

LEOPOLDO T. CALDERON, JR., PETITIONER, VS. PUBLIC SERVICE COMMISSION AND CECILIO V. MILO, RESPONDENTS.

G.R. No. L-29228. April 30, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Original action for certiorari and prohibition to annul an order of respondent Public Service Commission setting aside its previous decision approving the uncontested sale and transfer of municipal franchise and certificate of public convenience for the operation of electric service in Pulilan, Bulacan, in favor of petitioner and to prohibit respondent commission from further proceedings in the case below.

Private respondent Milo was the grantee of a municipal franchise, and upon application, was granted a certificate of public convenience for the operation of electric service in Pulilan, Bulacan, in a decision of respondent commission rendered on November 10, 1958.[1]

On February 15, 1967, said respondent sold his franchise and corresponding certificate of public convenience to petitioner. The parties to the sale filed on April 24, 1967 with respondent commission a joint petition for approval of the sale,[2] setting forth the inability of respondent-vendor to devote the necessary time and attention to the operation of his franchise to the prejudice of the public and the willingness and financial capacity of petitioner-vendee to operate the franchise with the resultant promotion of public necessity and convenience.

After various hearings which were postponed by the parties' agreement, respondent executed and submitted his affidavit of October 25, 1967 that "I have no objection and will not interpose any in the early approval of the sale and transfer subject of the above case."

Associate Commissioner Gregorio C. Panganiban, to whom the case had been assigned and who had earlier on June 15, 1967 issued a provisional order of approval of the sale, thereupon scheduled the hearing on November 16, 1967, at which hearing respondent's counsel manifested that there was no further reason for postponements of the hearing as were obtained "several times in the past to enable the parties to reach an agreement on certain collateral agreements between them" and "I will have no more objection to the hearing of Case No. 67-2819 for approval of the sale and transfer and also to the deputization of a hearing commissioner to receive the evidence in support of the application."

Commissioner Panganiban then delegated first the reception of evidence to an Atty. Gueco, but as the latter was not in his office, the parties asked for the deputization of another hearing commissioner. Commissioner Panganiban then delegated the reception of evidence to the then chief of the industrial division, Engr. Pedro Talavera, who was the same commissioner who received the evidence in the original case granting respondent Milo the subject certificate of public convenience.[3]

Thereafter, Engr. Talavera conducted inspections of petitioner-vendee's electric service in the municipality to verify his compliance with certain requirements for the improvement of his electric service and installations, as

required in the commission's provisional order of approval, and received the evidence in support of the petition.

On December 19, 1967, on the basis of the evidence submitted, Commissioner Panganiban rendered decision finding the petition in order and approving the transfer and sale of the franchise and certificate of public convenience, including all machinery and equipment in favor of petitioner, as promoting the public interest in a proper and suitable manner.

On January 19, 1968, or 30 days after the decision, respondent Milo filed a petition for reconsideration alleging that the decision was "incomplete and premature" since "collateral agreements" only "partially" complied with, and "subsequent" commitments not complied with, by petitioner-vendee, had not been submitted to the commission for approval; that petitioner was not financially qualified to operate and maintain the electric service; and that "the transaction with applicant-vendee belongs to the category of inexistent or void contracts" and that "no amount of approval by the commission can cure the inherent nullity of the transaction." Petitioner duly filed his opposition thereto of March 13, 1968.

Subsequently, however, at the hearing of the motion for reconsideration, respondent added a new ground and filed a supplemental motion, assailing the validity of the proceedings before Engr. Talavera, on the ground that not being a lawyer, he could not be authorized to receive the evidence in the case.

On June 24, 1968, respondent commission, by a vote of four to one, Commissioner Panganiban dissenting, issued its order granting the reconsideration, setting aside the decision of December 19, 1967 and directing the commission secretary to set the case for hearing anew on the ground that "Mr. Talavera is not a lawyer and does not have the necessary preparation to process the evidence, oral and documentary, presented in this case; and the provisions of Section 32 of Act 146, as amended, being clear that the hearing of cases may only be delegated to duly qualified attorneys of the Public Service Commission or Division Chiefs 'if they be lawyers' x x x."

On July 12, 1968, within the reglementary 30-day period, petitioner filed the present petition, submitting that appeal was not a plain, speedy or adequate remedy, because of "the great prejudice (to) petitioner who not only has paid respondent the purchase price of the sale, but also has introduced many improvements and invested money and effort in the operation of the franchise." In the alternative, petitioner submitted that should the Court rule appeal to be an adequate remedy, that the petition, timely filed, be treated as one for review under Rule 44 and that the questioned order be stayed.

The Court accepted the petition and issued summons on July 17, 1968 requiring respondents to answer the petition. On July 20, 1968, the Court, upon a P1,000.00-bond, issued a writ of preliminary injunction enjoining the enforcement of the questioned order.

The basic issue raised by the petition concerns the validity of the decision rendered by Commissioner Panganiban on the basis of the evidence received by Engr. Talavera, chief of the industrial division, who admittedly is not a lawyer. The resolution thereof depends on this question: may a joint applicant in an uncontested joint petition in an industrial case before the Public Service Commission for approval of the transfer and sale of a certificate of public convenience made by him in favor of his co-applicant, after submitting an affidavit that he has no objection to the early approval of the sale and agreeing through counsel to the delegation by the commission of the reception of evidence to the chief of the industrial division, be permitted, after the commission had rendered its decision of approval as prayed for and on the basis of the evidence thus received, to assail the decision so rendered on the ground that the said delegate, not being a lawyer, could not be legally authorized to receive the evidence in the case?

1. Respondent Milo must be held to be now clearly estopped from assailing the delegation of the reception of

evidence to Engr. Talavera, then chief of the industrial division of the commission, and questioning the validity of the decision thus rendered, after not having presented any timely objection to such delegation but having consented thereto. In fact, the grounds of his last-minute motion for reconsideration were ignored and brushed aside by respondent commission, since the sale executed by him in favor of petitioner was clearly legally valid and binding and he could not be heard in the commission to question its validity, after he himself had submitted it for approval, for alleged non-compliance with "collateral" and "subsequent" agreements, and the proper forum for its annulment was not the commission but the regular courts of competitive jurisdiction. The alleged ground of nullity of the delegation of Engr. Talavera was just an after-thought submitted by respondent in a supplemental motion at the hearing of his motion for reconsideration. Indeed, if respondent were to be consistent with his present posture that the decision was a nullity because the evidence was received by Engr. Talavera, who is not a lawyer, and therefore excluded from those expressly authorized in section 32 of the Public Service Act (Comm. Act No. 146) since its amendment by Republic Act No. 723 which took effect on June 6, 1952,[4] to be delegated to receive evidence - he must perforce concede the nullity of the commission's original decision granting him on November 10, 1958 the subject certificate of public convenience, for the reception of evidence in said case was likewise delegated to and received by Engr. Talavera. (The whole question would then be moot, for respondent in such case would have no valid certificate to retain or sell.)

2. Whatever defect there may have been in delegating the reception of evidence to a non-lawyer but to Engr. Talavera with his long experience and knowledgeability as chief of the industrial division must be deemed waived by the parties' consent to his designation. The objectives of the law were well complied with in the designation of Engr. Talavera, as observed by Commissioner Panganiban in his dissenting opinion: "(D)uring the hearing of the Motion for Reconsideration, counsel for the petitioner, added a new ground which is not included in the petition for reconsideration to the effect that since Mr. Pedro Talavera who was then the Chief of the Industrial Division of this Commission is not a lawyer, he can not be authorized to receive the evidence in this case and the proceedings conducted by him is null and void. The practice in this Commission, even in the past, is when a case is uncontested, like the present case, the Commission delegates the reception of the evidence to Mr. Talavera, who is an engineer and the Chief of the Industrial Division and who is believed more competent than a lawyer to know about industrial cases like electric plants, ice plants, cold storage plants and the like, as regards their technical aspect. No objection was made to the delegation of the hearing to Mr. Talavera by any party, so that whatever defect it has is deemed waived, particularly as in this case when the party now questioning the delegation was present and even agreed to it."[5]

3. Such defect in the delegation of reception of evidence to the person designated by the commission was invariably held to be a procedural defect which was deemed waived if no timely objection were raised by a party in our jurisprudence prior to the enactment on June 6, 1952 of Republic Act No. 723 - when the Public Service Act contained no provision authorizing the commission to delegate the conduct of hearings and reception of evidence to hearing commissioners. "By timely objection," the Court pointed out in *Enriquez & Co. vs. Ortega*[6], "we mean when the point is raised at the beginning of the hearing or investigation before the person assigned to receive the evidence, and not after he has completed the investigation. The reason is obvious. If the objection is raised at the beginning of the hearing, and the objection is sustained, the trouble and expense that a trial or an investigation generally entails could be avoided and the case may then be tried by the Commission, or by a member thereof, as the law requires. And if the objection is interposed opportunely and is overruled and the investigation is continued over and above the objection of the opposing counsel, the party so objecting can later reiterate his objection and pray for the nullification of the proceedings for then it is not fair that he be made to suffer the consequence resulting from the mistaken resolution of the officer assigned to receive the evidence." The Court thus emphasized that "the objection must be timely interposed in order to prevent the presentation of the

evidence before a person who has no legal authority to receive the evidence. If the objection is interposed after the evidence had been presented, it comes late and should be disregarded."

4. In *Rizal Light & Ice Co. vs. Municipality of Morong*,^[7] involving the very question of a similar belated objection to the delegation of the very same Engr. Talavera as division chief to hear the case and receive the evidence, although he is not a lawyer, and therefore excluded from those expressly authorized in section 32 of the Public Service Act, as amended by Republic Act 723, to be designated to receive evidence, the Court, per Mr. Justice Zaldivar, nevertheless adhered to the ruling of Enriquez, and other precedents, *supra*, that such defect in delegation was a procedural, not a jurisdictional, point that was waived by failure to interpose timely objection thereto. Thus, it was held therein that "(T)his Court in several cases has ruled that objection to the delegation of authority to hear a case filed before the Commission and to receive the evidence in connection therewith is a procedural, not a jurisdictional point, and is waived by failure to interpose timely the objection and the case had been decided by the Commission. Since petitioner has never raised any objection to the authority of Mr. Talavera before the Commission, it should be deemed to have waived such procedural defect, and consonant with the precedents on the matter, petitioner's claim that the Commission acted without or in excess of jurisdiction in so authorizing Mr. Talavera should be dismissed."

5. In the later case of *Eastern Tayabas Bus Co. Inc. vs. Public Service Commission*,^[8] however, the petitioner therein timely interposed an objection and motion for inhibition and disqualification of the public utility adviser designated to receive the evidence, since he was not a division chief, although a lawyer, and the rationale of Enriquez,^[9] was expressly invoked. The Court found that "It was alleged that at the hearing on September 26, 1968, counsel for petitioner upon learning for the first time that respondent Calderon, while a member of the bar, was not included in the legal division of respondent Commission and was not a division chief, moved for his inhibition or disqualification, invoking the appropriate statutory provision^[10] as well as two decisions of this Court.^[11] Respondent Calderon was deaf to such a plea and insisted on continuing with the hearing on the merits of such application, justifying such adamant stand on the view that while neither a member of the legal division nor a division chief, his being a public utility adviser placed him in the latter category." The Court thus held that "respondent Calderon could not thus have been validly designated to conduct the hearing," and in consonance with Enriquez ordered the nullification of the proceedings before therein respondent Calderon.

6. Even if such defect in the delegation of reception of evidence were to be considered a jurisdictional matter, it must be raised by timely objection as in the *Eastern Tayabas* case cited above, for otherwise the complaining party would fall under the principle enunciated by Mr. Justice Dizon for the Court in *Tijam vs. Sibonghanoy*^[12] that "after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court." As restated in *Crisostomo vs. Reyes*^[13] and a number of subsequent cases,^[14] the principle decrees that "While the jurisdiction of a tribunal may be challenged at any time, sound public policy bars the petitioners from so doing after their having procured that jurisdiction themselves, speculating on the fortunes of litigation."

7. Finally, it may be noted that petitioner's right to operate the electric service in Pulilan, Bulacan, is no longer open to question, petitioner having been granted a twenty-five year congressional franchise therefor under Republic Act No. 6013 enacted on August 4, 1969.^[15]

ACCORDINGLY, the order of respondent commission dated June 24, 1968 is hereby set aside and the writ of preliminary injunction heretofore issued is made permanent. With costs against private respondent.

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

Fernando, J., concurs on the ground set forth in par. 7 of the opinion.

[1] Docketed as Case No. 119036 of the Public Service Commission.

[2] Docketed as Case No. 67-2819.

[3] Supra, fn. 1.

[4] The pertinent provisions of Sec. 32, C.A. 146, as thus amended, provide: "The Commission may also, by proper order, authorize any attorneys of the legal division or division chiefs of the Commission, if they be lawyers, to hear and investigate any case filed with the Commission and in connection therewith to receive such evidence as may be material thereto. At the conclusion of the hearing or investigation, the attorney or division chief so authorized shall submit the evidence received by him to the Commission to enable the latter to render its decision."

[5] Emphasis furnished.

[6] 92 Phil. 352 (1952). To the same effect are the precedents of *Everett Steamship Corp. vs. Chuahiong*, 90 Phil. 64 (1951); *Silva vs. Ocampo*, 90 Phil. 777 (1952); *La Paz Ice Plant & Cold Storage Co. vs. Public Service Commission*, 89 Phil. 109 (1951); *Raymundo Trans. Co. vs. Cervo*, 91 Phil. 313 (May 21, 1952); and *Luzsteveco vs. Public Service Commission*, 93 Phil. 735 (Sept. 16, 1953).

[7] 25 SCRA 285 (Sept. 28, 1968).

[8] 30 SCRA 620 (Nov. 28, 1969).

[9] 92 Phil. 352 (1952); supra

[10] "Sec. 32 of Com. Act No. 146, as amended by Rep. Act No. 723 (1952)."

[11] "*Silva v. Ocampo*, 90 Phil. 777 (1952) and *R. J. Enriquez & Co. v. Ortega*, 92 Phil. 352 (1952)."

[12] 23 SCRA 29 (Apr. 15, 1968), citing *Tan vs. Filipinas Cia. de Seguros*, L-10096, Mar. 23, 1956; *Pindañgan etc. vs. Dans, et al.*, G.R. L-14591, September 26, 1962; *Montelibano, et al., vs. Bacolod-Murcia Milling Co., Inc.*, G.R. L-15092; *Young Men Labor Union, etc. vs. The Court of Industrial Relations, et al.*, G.R. L-20307, Feb. 26, 1965, and *Mejia vs. Lucas*, 100 Phil. p. 277.

[13] *Crisostomo vs. Reyes*, 32 SCRA 54 (Mar. 25, 1970).

[14] *Vide Lopez Carillo vs. AWA*, 24 SCRA 566 (July 31, 1968); *Rodriguez vs. Court of Appeals*, 29 SCRA 419 (Aug. 29, 1969).

[15] Republic Act No. 6013 is entitled "An act granting a franchise for an electric light, heat and power system to Leopoldo T. Calderon, Jr., in the Municipality of Pulilan, Province of Bulacan." See Art. XIV, sec. 8, Philippine Constitution.

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