

EVERETT STEAMSHIP CORPORATION, PETITIONER, VS. FEDERICO M. CHTJAHIONG AND THE PUBLIC SERVICE COMMISSION, RESPONDENTS.

G. R. No. L-2933. September 26, 1951

Ponente: BENGZON, J.

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BENGZON, J.:

This alternative petition either for review of an order of the Public Service Commission or for certiorari to annul the same poses the question of first impression whether or not said Government institution may validly require a common carrier to refund transportation charges collected by it in excess of the rates previously fixed by the Commission.

The controversy arose upon a complaint submitted by Federico M. Chua Hiong of Manila against the Everett Steamship Corporation, operating a number of vessels in the inter-island trade. Complainant alleged that for certain shipments of logs, the steamship collected from him a total of P40,490 exceeding the authorized rates by the amount of P18,064.75.

"It appears from the evidence" said the Commission after a hearing "that complainant is a lumber dealer in the City of Manila with a branch office in the port of Aparri, Cagayan; that complainant used to load lumber in the boats of respondent from said port of Aparri to Manila; that from July 6, 1946 to April 2, 1948, complainant actually loaded 1,939.90 cubic meters of lumber of different sizes in the boats of respondent; that respondent collected for said load the sum of P40,490 as freight charge, and that on the basis of the special commodity rate of P8.50 per cubic meter plus 35 per cent authorized by the Commission, respondent should have collected only the sum of P22,425.25.

The special commodity rate of P8.50 per cubic meter is equivalent to the basic rate of P6.80 prior to the War plus the surcharge of 25 per cent also authorized before the War, which rate of P8.50 was further authorized to be increased by 35 per cent on July 29, 1946 in Case No. 12113. The two increases of 25 per cent and 35 per cent are in effect equivalent to an increase of approximately 70 per cent of the basic rate of P6.80 per cubic meter. The present rate as already increased is P8.50 per cubic meter for all shipowners including respondent.

The evidence further shows that complainant did not know of the existing rates authorized the respondent's vessels; that he came to know about them only on April 15, 1948, when he received the reply of the Commission, Exhibit "G", to his letter of January 9, 1948, informing him of the rates authorized the respondent and of the difference between his payments and the payments he ought to have made for the shipments specified in said letter."

On the basis of the foregoing findings' the Commission imposed upon the Steamship a fine of P200 and ordered it to refund to the complainant the sum of P18,064.75 representing the overcharges.

The petitioner maintains that: (a) it has not demanded payment in excess of the authorized rates; (b) the

complainant's remedy has prescribed; (c) the Commission has no legal power or jurisdiction to compel the carrier to repay the overcharges and (d) anyway the whole proceeding is void because, in violation of law, the Commission entrusted the reception of evidence to one Tomas Canehela, an assistant to the Public Service Commissioner.

A. There seems to be no question that the transported materials required for application of the so-called special commodity rates binding on the petitioner. Measured by those rates, the charges were excessive. Petitioner, however, pleads that inasmuch as upon application of the De la Rama Steamship Co. those rates were temporarily suspended in an order authorizing such steamship line to collect ordinary rates (which are higher) the petitioner may also impose such "ordinary" rates. Otherwise petitioner avers, there would be an instance of discrimination. Petitioner then proceeds to demonstrate that applying those "ordinary rates" there was no excessive collection.

The argument must be overruled. The rates allowed to De la Rama were applicable to its vessels alone, as the Commission says. In permitting those rates, the Commission must have considered special circumstances favoring the De la Rama Steamship Co. The mere fact that for certain commodities some vessels are allowed to charge more than others does not constitute discrimination; because the difference might be due to disparity of operating and maintenance expenses, to hazard of the routes, or to other factors taken into account in determining the proper rates to be exacted by a particular public utility.

B. On the second point, it appears that the complaint was filed on June 2, 1948. According to the Commission's findings the complainant came to know the violations committed by the respondent only on April 15, 1948 when he received a reply to his letter of inquiry addressed to the Commission, informing him of the rates the respondent had been authorized to demand. The complaint was therefore submitted within the sixty-day period prescribed by section 28 of Commonwealth Act No. 146, or the greater period of one hundred and eighty days, inasmuch as such period does not begin to run until the violation is discovered (*Pangasinan Transportation Co. Inc. vs. Phil. Farming Co.*, 46 Off. Gaz., Supp. 1, 55).[*]

C. The third proposition of the petitioner is that the Public Service Commission has no legal authority to order the carrier or public service to return freight overcharges. It invokes our decisions holding that said Commission possesses only such powers as are expressly or impliedly conferred on it by constitutional or statutory provisions and such incidental powers as may be requisite to carry out those granted. Those decisions are good law, and we see no reason to depart from them.

However, when the Commission is empowered by law to fix the rates of freight which vessels may charge, it is implied that the vessels may not legally demand more than those rates. The petitioner has collected more than those rates, and profited to the tune of P18,064.75. It is of course liable to a maximum fine of P200 which the Commission is expressly empowered to impose under section 21. But if that is all the sanction for violation of the rate schedule, a situation would arise placing the Commission in a ridiculous predicament. Surely, after pocketing more than eighteen thousand pesos (P18,064.75) the carrier could very well laugh when ordered to pay P200. Does the law contemplate such untenable position? Certainly not. Section 17 of Commonwealth Act No. 146 expressly grants the Commission power to enforce compliance with any of its directives. To insure compliance with its order fixing rates, the Commission believes it should have power to direct a reparation or the return of the excessive rates collected. It has exercised the power in previous cases. That view does not seem to be unreasonable. As a matter of fact in the United States it is not unusual for Public Service authorities to require the refund of overcharges collected.

- *United Gas Public Service Co. vs. State et al*, (Tex.) 89 S. "W. (2d) p. 1094 at p. 1104. "The rule is settled that a public utility commission has the power to make its rate order retroactively effective as of any date after it has

actually acquired jurisdiction of the cause, and, in consequence, may order the refund of excessive rates paid from and after the retroactively effective date of the rate order." See *State ex rel. Eoynton vs. Public Service Commission of Kansas*, P. U. E. 1933a, 415; *State ex rel. Kansas City Terminal It. Co. vs. Public Service Com.* 308 Mo. 359, 272 S. YV. 957-; 111. Cent. E. R. Co. vs. Vest (D. C.) 39 F. (2d) 658.

- (Ark.) "The Department, upon exercising its power to make its rate order effective on any date prior to its issuance subsequent to acquiring jurisdiction, can require a public utility to refund any amounts which it may have collected in excess of the new rate between its effective date and that of its issuance." *Re Arkansas Power & Light Co.* (1942) 4G P. TJ. R. (NS) 226.

- (Cal.) "The Commission may order a reparation award only when it has found, after investigation, that the public utility has charged an unreasonable, excessive, or discriminatory amount." *Mettler vs. Southern P. Co.* (1941) 40 P. TJ. R. (NS) 405.

- (Pa.) "The Commission may not rest quiescent and permit a proceeding pending before it to be used for the collection of money by those not; morally entitled thereto; and its duty is to advise the public that if reparations are due to consumers the Commission will order them paid in accordance with, law, and that it is not necessary for any consumer to divide with anyone else that which is legally due him." *Public Utility Commission vs. Lipko* (1940) 32 P. U. E. (NS) 268.

- (Colo.) "The power conferred upon the Commission, p. 56 of Public Utilities Act, to award reparation of excessive or discriminatory charges made by a public utility, is inherent in its power to regulate and supervise the rates of such utility." *Copeland Ore Sampling Co. vs. Midland Terminal E. Co.* P. U. R. 1917F, 182.

- (La.) "The power and authority of the Commission under its rule (No. 68) with respect to refunding overcharges on freight movements within the state adopted pursuant to the provision of the state Constitution (1921) is superior to that of a law (Act 223 of 1914) fixing a prescriptive period of two years as a bar to the recovery of overcharges." *Howard Kenyon Dredging Co. vs. Louisiana R. & Nav. Co.* P. XJ. E. 1928E, 511.

- (Okla. Sup. Ct.) "The Commission is vested with the power of a court of record to determine: First, the amount of refund due in all cases where any public service corporation, person, or firm, as defined by the Constitution, charges an amount for any service rendered by such public service corporation, person, or firm, in excess of the lawful rate in force at the time such charge was made, or may thereafter be declared to be the legal rate which should have been applied to the service rendered; and, second, to whom the overcharge should be paid." Section 1, Chap. 10, Laws 1913. *Atchison, T. & S. F. E. Co. vs. State*, P. U. E. 1922D, 450, 85 Okla. 223, 206 Pac, 236; *Muskogee Gas & E. Co. vs. State*, P. U. E. 1922E, 514, 86 Okla. 58, 206 Pac, 242.

There appears to be no cogent reason to regard this power as beyond the scope of the administrative and quasi-judicial function of the Public Service Commission, because the question involved in a proceeding to demand reparation would merely be, whether the rate charges were excessive, and whether such charges had been actually received, questions which may properly be handled with its quasi-judicial facilities.[1] If the order to return is not complied with, the Commission may choose either to revoke any acquired right of the offending public service,[2] or else advise the offended party to initiate action in the courts to compel specific performance of such order. Hence, there is no merit in the third proposition of the petitioner.

D. The fourth is still less meritorious. It does not appear that at any stage of the proceedings in the Commission the petitioner has suggested or indicated any opposition to the introduction of evidence before the Commission's agent designated to receive the evidence. On the contrary it presented such proofs as it deemed convenient. And only when the findings turned out to be adverse did it choose to object on the ground that the proceeding was

invalid due to such procedural defect. Applying our views in *La Paz Ice Plants contra Comision de Utilidades Publicas*, 89 Phil., 109 we have to dismiss this belated claim. The doctrine must be reiterated that in the conduct of its hearings and investigations the Commission, is not strictly bound by the rules of procedure established for judicial litigations (*Batangas Transportation Co. vs. Ochoa*, G. R. No. 35345, April 27, 1932, *Public Service Act Annotated by Almario*) nor by the technical rules of legal evidence (Sec. 29 *Public Service Law*).

Wherefore, finding no prejudicial error in the order under review, we hereby deny the petition.

With costs.

Paras, C. J., Feria, Pablo, Padilla, Tuason, Reyes, Jugo, and Bautista Angelo, JJ., concur.

[*]81 Phil., 273.

[1] Some states deny such power to their public service officials. Yet our law discloses no tendency to line up with them. On the contrary it points in the other direction, if we are to judge from its 'section 17 (d).

[2] Section 16 (N) *Public Service Law*.

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