

IRINEO A. MERCADO, COMPLAINANT, VS. COMMISSIONER ENRIQUE MEDINA, RESPONDENT.*Adm. Case No. 106. February 17, 1968*

Ponente: CASTRO, J.

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On August 9, 1966 Irineo Mercado filed with this Court an administrative complaint against Chairman Enrique Medina of the Public Service Commission, charging him with (1) "non-feasance or dereliction of duty;" (2) "misfeasance, misconduct, and conduct unworthy of a public official;" and (3) "abuse of discretion and partiality."

A chronology of the essential antecedent events is necessary for a clear understanding of the factual setting.

On March 19, 1964 bus operators affiliated with the Bus Operators Association of the Philippines (BOAP) filed an application for increase in passenger fares with the Public Service Commission (hereinafter referred to as the Commission). Pending resolution of this application (which was docketed as case 64-2365), the Commission, upon motion of the applicants, issued on December 8, 1965 an order which provisionally hiked the transportation rate from 1 1/2 to 2 centavos per kilometer and set the minimum fare at 15 centavos for seven kilometers or less. Due to numerous complaints from commuters, the Commission issued an amendatory order on January 17, 1966, reducing the minimum provisional fare to 10 centavos for five kilometers or less, with the proviso "that in the Greater Manila area, the zonal arrangement provided for in the Order of May 12, 1960, Case No. 97768 (Ruben Beltran, applicant) shall be applied". Soon thereafter residents from Quezon City complained to the Commission that the bus operators, citing as their authority the "zonal arrangement" proviso, divided Quezon City into zones and collected fares in excess of the provisional rate allowed by the order of January 17, 1966.

One of the protesting commuters was the complainant Mercado who filed on January 27, 1966 with the Complaints, Investigation and Enforcement Division a written complaint denouncing the MM and JD bus companies for overcharging passengers commuting from Pagasa and Project 6 in Quezon City to Manila and back. The alleged amount of the overcharge was 5 centavos per ride. Atty. Tiburcio Hilario, chief of the division, conducted three preliminary hearings on the complaint (which was docketed as case 66-11-OC). After the third hearing, or on March 4, 1966, the complainant filed the same complaint with the respondent commissioner.

On March 9, 1966 the respondent commissioner ordered the MM Bus Lines, Inc. to show cause why drastic disciplinary action should not be taken against it. On March 17, 1966 the respondent conducted a formal hearing, at which he dictated an order which formed the basis of his written order of the same date. This latter order states, inter alia, "that the alleged overcharging committed by the respondent [the MM Bus Lines, Inc.] was due to a confusion created by the words 'zonal area or zonal arrangements' appearing in orders the Commission dated May 12, 1960 and of Jan. 17, 1966. In order to arrive at a definite solution to this problem the Commission hereby creates a Committee to * * * survey the areas and lines covered by the different operators in the City of Manila and suburbs and study whether the zonal system established since many years ago, in the City of Manila and suburbs, should be abandoned or continued and to make the necessary report and recommendations to the Commission not

later than April 15, 1966. This case will be sat for hearing on the merits of the case soon after the report of the Committee is filed * * *

Or April 14, 1966 Atty. Jose Beltran, counsel for the oppositors in case 64-2365, filed with this Court a petition for certiorari with preliminary injunction (G.R. L-25798), praying that the Commission be enjoined from enforcing its orders of December 8, 1965 and January 17, 1966 and that the said orders be adjudged illegal. On April 27, 1966 the Commission, upon separate motions of the parties, indefinitely postponed the hearing on the merits of case 64-2365 until final resolution of the petition pending before this Court.

On May 10, 1966 Atty. Generoso Almario, Chief Legal Officer of the Commission and the third person to be appointed chairman of the committee created by the March 17th order above adverted to, submitted his recommendations to the respondent. The latter reserved action on the said re-commendations, and suspended the proceedings in case 66-11-OC, pending the decision of this Court in G.R. L-25798, believing that the eventual resolution of the latter case would substantially affect the disposition of the complainant's charges against the MM and JD bus companies. On June 15, 1966 the complainant in writing urged the respondent to resolve without delay the case he filed against the erring bus operators. Then, after about 45 days of inaction on the part of the respondent, the complainant instituted the present administrative case, which was thereafter referred by this Court to Mr. Justice Ramon Nolasco of the Court of Appeals for investigation, report and recommendation. On August 24, 1967 Mr. Justice Nolasco, after an exhaustive investigation, submitted his report wherein he recommended that no disciplinary action be taken against the respondent but that he "be enjoined to proceed with the hearing of Case No. 66-11-OC in order to determine whether or not the complaint for overcharging * * * is meritorious."

We have painstakingly reviewed the record, and we find ourselves in agreement with Mr. Justice Nolasco that the charges against the respondent commissioner are not substantiated by sufficient, competent and convincing evidence.

1. Anent the charge of "non-feasance and dereliction of duty," the complainant alleged that the respondent deliberately delayed the resolution of case 66-11-OC and maliciously prolonged the proceedings therein in order that in the meantime the erring bus operators could continue harassing and cheating the hapless commuters. He claimed that the creation of the committee was a mere dilatory tactic because its purpose – to study the advantages and disadvantages of the "zonal arrangement" and the "total distance travelled" systems – was completely alien to the basic issue of overcharging.

The respondent countered that he had acted with dispatch as he had cited the parties to appear without delay; that if there was delay in the resolution of the complaint, this was not of his own design but instead was warranted by a supervening event—the filing and pendency of a petition for certiorari in this Court wherein the legality of the orders of December 8, 1965 and January 17, 1966 was challenged, these orders being the very same orders alleged to have been violated by the bus companies; and that the creation of the committee was justified because in the resolution of the issue of overcharging, the question of what system should be followed by the bus companies – the "total distance travelled system" or the "zonal arrangement" – was inescapably involved.

We agree with Mr. Justice Nolasco that the respondent "is guilty of neither non-feasance nor dereliction of duty. This offense implies a willful or fraudulent omission or neglect of official duty, and not mere failure to do one particular thing (*Hagener v. Pulitzer Pub. Co.*, 158 S.W. 54). Viewed in this context, the respondent's actions manifestly do not amount to dereliction of duty. The record shows that shortly after the respondent received the complaint, he issued a "show-cause" order against the MM Bus Lines, Inc., and thirteen days after the filing of the complaint he conducted the first formal hearing. Then believing that the complaint could be resolved fairly only

after a thorough appraisal of the "zonal" and "total distance travelled" systems, the respondent created a committee for this purpose.

The contention of the complainant that delay was deliberately resorted to by the respondent to favor the bus operators, is bereft of evidentiary foundation. We believe, however, that the respondent commissioner committed an error of judgment in not proceeding with the hearing of case 66-11-OC, despite the pendency in this Court of the petition for certiorari relative to case 64-2365. If the bus operators are found guilty of exacting fares beyond the rate provisionally authorized by the controverted orders, a subsequent declaration by this Court that the said orders are valid will not mitigate, much less justify, their violation. Upon the other hand, the nullity of said orders will not exempt the erring bus companies from liability for in the very least they could be ordered to make the necessary refund.

Thus, as correctly pointed out by Mr. Justice Nolasco,

" * * * in Case No. 66-11-OC, the complainant was complaining of having been overcharged by the MM Bus Lines, Inc. He was not, however, questioning the increase of rates in connection with the order of the Public Service Commission, dated January 17, 1966 (Exhibits C and 3). Such being the case, neither the pendency of the certiorari proceedings before the Supreme Court, nor the postponement of further action, upon petition of the parties, in Case No. 64-2365, should have deterred the respondent from continuing with the proceedings in Case No. 66-11-OC."

2. Regarding the charge of "misfeasance, misconduct and conduct unworthy of a public official," the complainant averred that the respondent, with manifest intent of favoring the bus operators at the expense of the riding public, made substantial and prejudicial alterations when his dictated order was reduced to written form. At the hearing on March 17, 1966 the respondent allegedly dictated an order which contained a finding confirming the overcharging; a directive to the bus operators through their counsel, Atty. Regala, to refund the collections made in excess of the authorized rates; a directive creating a committee of three headed by Atty. Tiburcio Hilario with the respective counsel of the complainant and the respondents as members; and a directive limiting the function of the committee to checking the distance between Pagasa District, Quezon City and Manila. When the written order was handed down, however, it made no mention of the finding of overcharging or the directive for refund, named Angeles Rodriguez committee chairman instead of Atty. Hilario as previously announced, and burdened the committee with the additional duty of appraising the advantages and disadvantages of the "zonal arrangement" and "total distance travelled" systems.

The respondent vehemently denied that the changes he introduced in the written order altered the essence of the dictated order, maintaining that the verbal order was corrected not to favor the bus operators but to make the contents thereof conform to the facts of the case and his real intentions. He charged the complainant with misconstruing the dictated order.

A portion of the verbal order, not controverted by the respondent, states that

"In view of this and considering that the overcharging committed by the respondent was due to a confusion created by the word 'zonal arrangement' appearing in the order of this Commission dated May 12, 1960 * * *".

According to the respondent, this statement does not confirm the accusation of overcharging. As he correctly points out, it would be superfluous to create a committee to make a "survey of the areas travelled" if there was already a categorical finding of overcharging by the bus operators

The reproduced dictated order also contains the following statements:

"(Atty. Regala promises that the difference in collection will be returned)," and

"The Commission expects the respondent to voluntarily return the amounts overcharged * * *".

Again, we agree with the respondent that these two statements cannot be construed to constitute an order for refund. The word "expects" is not equivalent to a command or an order. With respect to that statement regarding Atty. Regala's promise to make a refund, the respondent testified that he ordered this portion deleted upon the vigorous manifestation of Atty. Regala that he could not bind or commit his client. This testimony was corroborated by Consuelo D. Paragas, the stenographer who took down the dictated order.

With respect to the change of committee chairman, the respondent explained that he corrected after realizing that Atty. Hilario had already appeared on behalf of the commuters, and it would be better if he appointed as chairman one who had not had previous actuations for or against any of the parties. When the complainant's counsel protested the appointment of Angeles Rodriguez on the ground that the latter is a compadre of one of the bus operators, the respondent unhesitatingly named Atty. Almario to sit as chairman.

The respondent admitted that the dictated order directed the committee merely to check the kilometer markings. However, he maintained that the additional function of studying the advantages and disadvantages of the "zonal arrangement" and "distance travelled" systems is not unjustified because the "zonal arrangement," as a method for determining the amount of the fare, was pleaded by the bus operators in their defense.

We thus agree with Mr. Justice Nolasco that

"On the whole, * * * the respondent has satisfactorily explained the alterations and/or modifications, if any, which he had made in the final draft of the order which he issued dated March 17, 1966 (Exhibit J). In this connection, it may be stated that the evidence does not clearly establish that, in making such modifications, the respondent has been actuated by bad faith or any intention to be partial in favor of the bus operators. Needless to say, the respondent has an inherent right, while his order or judgment is still under his control, to correct errors or mistakes, or injustices, (Section 5[g], Rule 135, Rules of Court)".

3. The charge of "abuse of discretion and partiality" does not deserve extended discussion. The alterations made by the respondent of the dispositions he announced in his dictated order were not motivated by caprice, arbitrariness or partiality. Similarly, the accusation that the respondent favored the bus operators lacks evidentiary support. As Mr. Justice Nolasco aptly observes,

" * * * The charge of partiality against the respondent has not been satisfactorily established. While it may be true that suspicion might have been engendered in the mind of the complainant regarding alleged partiality of the respondent in favor of the bus operators, it may be stated, however, that mere suspicion or conjecture alone cannot be afforded weight and credence."

Indeed, no combination of speculation, surmise and suspicion, however contrived, can attain the category of evidentiary proof.

ACCORDINGLY, the complaint is dismissed, and the respondent is absolved from all the charges. Under the environmental circumstances, however, it would appear highly advisable that the respondent proceed with the hearing of case 66-11-OC with reasonable speed and arrive at a decision with deliberate speed.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

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