

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER,
VS. PUBLIC SERVICE COMMISSION, RESPONDENT.***G.R. Nos. L-24198 & 24207-10. December 18, 1968*

Ponente: REYES, J.B.L., J.

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The Philippine Long Distance Telephone Company (PLDT) is appealing from two orders of the Public Service Commission (in PSC Cases Nos. 61-5270, 61-5271, 61-5280, 61-2111 & 62-4169): (1) dated 13 August 1964, directing it to complete by 25 August 1964 the repair of all telephone troubles in Manila and suburbs caused by typhoon "Dading", or by other factors, and to repair, within five days after they were reported, all other telephone troubles that may arise after 20 August 1964, with provision for the imposition of a daily fine of P50.00 in case of failure to comply with any of the aforesaid directives; and (2) dated 3 February 1965, denying PLDT'S motion for reconsideration of the first order.

In connection with the numerous complaints received by the Public Service Commission from telephone subscribers in Manila and suburbs, about the alleged inadequate, inefficient and unsatisfactory service and discriminatory practices of the PLDT in the repair of telephones rendered out of order by typhoon "Dading", the PLDT was cited to appear before the Commission on 21 July 1964 to explain why disciplinary action should not be taken against it.

During the hearing, it was established that on account of this typhoon that hit Manila on 29 and 30 June 1964 the various public utility services sustained extensive damage. However, while the light and water services had been restored to almost normal condition, a great number of telephones remained unusable even a month after the calamity was over. The PLDT, through its witnesses, attempted to justify the delay in its repair-jobs by urging the extent of damage wrought by the typhoon to its facilities;[1] the difficulties being encountered in the repair-work;[2] the shortage of trained men to do the technical phase of the work.

For their part, the complainants offered the testimony of Severo Santiago, President of Republic Telephone Company, to rebut the declarations of the PLDT witnesses that the delay in the complete restoration of telephone outages could not be helped.

On 13 August 1964, the Public Service Commission ordered the PLDT to complete the repair of telephones still not functioning, in this tenor:

"WHEREFORE, the PSC hereby grants the PLDT up to August 25, 1964 to complete the repairs of all telephone troubles in Manila and suburbs which may be out-of-order as a result of typhoon Dading or for any other cause. After August 25, 1964, PLDT will pay a fine of Fifty Pesos (P50.00) per day, for any telephone trouble or troubles existing prior to August 20, 1964 and remaining unrepaired until such repair is completed. And for other telephone troubles arising and reported to PLDT after said date, said COMPANY is required to effect the necessary repairs within five (5) days, from the date of such report, and in case of failure to do so, PLDT will pay the same penalty of P50.00 per day, until such repair is completed."

The directive was based on the Commission's findings that -

"The evidence of the PLDT consisting of numerous plans, charts, sample cables, lead, etc. tend to establish that the damage caused by typhoon Dading on June 30, 1964 was too extensive and that PLDT did not have enough trained splicers and trained technical men to complete the work at once. Such explanation is not altogether sufficient or satisfactory. While we realize the predicament of PLDT, it is our considered opinion that the much needed repairs could have been completed by this time. As a matter of fact, when this incident was called for hearing on July 21, 1964, PLDT informed the Commission that about eighty per cent of the work needed was already finished, and PLDT expected to finish all the repairs on the early part of August, not beyond August 5, 1964. So much so, that the Commission suggested (to) the parties that a stipulation to that effect be submitted but the stipulation was not formally carried out. And if eighty per cent of the work was finished before July 21, 1964 when this incident was first called for hearing as affirmed by PLDT, there is no reason at all, why the remaining twenty percent was not finished up to August 5, 1964. Mr. Severo Santiago, a consulting telephone engineer since 1954, and presently the President of Republic Telephone Company, who testified as an expert witness in this case, maintained that in his opinion the damages caused by the typhoon to PLDT could have been repaired in thirty (30) days. Mr. Santiago, explained that in the absence of sufficient technical and trained or skilled workers, PLDT should have sought the cooperation of other telephone systems, either directly or thru the intervention of the PSC or other agencies of the Government. The Telecom, the Army, the Republic Telephone Company, and many other public utilities would have been too glad to extend their cooperation and to establish a system of mutual help, for the benefit of all, and particularly for the advantage of the general public. If the PLDT was able to finish 80% of the work, up to July 21, 1964 without assistance from anyone, had the PLDT solicited the help and cooperation of other utilities, instead of 80% the entire damage could have been repaired, at a very much earlier date.

"According to PLDT, at present there are only 1,360 cable troubles representing same number of telephones (except where there are party lines), remain-ing unrepaired. Said cable troubles should be repaired and finished without any unnecessary delay. The Commission is willing to be liberal with the PLDT provided all repairs are fully completed on or before August 25, 1964."

Against this order, the PLDT filed a 23-page motion for reconsideration, adducing therein its grounds and reasons in support of the same. The motion was set for hearing on 1 September 1964; then, at the instance of movant, it was moved to 4 September 1964. On this latter date, however, the Commission was not able to hear the motion, for lack of the necessary quorum (page 5, Petitioner's brief). On 3 February 1965, an order was issued in the cases, signed by six members of the Commission, denying PLDT's motion for reconsideration for lack of merit. The PLDT then filed the present petition for review.

Petitioner PLDT assigns as first error allegedly committed by the respondent Public Service Commission the denial of its motion for reconsideration before it could be heard by that body. It is claimed that, pursuant to Section 3 of the Public Service Act, as amended by Republic Act 2677, a hearing en banc of a motion for reconsideration of an order or decision of the Commission is mandatory, non-observance of which constitutes reversible error.

We do not agree to the proposition. It may be true that the Public Service Act provides for the hearing of a motion for reconsideration, with proper notice to the parties.[3] However, the strict observance of this provision in these cases is not now imperative, particularly in view of the proliferation of cases before the Commission since Commonwealth Act No. 146 became effective. It may be pointed out that the motion for reconsideration filed by petitioner PLDT consists of 23 pages, containing a complete discussion of the grounds, both legal and factual, in support of its stand that the Commission's order of 23 August 1964 was incorrect and deserved reconsideration. It quoted portions of the transcript of stenographic notes of the testimonies of the witnesses, as well as exhibits presented during the hearing, which were all available to the members of the Commission for verification. In

short, the motion adequately informed the Commission en banc of the issues and arguments that petitioner wanted to be taken up and considered. In the circumstances, therefore, even assuming that the resolution of the motion without prior oral argument thereon was not in strict compliance with the procedure prescribed by law, the same can not be deemed to have deprived petitioner of his right to due process. In fact, there is no pretense that had petitioner's motion been heard additional proof or argument would be presented that could have affected or changed the conclusion reached by the Commission en banc. It must be for the same reason, i.e., absence of material prejudice to the movant, that in one case^[4] this Court, although recognizing as irregular the rendition of a ruling by the Public Service Commission even before the period granted to the parties within which to file their respective memoranda had elapsed, refused to reverse the same, considering such irregularity insufficient to warrant a reversal or modification of the aforesaid decision, although a strict observance of procedural rules is eminently desirable, if only to forestall speculations generally derogatory to the Commission's reputation (cf. *Corrales vs. Gonzalez*, L-29502, *Resol. on Motion to Reconsider*, 5 December 1968). Additional argument against the stand of the petitioner is supplied by the fact that the Public Service Commission, as an administrative body exercising quasi-judicial powers, is not strictly bound by procedural rules; of course, provided that no cardinal primary rights to which an individual is entitled are sacrificed.^[5] None have been denied in the present case.

Petitioner next contests the findings of fact made by the hearing Commissioner, alleging that they are not supported by substantial evidence. There is further insinuation of arbitrariness on the part of the hearing Commissioner, in that petitioner was supposedly prevented from proving its defense that everything possible was done by the telephone company to repair the damage to its facilities at a much shorter time.

There is no merit to the allegation. The Commission's conclusion, that all of the 24,000 telephones affected by the cable troubles caused by the typhoon of 29 and 30 June 1964 could have been repaired much earlier than 25 August 1964, is not without basis. For petitioner's own witness declared that as of 4 August 1964, about 85 to 90% of the repair-work had already been accomplished, with only some 92 smaller cables remaining unrepaired;^[6] that as of 7 August 1964, only 4 cables with trouble and affecting 107 telephones had to be worked on.^[7] Since, according to this same witness, there were 175 crews or 645 men detailed on the job,^[8] rendering service daily including Saturdays, Sundays and legal holidays,^[9] the order of the Commission to finish the repair of the damage caused by the typhoon by 25 August 1964 is reasonable and justified. The fact remains that as between 21 July and 25 August no effort appear to have been exerted to enlist available outside technical help in order to relieve promptly the inconvenience to petitioner's subscribers.

That the hearing Commissioner was recorded to have uttered remarks indicating impatience with the slow-pace in which petitioner's evidence was being presented does not necessarily show unfairness and arbitrariness. On the contrary, throughout the 265 pages of the transcript covered by the testimonies of petitioner's expert witnesses, the effort is apparent on the part of the Commissioner to appreciate the details of the damage suffered by the telephone company and of the measures being adopted to accomplish quick restoration of the system to normalcy. At any rate, assuming that petitioner had other evidence to present but was not allowed to do so, the rule is that the party prejudiced by the court's action, if he desires to make it the subject of appeal, should state of record the particular facts he expects to prove by such evidence. Otherwise, no review of such erroneous action can be had in this Court (*Moreta vs. Tan Chay*, 57 Phil. 432). The reason for the rule is obvious: it would not be justifiable to set aside a judgment and remand the case for reception of evidence that might not suffice to induce a conclusion or lead to a result different from that previously arrived at. For this purpose, the record must show the nature and import of the purported evidence. Petitioner failed to observe this rule.

As regards that portion of the order imposing a fine of P50.00 a day in case of petitioner's failure to repair within five days after it has been reported, petitioner argues that the same was arbitrary, since it subjected petitioner to

liability even for disruptions of service caused by other and subsequent fortuitous events. Such argument is fallacious, for there is nothing on record to sustain the thesis that the PSC intended the questioned order to cover situations not due to, or connected with, typhoon "Dading". Furthermore, the argument proceeds upon pure hypothesis, since there is no proof that any of the fortuitous events envisaged by petitioner ever occurred. It is not the function of a reviewing court to speculate upon anticipated possibilities that have never jelled into reality; nor is it its duty to place unreasonable constructions upon orders brought up for its revision in order to overturn them.

WHEREFORE, the orders appealed from are hereby affirmed. Costs are taxed against the petitioner.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.

[1] According to PLDT's witness, after the storm, they noted initially 240 (main feeder) cable troubles, each one of which still branched into several others that may also need repair, and these cable troubles put 24,000 telephones out of use (pp. 167, 172-173, 189, t.s.n.).

[2] Among the difficulties mentioned were the lack of trained men to do technical work, such as the splicing of cables; the impossibility of pumping out manholes in areas under water, the reluctance of city authorities to allow excavation in busy streets, except at night (pages 177-178, t.s.n.); and pilferages of the company's cables and wires to be used in the repair work (pages 168--169, t.s.n.).

[3] Section 34 of Commonwealth Act 146 provides:

"SEC. 34. Any interested party may request the reconsideration of any order, ruling, or decision of the Commission by means of a petition filed not later than fifteen days after the date of the notice of the order, ruling or decision in question. The grounds on which the request for reconsideration is based shall be clearly and specifically stated in the petition. Copies of said petition shall be served on all parties interested in the matter. It shall be the duty of the Commission to call a hearing on said petition immediately, with notice to the parties, and after hearing to decide the same promptly, either denying the petition or revoking or modifying the order, ruling or decision under consideration." (See also *Marinduque Trans. Co. vs. Public Service Commission*, L- 18528, 31 July 1963).

[4] *Manila Yellow Taxicab Co., Inc. vs. Barredo*, 58 Phil. 385.

[5] *Serrano vs. Public Service Commission*, L-24165, 30 August 1968, 24 SCRA 867.

[6] Pages 161-162, t.s.n.

[7] Page 247, t.s.n.

[8] Pages 262-263, t.s.n.

[9] Page 163, t.s.n.

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