

**PHILIPPINE LONG DISTANCE TELEPHONE COMPANY, PETITIONER,
VS. THE PUBLIC SERVICE COMMISSION, RESPONDENT.***G.R. No. L-26762. August 31, 1970*

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

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Petitions filed separately by the Philippine Long Distance Telephone Company, the Manila Electric Company, Bolinao Broadcasting Corporation, the Philippine Steam Navigation Company, and the General Shipping Company, all domestic corporations operators of public utilities, for review of the decision of the Public Service Commission, in its Case No. 65-196, construing Section 40(e) of the Public Service Act, as amended by Republic Act 3792, adversely against them. The facts of these cases are not in dispute.

On various dales in September, 1964, the Public Service Commission assessed several public utilities for supposed supervision and regulation fees for that year, as follows: Philippine Long Distance Telephone Company - P214,353.60; Manila Electric Company - P727,526.00; Bolinao Electronics Corporation -P11,610.40; Philippine Steam Navigation Company - P23,921.60; and General Shipping Company - P33,146.80, based upon the value of their respective properties or equipment. The assessments were allegedly made pursuant to Section 40(e) of the Public Service Act, as amended by Republic Act 3792. After paying under protest the demanded amounts, the above-mentioned corporations sent separate letters to the Commission, except the Philippine Steam Navigation Company which filed a formal petition instead.[1] requesting for reconsideration of the assessments on the ground that under Section 40(e) of the Public Service Act, as amended, such assessments should be based not on the value of the properties but upon the subscribed and paid up capital stocks of the corporations.

On 28 September 1966, the Public Service Commission rendered judgment on the petition of the Philippine Steam Navigation Company, denying the request for reconsideration of the assessment, for the reason that under the amended provision of the Public Service law the amount of supervision fee payable by a public utility shall be based on its capital stock, if a stock corporation; on the capital invested, if a non-stock corporation; or on the property and equipment of such stock or non-stock entities, which ever is higher. As said decision was declared applicable to other operators of public services that similarly sought reconsideration of (he action of the Commission, and which were considered intervenors in the case, the petitioner Philippine Steam Navigation, the Philippine Long Distance Telephone Company, Manila Electric Company, Bolinao Electronics Corporation, and General Shipping Company individually came to this Court, raising the same question of the proper assessment-base to be used in imposing (lie prescribed supervision and regulation fees on public utilities.

Prior to its amendment, Section 40, paragraph (e), of the Public Service Act (Commonwealth Act 146), applicable in these proceedings, provides:

"SEC. 40. The Commission is authorized and ordered to charge and collect from any public service the following fees:

xxx xxx xxx

"(e) For reimbursement of the expenses incurred by the Commission in the supervision of other public services: ten centavos for each one hundred pesos or fraction thereof, of the capital stock subscribed or paid, or if no shares have been issued, of the capital invested." (As amended by Commonwealth Act 454).

With the enactment of Republic Act 3792 on 22 June 1963, the said Section now reads as follows:

"SEC. 40. The Commission is authorized and ordered to charge and collect from any public service or applicant, as the case may be, the following fees as reimbursement of its expenses in the authorization, supervision and/or regulation of public services:

xxx xxx xxx

"(e) For annual reimbursement of the expenses incurred by the Commission in the supervision of other public services and/or in the regulation or fixing of their rates, twenty centavos for each one hundred pesos or fraction thereof, of the capital stock subscribed or paid, or if no shares have been issued, of the capital invested, or of the property or equipment, whichever is higher."

Indenying petitioner's prayer for reconsideration and upholding the correctness of the assessed fees, the Commission reasons out that the clause "or of the property and equipment, whichever is higher" inserted or added to Section 40(e) of the Public Service Act as an alternative base for supervision fees collectible thereunder applies to both stock and non-stock corporations. The ruling is premised on the argument that the cost of property and equipment being usually higher than both the subscribed and paid up stocks in stock corporations and the capital investment in non-stock entities, to declare its use as assessment base only in case of public utilities not issuing stocks, to the exclusion of stock corporate public services, would make the law discriminatory, unfair and unjust. It was further reasoned out that the appearance of a comma after the words "capital subscribed or paid" and another after the words "Capital invested," immediately preceding the clause "property and equipment, whichever is higher," indicates the intention of the legislature to constitute the latter as an alternative of both the subscribed and invested capital. In short, the stand of the Commission is this: if the legislature designed "property and equipment" To apply only to non-stock corporations, the amended provision should have been drafted -

"x x x twenty centavos for each one hundred pesos or fraction thereof, of the capital stock subscribed or paid, or if no shares have been issued, of the capital invested or of the property or equipment, whichever is higher." instead of placing a comma between the words invested and or of the property, etc., as it now stands; or better still, a semicolon would have been inserted after the words "capital stock subscribed or paid."

Petitioners assail the reasoning of the Commission that to use the value of property and equipment as an alternative base for fixing the rates only in case of public services not issuing shares would result in unreasonable discrimination against the latter. They urge that the law itself draws a distinction between public utilities issuing shares and those that fail to do so; and reason out that as the capital invested is difficult to ascertain where no shares have been issued, it was logical that the Legislature should provide as an alternative rate base for this class of operators only the value of their property or equipment. We do not find this argument adequately cogent, since it is based on a hypothesis not backed by evidence. There is no showing in the record that the Commission has met with difficulty in ascertaining the actual capital investment of public service operators that do not issue shares of capital stock. Section 17 of the Public Service Act authorizes the Commission to require public services to submit annual reports of finances and operations, and we can not assume a priori that the reports submitted by operators that do not issue shares of capital stock are or will be untruthful.

It is also argued that reliance on punctuation is too risky a method of statutory construction, citing authorities (Sutherland on Statutory Construction) that often the punctuation becomes that of the printer rather than of the legislature. But in the particular case at bar, a comparison of the text of Section 40(e) appearing in the official text

of Republic Act No. 3792 with that of its original, House Bill No. 4613, shows that the punctuation of the provision in question has undergone no alteration at all. At any rate, the consideranda on punctuation made in the Commission's appealed resolution was merely employed to reinforce its main argument that nothing in the law justifies a discriminatory application of the value of the property or equipment (as alternative rate base) solely to operators not issuing shares of capital stock.

On the alleged disproportion of the total amount to be collected as supervisory fees when contrasted with the possible amount expendable in supervising public services, the very statute indicates that such fees as are therein fixed were designed to raise revenue for the general expenses of the Commission, and were not limited to reimbursement of actual expenditures in supervision. For the last paragraph of Section 40 of the Public Service Act, as amended, explicitly prescribes that "any unexpended balance of the fees collected by the Commission under this section shall be constituted receipts automatically appropriated each year and, — shall be disbursed—for additional needed personal services, maintenance and operating expenses, acquisition of urgently needed vehicles, furniture and equipment," reference library and buildings.

"Aside from the appropriations for the Commission under the annual general appropriations, Act, any unexpended balance of the fees collected by the Commission under this section shall be constituted receipts automatically appropriated each year, and together with any surplus in the standardizing meter laboratory revolving fund under Commonwealth Act Numbered Three Hundred Forty-Nine, shall be disbursed by the Public Service Commissioner in accordance with special budgets to be approved by the Department of Justice, the Budget Commission and the Office of the President of the Philippines for additional needed personal services, maintenance and operating expenses, acquisition of urgently needed vehicles, furniture and equipment, maintenance of an adequate reference library, acquisition of a lot and building for the Commission, and other expenses necessary for efficient administration and effective supervision and regulating of public services."

While the jurisprudence of this Court has maintained the distinction between taxes and regulatory fees, legislative intent is clear that these fees collectible by the Public Service Commission were imposed to raise revenue. It is well to note, in this connection, that under the mandatory Act (Section 40, paragraph 1), the Public Service Commission is not merely authorized but ordered to collect the fees prescribed therein:

"The Commission is authorized and ordered to charge and collect from any public service or applicant as the case may be, the following fees " (Italics supplied)

Petitioners aver that regarded as taxes, the fees prescribed in Section 40, as amended, are confiscatory and violative of substantive due process; they have not submitted, however, evidentiary data to substantiate this point. That the amounts to be collected are large do not, per se alone, suffice to establish their confiscatory character.

Upon the other hand, we are in accord with petitioner operators that the Commission was in error in collecting the fees in question on the basis of the original cost of their property and equipment without due allowance for depreciation. Once said properties and equipment are in use, depreciation sets in, and renders the original cost a theoretical figure that does not correspond to reality; and as a matter of fact, the computation of the reasonable profits that operators are allowed to make, and the fixing of the rates that they can charge to the public, are based on actual value of their properties and equipment in use, not the original cost thereof. In the absence of clear specification in the statute that the fees imposed by Republic Act No. 3792 are to be determined on the basis of original cost of acquisition, justice and equity demand that the fees be calculated on the present values^[2] of the operator's property and equipment at the time the fees become payable. It is not to be overlooked that the fees in question are payable yearly, for an indefinite period; and it would be unreasonable to assume that the Legislature intended the fees to be based, year after year, on a cost that would become more and more distant from reality as

the years pass by. At least, such intendment is not be assumed in the absence of clear expression to the effect in the law.

The Solicitor General avers that depreciation allowance would complicate the computation of the fees due from the operators. We fail to see why it should do so, when under the Public Services Act (Commonwealth Act No. 136, as amended) it is the Commission that sets and determines the "proper and adequate rates of depreciation of the property of any public service" and "each public service shall conform its depreciation accounts to the rates so determined and fixed" (Section 16). In any event, the necessity of increased effort in the computation of a fee or tax is not acceptable excuse for selling the rates thereof in disregard of justice to the parties, which in every case is the overriding consideration.

Modified in the sense that the supervision fees payable under Republic Act No. 3792 should be computed upon present values of property and equipment in use. as above stated, the appealed resolution of the Public Service Commission is affirmed. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee and Villamor, JJ., concur. Barredo and Makasiar, JJ., did not take part.

[1] Docketed as Case No. 65-196

[2] *Inchausti Steamship Co. vs. Public Utility Conim.*, 42 Phil. 621.

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