that every person shall have his day in court and be given an opportunity to be heard in order to establish any fact which will protect his rights.[9]

It cannot be said either, that herein petitioner waived his right to present evidence in support of his opposition, as the Public Service Commission said in its decision, and stressed by respondent, when

"counsel for oppositor was admonished that an adverse resolution on his motion to dismiss would imperil his client's case for he would be barred from introducing evidence in support of the opposition x x x Counsel nevertheless decided to take said risk and agreed to have the case submitted after submission of his memorandum in support of his oral motion to dismiss." [10]

It is untenable that a mere admonition by the Public Service Commissioner would suffice to take away a right granted by law to a party to a case -- that is, the right to present evidence in support of his opposition. Neither can it be said that petitioner by the mere filing of the demurer to evidence waived his right to present evidence, because Rule 35, Section 1, expressly provides that the filing of such motion to dismiss is not a waiver of the right to offer evidence in the event the motion is not granted. Moreover, counsel for petitioner herein expressly reserved said right, when in his memorandum in support of the verbal motion to dismiss he "respectfully prayed that this application be ordered dismissed and in the alternative this case be set for hearing for the presentation of the evidence oppositor." [11] Waiver of a right must be express, made in a clear and unequivocal manner. [12]

It is clear, therefore, that the Public Service Commission arbitrarily disregarded the right of herein petitioner to present evidence in support of its opposition, and so the decision in question should be set aside.

WHEREFORE, the decision of the Public Service Commission, dated August 26, 1968, in Case No. 67-1712 is set aside, and the certificate of public convenience issued in accordance thereto is revoked. This case is remanded to the Public Service Commission, for further proceeding whereby herein petitioner (oppositor below) is given

opportunity to present evidence in support of its opposition. The writ of Preliminary injunction issued by this Court on February 19, 1969 is made permanent insofar as it relates to the decision herein, set aside. Costs at this instance against respondent Dolly C. Javellana.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Castro, Fernando, Teehankee, and Barredo, JJ., concur.
Villamor, J., on leave.

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- [1] Annex A to petition; page 7 of the record.
[2] Annex C to petition; page 9 of the record.
[3] Annex D to petition; pages 10-12 of the record.
[4] Resolution of November 26, 1968; page 55 of record.
[5] Prayer of petition; page 6 of record.
[6] Page 30, of the record.
[7] G. R. No. L-18527, June 29, 1963; 8 SCRA 436.
[8] G. R. No. L-22506, February 28, 1969; 27 SCRA 272.
[9] State vs. Sax, 18 ALR2d 929; 231 Minn 1, 42 NW2d 680.
[10] Decision in Case No. 67-1712, p. 2; page 14 of the record.
[11] Record, page 12; underscoring supplied.
[12] Lang vs. Provincial Sheriff of Surigao, et al., 93 Phil. 661.

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