

**VIDAL M. TOMBO AND BONIFACIO R. VILLACORTA,
COMPLAINANTS, VS. ENRIQUE P. MEDINA, COMMISSIONER, PUBLIC
SERVICE COMMISSION, RESPONDENT.***A.C. No. 929. January 17, 1974*

Ponente: FERNANDO, J.

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This Tribunal is called upon to decide this administrative complaint against respondent Enrique P. Medina, a former Commissioner of Public Service Commission, now retired. He was accused of various acts of malfeasance. As noted in the report and recommendation of forty-one pages of Justice Jose N. Leuterio of the Court of Appeals to whom the matter was referred for investigation, they could be categorized into serious misconduct in office, gross negligence with manifest partiality, and bribery. Justice Leuterio's report and recommendation is characterized by thoroughness, every aspect of the matter being looked into and passed upon with that degree of objectivity expected of a trier of facts. After going over the records of the case, this Court cannot find any circumstance of weight or influence that has been overlooked or the significance of which has been misinterpreted, and therefore yields its approval to its recommendation of exoneration. To do so is merely to abide by the controlling standard set forth by Justice Malcolm in the leading case of *re Horrilleno*.^[1] As was made clear by him: "impeachment proceedings before courts have been said, in other jurisdictions, to be in their nature highly penal in character and to be governed by the rules of law applicable to criminal cases. The charges must, therefore, be proved beyond a reasonable doubt."^[2] The passage of time has not in any way impaired the validity of such a pronouncement made as far back as 1922. It is on that controlling legal norm to which fealty has been paid by Justice Leuterio that after a careful study of the proceedings at the various hearings, we find the recommendation for exoneration acceptable.

1. Justice Leuterio absolved respondent of the charge of serious misconduct in office consisting of impropriety, manifest partiality, dishonesty, oppression or abuse of power, in favor of Batangas, Laguna, Tayabas Bus Co., to be hereinafter designated as BLTBCO. Thus: "The complainants question the acts of the respondent in issuing the order of October 8 revoking the provisional permit granted to Francisco Alvarez to operate the Carmona-Manila line via San Pedro and Binan. The thrust of complainant's argument is that this case properly belonged to Commissioner Cadiao who issued the provisional permit and who penned the decision in PSC Case No. 69-36694, granting Certificate of Public Convenience to Prima Donna, Inc., the assignor of Francisco Alvarez. The complainants do not question the legality of the order. The reasons given by the respondent for revoking the order of the provisional permit was that it was issued before the Commission had acquired jurisdiction, and that although the petition was entitled to change of terminal, it was in fact a grant of new line from Carmona to Manila by way of San Pedro and Biñan, and which, unlike a mere change of terminal is controversial. Another reason was that there were already several operators operating in that line. The respondent explained that he called Associate Commissioners Cadiao and Panganiban and discussed the provisional permit; and having found that it was issued before the Commission had acquired jurisdiction, they resolved to revoke the permit. They had agreed, however,

that in view of the pressure from above, the respondent was given the responsibility to appear as the ponente of the order which was concurred in by Associate Commissioners Cadiao and Panganiban. And it is not true that the case had been assigned to Commissioner Cadiao when he issued the provisional permit on July 22, for the case was raffled to Commissioner Cadiao only on July 29 * * *. That pressure had been brought upon the Commission not only to maintain the provisional permit of Alvarez but to grant him a new line is evident from complainants' evidence. As early as July 2, Francisco Benito had written to Honorable Rafael Salas, Executive Secretary, the letter, * * * which discussed the transportation facilities in the settlement of San Pedro and Carmona and the necessity of granting a provisional permit to Southway Liner Buses. This is the name of the bus line of Alvarez. Letters were also sent by Benito to the Commissioner of Public Service, * * *. And Asst. Executive Secretary Jose Leido, Jr. wrote to the respondent directing that immediate and appropriate action be taken on the representations of the Kapatirang Langgam, Inc., * * *. It must be because of this directive from above that Commissioner Cadiao had acted and granted a provisional permit to Alvarez even before the date set for the hearing, in violation of the rules of the Public Service Commission, * * * par. (2), that 'provisional authority should never be granted in any case, before the Public Service Commission has acquired jurisdiction of the same. Thereafter, it may be granted only if there is delay in the determination of the case and if public necessity demands it.' It is the view of the Commission that jurisdiction is acquired only on the date of the hearing and after publication. The complainants are of the contrary view and contend that jurisdiction was acquired immediately after completion of publication and even before the date of the hearing. The interpretation of the Commission must be respected until a higher authority holds that it is in error. That Alvarez availed of pressure from higher authority, * * * is evident * * *. The impropriety of [such] acts * * * to obtain the permit to operate the Carmona--Manila line is evident; and the Commission en banc which thereafter denied the motion for reconsideration of Francisco Alvarez is more to be admired than condemned. On the other hand, the efforts of certain persons, whether in courts or in quasi-judicial bodies like the Public Service Commission, to obtain what they want, not through the merit of their petition, but through the use of influence and power, in this case the [executive] power, should not only be discouraged but should be condemned. The Public Service Commission is a quasi-judicial body which grants certificates of convenience only after hearing and if the evidence warrants. The correctness of the order of the Public Service Commission is evident from the fact that the order was affirmed by the Commission en banc and no appeal had been taken by Francisco Alvarez." [3]

2. As to the alleged improper relationship of respondent with Colonel Pelagio G. Potenciano of BLTBCO, this is what is contained in the Report and Recommendation: "The complainants tried to prove with the testimony of Atty. Imbang, counsel for Francisco Alvarez, that on October 27, he went to the office of the respondent to seek deferment of the order of October 8 revoking the provisional permit; that he had been informed by the Commissioner that Col. Potenciano, the Chairman of the Board of the BLTBCO, had just left, but Col. Potenciano was called at the request of Atty. Imbang; that Col. Potenciano did not agree to the revocation of the order and the revival of the provisional permit of Alvarez because the BLTBCO was losing on the line applied for; and that respondent brought Col. Potenciano to a corner and when they came back, the respondent informed Atty. Imbang that Col. Potenciano was willing to revoke the provisional permit but only up to November provided that Alvarez would waive the right to file a motion for reconsideration. I do not find any impropriety in the act of the respondent in talking to Col. Potenciano privately, assuming this to be true. The purpose of the private conversation was evidently to seek an amicable settlement and to prevail upon Col. Potenciano not to object to Atty. Imbang's request. Atty. Imbang himself testified that the respondent had wanted him to see Col. Potenciano with the view to an amicable settlement and that if they arrived at a settlement, Atty. Imbang could see the respondent anytime and he would approve the settlement. Since at that time, no motion for reconsideration had as yet been filed, the only proper course, if the deferment was to be granted *motu proprio* was to get the consent of the oppositor. If a motion for reconsideration were to be filed, the oppositor was entitled to answer and to a

hearing. The most expedient course was therefore to get the consent of the oppositor and this, the respondent tried to do. It is the belief of Benito and Alvarez that the respondent was taking orders from Col. Potenciano and would not issue a permit without his consent. Alvarez and Benito misapprehended the act of the respondent. The BLTBCO operates the Carmona-Manila line. Francisco Alvarez wants to operate in that line. Hence, the petition and the opposition of the BLTBCO. The request of Alvarez to defer the implementation of the order revoking the provisional permit could not be acted upon before a motion for reconsideration had been filed and BLTBCO given an opportunity to be heard, and there was the probability that it would be denied. What the respondent did was to try to settle the differences between Alvarez, the petitioner, and the BLTBCO, the oppositor. Assuming that he had talked to Col. Potenciano in the corner of his office, it was made in the presence of Atty. Imbang and, therefore, it cannot be said that it was done with any fraudulent intent. The respondent must have believed that he could prevail upon Col. Potenciano if he talked to him in private. And in fact, Col. Potenciano agreed to the suspension of the order. Under certain conditions Atty. Imbang himself admitted that the respondent had tried to settle the case amicably. The alleged delivery of the note indicating the address of Col. Potenciano which according to Atty. Imbang was given to him by the Commissioner, but denied by the latter, can only be viewed in that light, to enable Atty. Imbang to talk to Col. Potenciano with a view to an amicable settlement."[4]

3. To the charge against respondent of "gross negligence and manifest partiality in the imposition of supervision and regulation fees upon the BLTBCO in gross disregard [of the law] resulting in tremendous loss of income for the government constitutive of malversation," Justice Leuterio had this to say: "I do not find any evidence of manifest partiality by the respondent in favor of the BLTBCO in the imposition of supervision and regulation fees, nor any gross disregard of Sec. 40 of the Public Service Law as amended by Rep. Act No. 3792, and much less is there tremendous loss, or any loss of income for the government. The facts which gave rise to this charge started on Sept. 3, 1968 with the letter of Gregorio del Mundo, In-charge, Revenue Collection Unit, to the BLTBCO to submit the corresponding statements of the auto trucks registered and operated for the period 1964 to 1967. Atty. de Lara, on behalf of the BLTBCO, questioned the interpretation of the Public Service Commission of the term 'gross transportation capacity' in Rep. Act No. 3792. Thereafter, various communications were exchanged between the Public Service Commission, acting through del Mundo, and not the respondent, and Atty. de Lara. When the matter was brought to the attention of the respondent by Mr. del Mundo, he sought the opinion of the Chief Attorney. The Chief Attorney rendered his opinion on February 4, 1969, * * * but in view of the insistence of Atty. de Lara that the matter be referred to higher authorities, the respondent Commissioner forwarded the papers to the Secretary of Justice and requested for an opinion on the legal issue involved, in a letter dated February 13, 1969. This was received by the Department of Justice on February 15, 1969. The Department of Justice did not act on the request of the respondent Commissioner for an opinion on the legal issue involved for over one year, and nothing was heard of by the respondent from the Department of Justice. * * * [It was not until] June 4, 1970, [that a reply was received] stating that the Department does not render opinion on the request of private parties even if coured through an authorized office. * * *"[5] Further, he added: "I do not see how the respondent can be liable for gross negligence or manifest partiality or disregard of Sec. 40 of Rep. Act No. 3792. The respondent had desired an authoritative ruling on the interpretation of the term 'gross capacity' for the proper guidance of the Commission in the collection of the supervision and regulation fees. The delay was due to the inaction of the Department of Justice, where the request for an opinion by the respondent had slept for about 15 months. The matter came to the knowledge of the respondent only on December 23, 1968, when Mr. del Mundo endorsed the letter of Atty. de Lara to the respondent Commissioner. After Atty. de Peralta rendered his opinion on February 4, 1969, the respondent raised the matter to the Secretary of Justice in a consulta on February 13, 1969 or 19 days after Atty. de Peralta rendered his opinion. When the Auditor General sent a letter on April 7, 1970, wherein he expressed the view that the Commission should take steps to press the BLTBCO to pay the deficiency taxes and recommended that representations be made to the Secretary of Justice for an early opinion on

the correct interpretation of Sec. 40 of Rep. Act No. 3792, the respondent, on May 19, 1970, wrote to the BLTBCO that it is the opinion of the Public Service Commission that it should pay the supervision and regulation fees as computed by the Public Service Commission and as ruled by the Auditor General in his letter of April 7, 1970, * * *. And upon receipt of the endorsement of the Undersecretary of Justice on June 4, 1970, denying the consulta, the respondent wrote the letter, * * * demanding immediate payment of the supervision and regulation fees. There has been no undue delay in the collection of supervision and regulation fees from the BLTBCO. The complainants, however, said that 'instead of applying the full force of the law against the BLTBCO, as he had done to the other public service operators, Medina instead referred the matter for study to the Public Service Commission's Legal Division.' There is no evidence, however, that other public service operators had raised the same question; or that notwithstanding that they had raised the question, the respondent had nevertheless insisted on the immediate payment and penalized them for non-payment. As far as the evidence shows, it was only the BLTBCO which had raised the question of the correct interpretation of Sec. 40(d) of the Public Service Law as amended. True, the respondent could have compelled the BLTBCO to pay, and if it refused to pay in accordance with the ruling of the Commission, it could have imposed a sanction upon the BLTBCO. But Sec. 40(d) had not been interpreted by any authority except by the Public Service Commission, and since its interpretation was questioned by the BLTBCO, the respondent believed that in order to remove any doubt, the matter should be elevated to the Secretary of Justice for an authoritative opinion. Complainants stated that the respondent should have known that the Department of Justice does not render opinions on consulta by private parties. But it was the respondent, then Public Service Commission, who was asking the Secretary of Justice for an opinion although it is true that in his letter-consulta it is stated that it was upon request of Attys. de Lara & Associates. In fact, even the Auditor General suggested in his letter of April 7, 1970, that proper representations be made to the Secretary of Justice for any early decision of the consulta. * * * The respondent had the right to believe that since the papers had not been returned to him, the matter was under serious study by the Department of Justice. The complainants blamed the respondent for the few months that passed during which communications between the Public Service Commission and the BLTBCO were exchanged in view of the fact that BLTBCO questioned the interpretation of the Public Service Law by the Public Service Commission, but would not assume any responsibility for the long period of 15 months during which the consulta was left unacted upon by the Department of Justice. Moreover it is not correct to say that no disciplinary action was taken by the Commission, for as can be seen from the letter of Atty. de Lara to Mr. del Mundo, Atty. de Lara complained that Mr. del Mundo had frozen the papers of the BLTBCO passing his unit * * *. There is no evidence that the Commission had passed upon and approved the papers even before the BLTBCO had paid the supervision and regulation fees. The complainants charge that this resulted in tremendous loss of income to the government. I do not see any loss for the BLTBCO fully paid the supervision and regulation fees of P30,511.20 after the Public Service Commission, through Commissioner Gregorio Panganiban, the respondent having retired, denied the petition of the BLTBCO." [6]

4. The last count consisted in respondent allegedly receiving a bribe consisting of a Massey-Ferguson tractor with accessories from BLTBCO's President, the aforesaid Col. Potenciano, in return "for acts of extreme partiality and gross favoritism." Justice Leuterio did not, as in the other two charges, find respondent guilty as charged. As he pointed out in his Report: "Complainants charge the respondent with bribery in having received one tractor in return for his acts of extreme partiality and gross favoritism. But complainants have not established by evidence or any act of the respondent to prove extreme partiality or even partiality or gross favoritism or any favoritism at all. Complainants do not deny that the respondent had not acted in any contested case involving the BLTBCO except the Alvarez case, the subject of charge I, and the administrative investigation concerning the collision of 2 buses of BLTBCO in Indang, Cavite. In the Alvarez case discussed above, I found it to be without merit. The order of Oct. 8, 1969, was upon motion for reconsideration affirmed by the Court en banc. In both cases, no appeal was taken against the order of the respondent or the Commission. There is no evidence that this tractor had

been used regularly or even once in the cultivation of the land of the respondent in Jagna, now in possession of his wife and son. There is no evidence that this tractor had been regularly used by Enrique Medina, Jr. in his hacienda in Sicopong. The complainants relied solely on the testimony of agent Dulog, which to say the least, did not establish anything except that he saw at one time, the tractor in Hacienda Jagna. It may be conceded that Salvador Bocanegra was given a discount of 10 and 10% because his sister, Anita Hernaez, a widow, is now living with the respondent. But this fact does not establish any bribery for there is no evidence that either the respondent or Anita Hernaez had intervened in the purchase. The discount of 10 and 10% is given by (Mosserco), in the words of Col. Potenciano, in special cases. It was not only to Salvador Bocanegra that this discount had been given, although it may be that his relation with the respondent had influenced Dr. Potenciano in granting him this special discount. Complainants made statements of facts in their memorandum which had not been the subject of evidence. They quoted from the affidavits of agents Dulog and Libit, but to which neither Dulog nor Libit had testified. For example, complainants made mention of the alleged efforts of the respondent to pull strings to seek an audience with the President; or threatened complainants with retaliation, or to the approval of the raise in the Meralco case; or the respondent was 'an old friend and golfing crony' of Dr. Potenciano. All of these are without basis in the evidence. Outside the admission of the respondent that he had played a few games of golf with Dr. Potenciano and that the latter had visited him about 2 or 3 times, no evidence was submitted by the complainants, that the respondent is an old friend and golfing crony of Dr. Potenciano." [7] Nor should it be lost sight of anent this charge that the proof offered by the contending parties was appraised by Justice Leuterio in this wise: "Against the positive evidence for the respondent, is the complainants' inference that the accessories belong to the respondent. I do not believe that the inference necessarily follows from the admitted facts. When Bocanegra came to Manila in January, he was not prepared to buy a new tractor. He came only for the purpose of having his International Harvester tractor repaired. But he was prevailed upon by Col. Potenciano to buy a new one. The purchase of the accessories could not have entered his mind then, and he decided to buy these accessories in May when they were needed in the cultivation of the land." [8]

5. Nothing is left for this Court then except to stress that even if, as is shown in the Report and Recommendation of Justice Leuterio, respondent should be absolved, still there is nothing in the record that would indicate in any way that in thus preferring charges against him, the Department of Justice, through its then Secretary and Undersecretary, now Associate Justices Claudio Teehankee and Felix V. Makasiar, was motivated by anything except the utmost good faith. Certainly, they were impelled by a desire to see that any imputation even at times coming from biased sources to the effect that certain officials under their supervision could be held liable for malfeasance, should be inquired into. There was no question either that before the charges against respondent were filed, a thorough and exhaustive attempt was made to look into the merits of the alleged misdeeds. The mere fact that after a full-dress investigation, respondent should be acquitted, should not in any wise be construed as casting a reflection on the fairness and honesty with which the inquiry was made by the respondent officials of the Department of Justice.

WHEREFORE, in view of the report and recommendation of Justice Leuterio, the respondent is exonerated, there being insufficiency of evidence to warrant a finding of guilt.

Makalintal, C.J., Zaldivar, Ruiz Castro, Barredo, Antonio, Esguerra, Fernandez, Muñoz Palma, and Aquino, JJ., concur.

Teehankee and Makasiar, JJ., took no part.

[1] 43 Phil. 212 (1922).

[2] Ibid, 215.

[3] Report and Recommendation, 10-13.

[4] Ibid, 13-15.

[5] Ibid, 21-23.

[6] Ibid, 23-26.

[7] Ibid, 38-40.

[8] Ibid, 36-37.

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