

CONSOLACION DIZON, PETITIONER, VS. PUBLIC SERVICE COMMISSION AND JUANITA RODRIGUEZ, RESPONDENTS.

G.R. No. L-34820. April 30, 1973

Ponente: FERNANDO, J.

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FERNANDO, J.:

It is a new question that confronts this Court in this petition for the review of a decision of respondent Public Service Commission. The specific issue raised is whether upon the motion to dismiss filed by petitioner Consolacion Dizon having been denied, the case could be decided against her without affording her an opportunity to present evidence. It is thus immediately apparent that reliance is placed by her on procedural due process. It is her contention that there is a right to be heard before a finding of an abandonment on the part of a public service operator is warranted. In that sense, the petition appears to be impressed with a certain degree of merit. Nonetheless, as will be discussed more in detail, there is no denial that respondent Commission did not see the need for any evidence on that point as there could possibly be no dispute about petitioner being susceptible to such a charge. It is this circumstance decisive in character that lends support to the decision now under review and removes any taint of infirmity on due process grounds. We therefore affirm.

The background facts are set forth in the decision under review as follows: "Applicant [now respondent Juanita Rodriguez] requests authority to appropriate the right to operate five (5) units under the certificates of public convenience issued in Cases Nos. 67-1485 and 62-6947, both certificates authorizing the operation of a TAXI automobile service within Baguio City to any point in the Island of Luzon, in the names of Lolita Ganzon and Consolacion Dizon, respectively, for the reason that said ten (10) units were not registered the whole year of 1970 and up to the present and are therefore considered abandoned. Jurisdictional requirements have been complied with by the applicant and written oppositions to the instant application were filed thru their respective counsel x x x." [1] Then the case was heard, with this summary of the proof offered by respondent Rodriguez as applicant: "From the undisputed evidence on hand it appears that applicant was born in the Philippines of Filipino parents and married to a Filipino citizen, that she and her husband owns a house and lot in Baguio City with a fair market value of P85,000.00, money in the bank (PNB) amounting to P15,000.00 and P5,500.00 (Peoples Bank and Trust Co.); that they have a fishpond in Pangasinan of around 1.5 hectares, agricultural land also located at the municipality of Labrador, Pangasinan, from which they derive a monthly income of P1,500.00 as rental from the house and from the fishpond; that applicant is also a meat vendor in Baguio with a capital of around P20,000.00 and an income of around P1,000.00 a month; that she has already four (4) ready units worth P30,000.00, three (3) trucks (1 International, 1 Ford and 1 station wagon) worth P85,000.00, and that she has placed an order for the purchase of the other units which she will use for this purpose, and that there is still a public need for the continued operation of the ten (10) units whose operations were stopped for abandonment by said operators." [2]

Why petitioner should be the losing party was explained therein thus: "After the applicant has rested her case on January 17, 1972, both oppositors Lolita Ganzon and Consolacion Dizon, thru their respective counsel, filed Motions to Dismiss based on only one common ground, i.e., that inasmuch as both have already registered the

units they are authorized, that the petition should, of necessity, be dismissed. For practical purposes, counsel's motion do carry some semblance of validity. However, we must not lose sight of the fact that petitions for appropriations have been purposely given due course - we may even say 'tolerated' - to fill an urgent public need. The records show that the two aforementioned oppositors have defaulted in the duty entrusted on them, and that is to fulfill a public need. For a long period, either by neglect or by evident lack of desire to serve, they have not fulfilled that need, to the prejudice of the Baguio public. The instant petition was filed precisely to step into the void which the oppositors have created. The fact that registrations were made after the petition was filed, in this instance, after evidence has been adduced showing uncontrovertibly such abandonment should be of no moment. For this reason, the motions to dismiss have to be, as they hereby are, [denied]."[3] Hence the approval of respondent Rodriguez's petition.

There were two oppositors to the application of respondent Rodriguez, petitioner Consolacion Dizon and one Lolita Ganzon. Only the former elevated the decision for review before us. Ordinarily, the facts as set forth by respondent Commission are impressed with finality.[4] Such a doctrine finds no application in the present petition for precisely the very point raised is that there was no opportunity on the part of oppositor Dizon to present her evidence. There is plausibility in her contention then that only after her right to be heard is fully respected may the determination as to the controlling facts be considered conclusive on this Court. What blunts the force of such an argument, however, is that on the question of abandonment which was the basis for respondent Rodriguez seeking to appropriate five of her units, she was not in a position to belie the same. While in her petition, her admission on non-registration was limited to only four units,[5] in her very motion to dismiss before respondent Commission she did refer to five taxicabs. She could not deny therein that as of July 2, 1971, as shown in an exhibit of respondent Rodriguez, they were not as yet registered, but, she did claim that after three months she was able to do so.[6] It does appear incontrovertible then that there is factual basis for the finding of abandonment. It is equally clear that no additional evidence whatsoever could even be hinted at by petitioner to disprove the fact of abandonment or to remedy such an admitted failure to comply with an obligation on her part. Under such circumstances, a hearing would be fruitless. It would be characterized by futility. A case for the denial of due process cannot thereby be made out. As noted at the outset, we have to affirm.

1. This is not to deny that were it not for the above decisive circumstance an allegation of the failure to accord the parties the right to be heard must be seriously inquired into. For if true, there is a disregard of an essential requirement of procedural due process. So it has been from the earliest decision, *Yangco vs. The Board of Public Utility Commissioners*, [7] decided in 1917, with the opinion being penned by Justice Moreland. Thus: "It is not proposed to apply rigidly to proceedings before the Board of Public Utility Commissioners the rules of pleading and practice which in general govern proceedings in court; but it is the evident purpose of the law, as it is a requirement of the principles which govern due process of law, that a public utility should be duly and fully notified of the act or omission of which it is charged; and that that charge and that alone shall be the subject-matter of the investigation as well as of the order made in consequence thereof. It is not due process of law to charge a public utility with one act or omission and convict it of another; nor is it due process of law to investigate a particular subject in a given proceeding and then make an order which relates to an entirely different subject." [8] Justice Street, speaking for the Court followed the same view in *Philippine Manufacturing Company vs. Board of Public Utility Commissioners*, [9] promulgated two years later. These are his words: "The Legislature in creating the Commission did not intend that the decision of the matters confided to its oversight should rest exclusively in the experience or wisdom of any one man, or body of men. It was on the other hand intended that the proceedings before it, while not hampered by the trammels of technical procedure, should yet have the security incident to review in the Supreme Court. We therefore think it was incumbent upon the Commissioner in the matter before us, before finally promulgating his order, to have announced a hearing upon the method of

distribution incorporated therein and to have permitted the parties in interest to submit proof, if they desired, with reference thereto." [10]

One of the later cases stressing the importance of a due process requirement is *Calalang vs. Intestate Estate of Tanjangco*, [11] with Justice J.B.L. Reyes pointing out: "The act of the Commission of hearing and granting respondent Tanjangco's application without as much as allowing petitioner to intervene, oppose, or prove any better rights against it, is not only a deprivation of petitioner's rights without due process of law, but seems calculated to render ineffectual and nugatory the franchise granted to her by the legislature and frustrate the legislative intent behind it. Such act is, therefore, not only a grave abuse of discretion on the part of the Commission, but an overstepping of the powers and jurisdiction conferred upon it by the law." [12] What is even more relevant considering the precise question before the Court is this pronouncement in *Bohol Land Transportation Co. vs. Jureidini*. [13] From the pen of Justice Villa-real: "Even if there were a good reason for such cancellation, the Bohol Land Transportation Co. should have been notified thereof, and given an opportunity to be heard before carrying it out. Although it is quite true that Act No. 3108, as amended, does not expressly provide for such notification and hearing, as much may be inferred from its provisions, for Section 15 thereof requires such notification and hearing in order to make a holder of a certificate of public utility and convenience comply with his duties. If the law demands this condition for lesser things, it should be understood to demand it for greater ones, for the requirement that a duty be complied with is less onerous than the deprivation of a right." [14] Further: "Therefore, the Bohol Land Transportation Co. was entitled to receive notice and be heard before being deprived of its rights, and the commission erred in depriving it of such rights without first giving notice and a hearing on any complaint against it for any inefficiency." [15]

With such authoritative rulings, the plea made by petitioner is not devoid of plausibility as respondent Commission did not, after denying her motion to dismiss, allow her to present her evidence. That ought to have been the course followed, were it not for the crucial fact that petitioner had admitted that there had been for sometime prior to the filing of the application of respondent Rodriguez, a failure to register five units. There was no dispute then about such a matter impressed with decisive significance. No introduction of evidence could have cured such a factual infirmity. What is sought by petitioner would thus become a useless formality. When no affirmative response was given by respondent Commission to her plea, there was no offense to the due process clause. For even had it done so, the result would not have been any different. An excerpt from *Caltex (Phil.), Inc. vs. Castillo* [16] is relevant: "Since what due process contemplates is freedom from arbitrariness and what it requires is fairness or justice, the substance rather than the form being paramount, an allegation based solely on the lack of opportunity to be heard x x x does not per se merit unconditional approval." [17] The reliance on the due process clause is thus in vain.

2. Such a prop failing, petitioner's case falls to the ground. For as her very petition was at pains to point out: "That the decision of February 13, 1972 is null and void, as far as the petitioner herein is [concerned], for wanting of the due process of law; and that petitioner has a valid defense as she did not and has never abandoned the five (5) units sought to be appropriated by the respondent Rodriguez." [18] She is not entitled then to the remedy prayed for. That should dispose of this petition, but some additional words may not be amiss. What cannot be ignored is the primordial aim in entrusting respondent Commission with the competence it possesses. The needs of the public are paramount. In the language of Justice Tuason: "The Public Service Commission is the entity vested with the power to authorize the operation of public services and to issue certificates of public convenience therefor. x x x In the exercise of this power, the Commission must be guided by public necessity and convenience as the primary consideration. x x x In the granting or refusal of a certificate of public convenience, all things considered, the question is what is best for the interest of the public." [19] This is not the first case, and it is not likely to be the last, where the discretion exercised by the Commission in determining whether an applicant or

oppositor is to be granted the right to operate certain units because of abandonment is not interfered with by this Court.[20] If there were a manifest abuse of discretion, an indication of arbitrariness in the exercise of its competence, the result could have been different. There is, however, no such showing.

WHEREFORE, the petition is denied and the decision of February 15, 1972 is affirmed. With costs against petitioner.

Makalintal, Acting C.J., Zaldivar, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.
Ruiz Castro and Teehankee, JJ., took no part.

[1] Petition, Annex G, 1.

[2] Ibid., 2.

[3] Ibid., 2-3.

[4] Philippine Rabbit Bus Line vs. Gabatin, L-24472, July 31, 1968, 24 SCRA 411, citing 35 cases from Philippine Shipowners Association vs. Public Utility Commissioners, 43 Phil. 328, decided in 1922 to Robles vs. Blaylock, L-24123, March 27, 1968, 22 SCRA 1284. Since then there have been these additional decisions: Republic Telephone Co., Inc. vs. PLDT Co., Inc., L-21070, Sept. 23, 1968, 25 SCRA 80; Rizal Light & Ice Co., Inc. vs. Municipality of Morong, L-20993, Sept. 28, 1968, 25 SCRA 285; PLDT Co. vs. Public Service Commission, L-24207-10, Dec. 18, 1968, 26 SCRA 427; Alarco Transportation, Inc. vs. Bonete, Jr., L-25078, Dec. 24, 1968, 26 SCRA 499; San Ildefonso Electric Plant, Inc. vs. Baliwag Electric Light & Power Co., Inc., L-26770-71, March 25, 1969, 27 SCRA 404; R.C. Ledesma vs. Public Service Commission, L-26900, Feb. 27, 1970, 31 SCRA 805; and Intestate Testate of Teofilo M. Tiongson vs. Public Service Commission, L-24701, Dec. 16, 1970, 36 SCRA 241.

[5] Petition, par. 5.

[6] Petition, Annex F, Motion to Dismiss, 3.

[7] 36 Phil. 116.

[8] Ibid., 124. Cf. Manila Electric Co. vs. Public Service Commission, 63 Phil. 107 (1936).

[9] 40 Phil. 285.

[10] Ibid., 306.

[11] 110 Phil. 270 (1960).

[12] Ibid., 275. Cf. Vigan Electric Light Co. vs. Public Service Commission, L-19850, Jan. 30, 1964, 10 SCRA 46; Manila Electric Co. vs. Public Service Commission, L-13638-40, June 30, 1964, 11 SCRA 317; Olongapo Jeepney Operators Asso. vs. Public Service Commission, L-20699, Feb. 26, 1965, 13 SCRA 303; and Philippine Long Distance Telephone Co. vs. Medina, L-24340, July 18, 1967, 20 SCRA 659.

[13] 53 Phil. 560 (1929).

[14] Ibid., 566-567.

[15] Ibid., 567. Cf. Vda. de Cruz vs. Marcelo, L-15301, March 30, 1962, 4 SCRA 694.

[16] L-24657, Nov. 27, 1967, 21 SCRA 1071.

[17] Ibid., 1079.

[18] Petition, Grounds warranting review, 3.

[19] In re Gregorio, 77 Phil. 906, 914 (1947). Justice Tuason made reference to Carmelo vs. Monserrat, 55 Phil. 644 (1931); Manila Electric Co. vs. Pasay Transportation, 57 Phil. 825 (1933); Manila Electric Co. vs. Pasay Transportation Co., 66 Phil 36 (1938); Manila Railroad Co. vs. Parsons Hardware Co., 66 Phil. 706 (1938). These other cases may likewise be cited: Interprovincial Autobus Co. vs. Claute, 91 Phil. 275 (1952); Philippine Rabbit Bus Lines vs. Gabatin, L-24472, July 31, 1968, 24 SCRA 411; Mandbusco Inc. vs. Francisco, L-23688, April 30, 1970, 32 SCRA 405 and Intestate Testate of Tiongson, L-24701, Dec. 16, 1970, 36 SCRA 241.

[20] Cf. Phil. Rabbit Bus Lines vs. Gabatin, L-24472, July 31, 1968, 24 SCRA 411, and the cases therein cited.

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