

TAMARAW TAXICAB CO., INC., PETITIONER, VS. THE PUBLIC SERVICE COMMISSION, AMADO A. DIMAYUGA AND SOUTHERN STAR TAXI CO., INC., RESPONDENTS.

G.R. No. L-19362. August 30, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Before us for review is the decision of the Public Service Commission in its case No. 61-2640 approving: (1) the sale and transfer of the certificate of public convenience of the Tamaraw Taxicab Company for the operation of a taxicab service in favor of Amado A. Dimayuga and his co-transferees; and (2) the assignment of the same franchise by the latter in favor of the Southern Star Taxi Company.

Amado A. Dimayuga was the original grantee of a certificate of public convenience for the operation of forty-five (45) taxicab units within the City of Manila and suburbs. On March 16, 1959 he leased the certificate to the Tamaraw Taxicab Company, and on January 2, 1960 he sold it to the lessee for P112,500.00. Simultaneously with the execution of the sale the president of the Tamaraw Taxicab Company executed a document entitled "Undertaking in Connection with the Deed of Sale of a Certificate of Public Necessity and Convenience in favor of Amado A. Dimayuga." The terms of the "undertaking" are as follows:

"That the TAMARAW TAXICAB CO., Inc. represented by its President, JUANITO VERGEL DE DIOS hereby undertake (sic) to return to AMADO A. DIMAYUGA the Franchise or Certificate of Public Necessity and Convenience which it acquired by a Deed of Absolute Sale executed before Notary Public Jose M. I. Antiporda of Manila which Deed is registered as Document No. 22; Page No. 31; Book No. III; Series of 1960;

"That out of gratitude to Mr. AMADO A. DIMAYUGA for leasing his franchise to the Tamaraw Taxicab, Inc., thereby enabling the stockholders thereof to realize profits during the use of the line, the said Tamaraw Taxicab Inc., by virtue of a resolution thereof (made an integral part of this undertaking) binds itself to execute a Deed of Absolute Sale to Mr. Dimayuga only and to no other or any beneficiary or beneficiaries of his choice, not later than Dec. 31, 1964.

"That this arrangement is known and with the conformity of all the stockholders and the Board of Directors of the TAMARAW TAXICAB CO., INC."

The stockholders as well as the members of the Board of Directors of the Tamaraw Taxicab Company also signed the foregoing document to signify such conformity.

The second transaction, that is, the sale to the Tamaraw Taxicab Company, was duly approved by the Public Service Commission. The life of the certificate of public convenience was thereafter extended for a period of fifteen (15) years beginning January 4, 1961.

On April 13, 1961 Amado A. Dimayuga and the Southern Star Taxicab Company filed an application with the Public Service Commission, alleging inter alia that the Tamaraw Taxicab Company had sold back the same

franchise to Dimayuga[1] and that the latter in turn had assigned it to the Southern Star Taxicab Company, a Filipino corporation with the necessary financial capacity to operate the taxicab service. The applicants prayed that the sale and the assignment be approved and that pending final action by the Commission an order of provisional approval be issued. The Tamaraw Taxicab Company opposed the application, alleging that it had not sold its franchise to the applicants; that it had not authorized any of its officers to make the sale; and that the deed of sale attached to the application was null and void because it had been executed by one who was not authorized for that purpose under the by-laws of the corporation or by any formal resolution of its board of directors.

On April 26, 1961 the Public Service Commission issued two orders: one provisionally approving the application and the other withdrawing from public service the then remaining 44 taxicab units of the Tamaraw Taxicab Company, with instructions for the surrender of their corresponding registration plates to the Chief of the Motor Vehicles Office. The said orders, however, were reconsidered and revoked by the Commission on June 20, 1961, upon petition of the Tamaraw Taxicab Company.

Thereafter the Commission proceeded to hear the case on the merits. On September 19, 1961 the Tamaraw Taxicab Company went to the Court of First Instance of Rizal (Quezon City) in an action for declaratory relief (Case No. Q-6016), praying that the sale in question, subject of the pending application for approval by the Commission, be declared unenforceable for want of authority on the part of the one who signed on behalf of the said company, namely, its president Juanito Vergel de Dios.

On October 12, 1961 the Public Service Commission rendered its decision and decreed as follows:

"In view of all the foregoing and without prejudice to the final decision of the Courts in Civil Case No. Q-6016, Court of First Instance of Quezon City, it appearing that the sales and transfers proposed herein for approval are not detrimental to public interests, and that applicant-vendee, SOUTHERN STAR TAXI CO., INC., is a corporation duly organized in accordance with law, and is financially qualified to continue operation of the service, the Commission believes that the present application may be, as it is hereby APPROVED, pursuant to the provisions of Section 20(g) of Commonwealth Act 146, as amended.

"WHEREFORE, it is ordered that, with the cancellation of certificate of public convenience issued to Tamaraw Taxicab Co. Inc. in Case No. 133140, a new certificate of public convenience be issued in favor of the applicant-vendee, SOUTHERN STAR TAXI CO. INC., authorizing it to continue the operation of the above-mentioned service, subject to the following conditions: x x x."

The Tamaraw Taxicab Company filed the instant petition for review, with a prayer for preliminary injunction. This Court issued the writ to stop implementation of the judgment, but subsequently lifted it upon respondents' counterbond of P25,000.00, later increased to P50,000.00.

On March 26, 1962 the petitioner filed a motion praying that the status quo be preserved in the sense that both operators be allowed to continue operating during the pendency of this case. The motion was granted by resolution of this Court dated May 9, 1962, "it appearing that at the time of the issuance of the writ of preliminary injunction...both the petitioner Tamaraw Taxicab Company, Inc. and the respondent Southern Star Taxicab Co., Inc. were operating." Pursuant to the said resolution the Public Service Commission authorized the respondent company to operate 45 taxicab units and the petitioner, 28 units.

On November 14, 1962 the petitioner filed for admission into the record of this case: (1) a copy of the information in Criminal Case No. 11063 of the Court of First Instance of Rizal, charging Amado A. Dimayuga and a certain Abundio G. Suck with falsification in connection with the deed of sale in question, Suck being the notary public who intervened in its execution; and (2) a copy of an order of the Court in Civil Case No. Q-6016 postponing the hearing of the case "until further move by the parties, pending final decision of the case brought before the

Supreme Court as well as the outcome of the case for falsification filed against defendant Dimayuga in connection with the deed of sale."

It should be stated, to place the main issue in proper perspective, that the deed of sale submitted to the Commission for approval was signed in behalf of the vendor, the Tamaraw Taxicab Company, by its president, Juanito Vergel de Dios; and in behalf of the vendees, by respondent Amado A. Dimayuga. That they signed the document is not questioned. The alleged falsification consists of handwritten insertions in spaces originally left blank by the typist for the respective addresses of the contracting parties, the date of the order of the Public Service Commission approving the certificate of public convenience of the vendor which was the subject of the sale, the number of the case in which such order was issued, the signatures of the witnesses, and the date and place of the execution of the deed of sale itself. These are details which do not materially affect the genuineness of the document insofar as the intention of the parties, as indicated by the signatures, is concerned, even assuming, as the petitioner would make it appear, that they were inserted after the document had been signed. Besides, they were not alleged among the grounds of the petitioner's opposition to the application filed by the respondents with the Public Service Commission. They were raised for the first time in the motion, which the Commission denied, for reopening or for new trial after the decision was handed down. In any event the criminal case for falsification has been dismissed since.

The real issue here is whether or not, under the circumstances, the Public Service Commission committed a reversible error in approving the sale of the certificate of public convenience to Dimayuga and his co-buyers and the assignment thereof by them to the Southern Star Taxicab Company, such approval to be "without prejudice to the final decision... in Civil Case No. Q-6016, Court of First Instance of Quezon City."

We are of the opinion that the Public Service Commission did not err.

(1) As already noted, the signature of Juanito Vergel de Dios, president of the Tamaraw Taxicab Company is not denied. It was he also who signed, in the same capacity, the "undertaking" of January 2, 1960 "to return to Amado A. Dimayuga the Franchise or Certificate of Public Convenience which it (the corporation) acquired by a Deed of Absolute Sale... which arrangement is known and with the conformity of all the stockholders and the Board of Directors of the Tamaraw Taxicab Co., Inc." The deed of sale itself recites that Juanito Vergel de Dios was "vested with full and exclusive authority by the Board of Directors of the Tamaraw Taxi-cab Co., Inc."

2. The petitioner claims that respondent Dimayuga has not shown that he has paid the purchase price. For purposes of the approval of respondent's application, as adjudged by the Public Service Commission, there is at least a sufficient prima facie showing of payment, for the deed states that the sale is "for and in consideration of the sum of One Hundred Twelve Thousand Five Hundred Pesos (P112,500.00), Philippine currency, to me in hand paid by the vendee and receipt of which is hereby acknowledged." In the face of this recital, the burden of proof is upon the petitioner to show otherwise; and as pointed out by the Public Service Commission there is not even a denial of such payment.

3. The issue of the correctness of the decision under review granting the respondents' application for approval of the sale and the subsequent assignment of the certificate of public convenience in question has virtually become moot insofar as the effects of said decision after December 31, 1964 are concerned. Under the so-called "undertaking" executed by the petitioner on January 2, 1960 it bound itself to sell the said franchise to Amado A. Dimayuga not later than December 31, 1964. In other words, irrespective of whether or not the deed of sale submitted to the Commission for approval had been duly authorized by the board of directors of the petitioner corporation, it could have been compelled to sell the franchise anyway, at the latest on the afore-said date, and the vendees, or their assignee the Southern Star Taxicab Company, would have been the operator of the service just

the same thereafter.

4. The Public Service Commission properly refrained from resolving the issue of the enforceability of the deed of sale, not only because it had no juris-diction to do so but also because the issue was pending before the Court of First Instance of Rizal (Quezon City) in Case No. Q-6016.[2] This does not mean, however, that the Commission was totally without jurisdiction to act on the respondents' application for approval and to decide it favorably on a prima facie showing of merit. In the case of Dagdag, Jr., et al., vs. Public Service Commission et al., 104 Phil. 162 (July 25, 1958) this Court, through Mr. Justice J.B.L. Reyes, resolved a similar question and said:

"... Under Sec. 20(g) of the Public Service Act, the Commission has the power and authority to approve a sale or transfer of a certificate of public convenience if (1) there are just and reasonable grounds for making the transfer; and (2) the sale or transfer is not detrimental to the public interest. The fact that the question of the validity of the transfer, or the title or ownership over the fran-chise, is pending determination in the courts, does not deprive the Commission of the power to approve (the) transfer provisionally where these conditions set by the law are satisfied, in order to protect the public interest..."

In the present case the Public Service Commission, recognizing the limits of its jurisdiction, granted the respondents' application for approval without pre-judice to whatever judgment may be finally rendered in the action for declaratory relief in the Court of First Instance to determine the enforceability of the deed of sale in the light of the alleged lack of authority to execute the same on the part of the president of the petitioner corporation.

The judgment appealed from is affirmed and the counterbond filed by the respondents for the dissolution of the preliminary injunction is cancelled, with costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Fernando, J., did not take part.

[1] A copy of the deed of sale, dated March 18, 1961, was attached to the application.

[2] Hoc Lian Dry Goods Club v. Meralco, 63 Phil. 804; Dagdag v. Public Service Commission, 104 Phil. 162; Batangas Laguna Tayabas Bus Co. v. Public Service Commission, L-25994, L-26004 to L-26046, August 31, 1966, 17 SCRA 1111; Gray v. Kiungco, L-25222, September 27, 1968, 25 SCRA 216.

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