

ERDULFO C. BOISER, PETITIONER, VS. TAGBILARAN TELEPHONE SYSTEM CO., INC., AND PUBLIC SERVICE COMMISSION, RESPONDENTS.

G.R. Nos. L-27690 & L-28190. March 25, 1970

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

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

These are petitions filed by Erdulfo Boiser for review of two decisions of the Public Service Commission, in its Cases Nos. 62- 3636 and 61-1751.

Involved in L-27690 is a decision of one of the Commissioners, dated 2 September 1965, granting the herein respondent Tagbilaran Telephone System Company, Inc. (Tagbilaran Telephone, for short) a certificate of public convenience and necessity for the installation, maintenance and operation of a telephone system in Tagbilaran, Bohol, overruling the objection of petitioner herein, Erdulfo Boiser, and the subsequent order of the Commission en banc, dated 8 May 1967, denying Boiser's urgent motion for reconsideration. Notice of the order was received by petitioner-appellant on 23 May 1967 (Petition, paragraph 4).

The petition for review was filed in the Supreme Court on 22 June 1967, i. e., thirty (30) days from and after receipt by petitioner Boiser (or 23 May 1967) of a copy of the aforesaid order en banc. Respondent Tagbilaran Telephone raises the issue that the petition was filed out of time, arguing that the petition should have been filed within fifteen (15) days, in accordance with the second period of limitation provided for in the second part of Section 36 of Commonwealth Act No. 146 (Public Service Commission Act), as follows:

"Sec. 36. Any order, ruling, or decision of the Commission may be reviewed on the application of any person or public service affected thereby, by certiorari in appropriate cases, or by petition, to be known as Petition for Review, which shall be filed within thirty days from the notification of such order, ruling, or decision or, in case a petition for the reconsideration of such order, ruling, or decision is filed in accordance with the preceding section and the same is denied, it shall be filed within fifteen days after notice of the order denying reconsideration. Said petition shall be placed on file in the office of the clerk of the Supreme Court who shall furnish co-pies thereof to the Secretary of the Commission and other parties interested." (Emphasis supplied)

Respondent argues that the 15-day period is the governing limitation and not the thirty (30) days, as provided for by Section 1 of Rule 44 of the Rules of Court, because petitioner Boiser had filed in the Public Service Commission a motion for reconsideration and that the Commission's decision had, therefore, become final, and no longer appealable. The reason given is that the period provided for in the Public Service Act, being a special provision, should govern.

The rule applicable to the foregoing issue was stated in *Manila Electric Company vs. Public Service Commission*, L-24762; *Rosal vs. Manila Electric Company*, L-24841; *Republic of the Philippines v. Public Service Commission, et al.*, L-24854; and *City of Manila vs. Public Service Commission*, L-24872, 14 November 1966; 18 SCRA 651, in the following language:

"Let us now take up the appeals of the Republic and the City. As above indicated, MERALCO maintains that said appellants had only 15 days from notice of the order of the PSC dated July 16, 1965, within which to perfect their appeal, pursuant to Section 36 of Commonwealth Act No. 146, which, the MERALCO maintains, is controlling. Upon the other hand, the Republic and the City allege that they had, for purposes of appeal, the period of 30 days prescribed in Rule 44, Section 1, of the Rules of Court, which should prevail over that prescribed in Section 36 of Commonwealth Act No. 146, said Rule being subsequent, in point of time, to this statute. Replying thereto, the MERALCO insists that Commonwealth Act No. 146 must prevail over the Rules of Court, not only because the former has, constitutionally, a higher status than the latter, but, also, because the former is a special legislation, enacted exclusively for the PSC.

"The last part of MERALCO's argument is, however, weakened by the fact that Rule 44, Section 1, of the Rules of Court, refers specifically to appeals "from a final award, order or decision of the Public Service Commission . . .," among others. At any rate, the 15-day period provided in the last part of the first sentence of Section 36 of Commonwealth Act No. 146, governs only when the motion for reconsideration has been denied. It has no application when the motion is granted because, then, there results, in contemplation of law, a new decision, which may be reviewed on application filed with the Supreme Court within thirty (30) days from notice of said decision or of the order granting the motion for new trial, pursuant to both, the first part of the first sentence of said Section 36 of Commonwealth Act No. 146, and Rule 44, Section 1, of the Rules of Court."

Upon the foregoing doctrine, the instant petition for review was filed out of time because the petitioner's motion for reconsideration was denied, so that the order of denial en banc was not a new decision that was appealable in thirty (30) days.

The same situation obtains in the other case, L-28190 (PSC Case No. 61-1751). There the Public Service Commission, in a decision of 1 September 1965, dismissed Erdulfo Boiser's own petition for a certificate of public convenience to install, operate and maintain a telephone system in Tagbilaran, Bohol, for the reason that he had failed to submit his evidence within the period given him to do so, and because the records of PSC Case No. 61-1751 showed that Boiser, was not financially capable to sustain the operation of the telephone system applied for. Boiser asked reconsideration of the decision by a motion ex-parte, dated 14 September 1965, within the 30 days provided by the first part of Section 36 of the Public Service Law (Commonwealth Act 146). The Commission en banc denied reconsideration, by an order of 10 August 1967 that counsel for petitioner-appellant received on 20 September 1967. Petition for review was filed in this Court only on 20 October 1967.

For the reasons previously adverted to in this opinion concerning the appeal in Case 3. No. L-27690 of this Court, this petition must also be dismissed for having been filed beyond the term of 15 days granted by the Public Service Commission Act for appeals from the Commission's denial of a motion to reconsider a decision previously rendered (Section 36, Commonwealth Act 146). The orders sought to be reviewed became final and unappealable on 5 October 1967.

WHEREFORE, the petition in the two cases above entitled are dismissed. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

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