

ROQUE ESCAÑO, PETITIONER, VS. RODRIGO C. LIM, RESPONDENT.*G. R. No. L-20737. May 31, 1965*

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

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The petitioner, Roque Escaño, had applied to the Public Service Commission, in its Case No. 116808, for authority to operate ten (10) taxicab units for Cagayan de Oro City and from the said city to any point in the island Mindanao. Over the opposition of the respondent, C. Lim, a taxicab operator in the territory applied for, the Commission, on 5 May 1959, granted the petitioner's application.

Apart from the foregoing application, the petitioner, and separately with his wife, Asuncion II. Escaño, had been granted other certificates of public convenience to TPU and AC units. The wife holds the active of the business because her husband, Roque Escaño, is a blind man.

On motion for reconsideration by oppositor Lim, however, the Commission, on 20 May 1959, set aside the said decision of 5 May 1959 for the reason that at that time the oppositor had not completed adducing his evidence before the municipal judge of Cagayan de Oro. Said judge was commissioned by the Commission to receive the evidence by deposition.

Meantime, on 8 September 1959, petitioner Escaño filed another petition to operate the proposed service, pending final determination of his application. On 28 September 1959, the Commission approved the operation of three units.

When the evidence of the parties before the municipal judge was completed (transcribed from tape-recorded testimonies to which manner no objection was raised), and the parties rested their respective cases, the Public Service Commission, on 21 December 1959, revived its earlier decision of 5 May 1959 and authorized the applicant to operate seven (7) more taxi cabs to complete the ten (10) units.

But again, oppositor Lim moved, on 21 January to reconsider the order of 21 December 1959 on the ground that petitioner Escaño is not qualified to operate the service applied for by him. In his motion for reconsideration, Lim specified the charges made against Escaño and his wife by Public Service Inspector Leoncio Paredes. These charges refer to the complaints, Nos. 77920-C and 77921-C, instituted before the Commission on 16 February 1959 for violation of certificates in the TPU and & services. In a joint decision on 24 March 1960 of the two cases, the Commission found the Escaños guilty allowing third persons to operate their vehicles under their certificates for a fee, and forthwith cancelled their & TPU and AC certificates; but the Escanos filed a motion for reconsideration of the decision and said motion not been resolved.

Acting on Lim's motion for reconsideration of 21 January 1960, the three commissioners then composing the Commission voted two in favor (Commissioners Galang and Prieto) and one against (Commissioner Aspillera) the grant of the motion in separate opinions dated 30 March 1960, 1 April 1960, and 22 March 1960, respectively. On 12 April 1960, applicant Escaño moved to reconsider the majority opinion.

Because, in the meantime, Republic Act 2077 had increased membership in the Public Service Commission from three to five, and the two additional Commissioners had not been appointed, no action could be taken on Escaño's motion to reconsider. He then moved to be allowed to provisionally operate the seven (7) taxicabs that he had acquired prior to the revocation of his permit. By order of 23 December 1960 (Annex N, Appellant's Brief), the provisional authority was granted, the Commission taking into account the damages suffered by the applicant through the suspension of the operation of the taxicabs he had acquired, the large capital invested, and "that there is no certainty when the motion for reconsideration can be finally acted upon." This order was issued by the three Qualified and then acting Commissioners, Aspillera, Galang and Prieto, the last two being the very ones who had Previously voted to recall the 1959 decision granting Escaño's application to operate his taxis.

The composition of the Commission was thereafter completed on 30 July 1962, and it issued the following order, finally resolving adversely Escaño's motion for reconsideration (with one commissioner dissenting):

"Considering that the application filed by Roque Escaño to operate a taxicab service dated June 16, 1958 was denied by a majority the Commissioners, as may be noted in the separate opinion rendered by Commissioner Alejandro A. Galang dated March 30, 1960, and the opinion of Associate Commissioner Gabriel P. Prieto dated April 1, 1960, wherein it is clearly stated that the decision Commission dated May 5, 1959 as well as the order of December 21, 1959 should be cancelled and set aside; and considering furthermore that said opinions are based on the fact that in Case No. 77920-C, the applicant Roque Escaño, was found guilty of a serious violation of his certificates and was punished accordingly in accordance with law, and considering furthermore, that no evidence was presented by the applicant to prove that such a finding of fact is not supported by the evidence of record, this Commission believes that it has no valid reason to disturb the findings of fact of Commissioners Galang and Prieto.

"Wherefore, the motion for reconsideration filed by applicant dated 12 April 1960 is hereby DENIED, and accordingly, the provisional permit authorized by order of this Commission dated December 23, 1960, is Cancelled and Revoked.

"Applicant is therefore required to surrender the Taxi identification plates issued for his taxicabs authorized under said provisional permit within twenty (20) days from receipt hereof. If he fails to do so, the Motor Vehicles Registrar of Cagayan de Oro City is hereby directed to order the recall or confiscation of the same."

A motion by Escaño for the reconsideration of the above order was unanimously denied on 12 December 1962, Not satisfied with the foregoing orders of 30 July 1962 and 12 December 1962, petitioner Escaño appealed to this Court.

We find the appeal to be meritorious, and agree with petitioner-appellant that it was abuse of discretion for the majority of the Commission to penalize him with revocation of his taxicab permit upon the basis of a non-final conviction of an alleged violation of another and distinct certificate of convenience. It is not disputed that the order of 24 March 1960 finding Escaño guilty of having willfully violated the conditions of his TPU and AC certificates had not yet become final, since petitioner's motion to reconsider the same was still unacted upon, and said could be subject to review by the Supreme Court, Furthermore, according to the dissenting opinion of Commissioner Aspillera (Petition, Annex P), the said decision of conviction "was promulgated without sufficient notice to Escaño, who was not given an opportunity to be nor to present his evidence." This statement is nowhere contradicted in the record, and, if true, the conviction could even be void for lack of due process (cf. *Olongapo Jeepney Operators vs. PSC*, L-20699, 26 February 1965).

At any rate, not being final, said conviction could not constitute a reasonable basis for revoking a totally distinct certificate of public convenience to operate a taxi service, especially because the nature of this service is different from the TPU and AC services the conditions of which are alleged to have been violated. The appealed order of

the Commission thus imposes a second and distinct penalty for which we find no justification. While a violation of the conditions of a certificate entitles the Commission to revoke the violated certificate, it was never held that such violation alone could also result in the forfeiture of a totally different certificate.

Respondent Lim charges that the decision of 1 April 1960 revoking Escaño's taxicab permit had become final because petitioner's motion for reconsideration against the order of 30 July 1962, in reality, was a second motion, since the last order already denied Escaño's first motion for reconsideration of 12 April 1960. We do not agree. It is noteworthy that after petitioner Escaño's motion of 12 April 1960, seeking reconsideration of the revocation of his taxicab permit, Escaño was authorized by the Commission, on 30 December 1960, to operate his second batch of seven taxicabs; this authority, in effect, suspended the order of revocation of the certificate. Hence, the order of 30 July 1962, while denying Escaño's first Motion to reconsider, actually was revoking also the order of 30 December 1960. This added feature entitled Escaño to ask for reconsideration anew.

Wherefore, the appealed orders of 30 March and 1 April 1960, as well as the order of 30 July 1962 revoking the taxi certificate of Roque Escaño, are reversed and set aside. Costs against respondent Rodrigo C. Lim.

Bengzon, C. J., Bautista Angelo, Barrera, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

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