

VIGAN ELECTRIC LIGHT COMPANY, INC., PETITIONER, VS. THE PUBLIC SERVICE COMMISSION, RESPONDENT.

G.R. No. L-19850. January 30, 1964

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an original action for certiorari to annul an order of respondent Public Service Commission. Upon the filing of the petition and the submission and approval of the corresponding bond, we issued a writ of injunction restraining said respondent from enforcing the order complained of.

Republic Act No. 316, approved on June 19, 1948, granted petitioner Vigan Electric Light Company, Inc., a franchise to construct, maintain and operate an electric light heat and/or power plant for the purpose of generating and distributing light, heat and/or power, for sale within the limits of several municipalities of the province of Ilocos Sur. Accordingly, petitioner secured from respondent, on May 31, 1950, a certificate of public convenience to render electric light, heat and/or power services in said municipalities and to charge its customers and/or consumers the following rates:

"Flat rate

1—20 watt bulb per month

P2.30

1—25 watt bulb per month

3.00

1—40 watt bulb per month

4.50

1—50 watt bulb per month

5.50

1—60 watt bulb per month

6.50

1—75 watt bulb per month

7.50

1—80 watt bulb per month

8.00

1—100 watt bulb per month

9.00

1—150 watt bulb per month

13.00

1—200 watt bulb per month

17.00

"Meter Rate

For the first 15 w. hrs P0.40

For the next 35 w. hrs .30

For the next 50 w. hrs .25

For all over 100 w. hrs .20

Minimum Charges P6.00 per month for connection of 200 watts or less; plus P0.01 per watt per month for connection in excess of 200 watts.

"Temporary Rate

P0.01 per watt per night"

On May 22, 1957, petitioner, acting with respondent's approval, entered into a contract for the purchase of electric power and energy from the National Power Corporation, for resale, in the course of the business of said petitioner, to its customers, to whom, in fact, petitioner resold said electric power and energy, in accordance with the above schedule of rates. About five (5) years later, or on January 16, 1962, respondent advised petitioner of a conference to be held on February 12, 1962 for the purpose: of revising its authorized rates. Soon thereafter, petitioner received a letter of respondent informing the former of an alleged letter-petition of "Congressman Floro Crisologo and 107 alleged residents of Vigan, Ilocos Sur", charging the following:

"We also denounce the sale of Two Thousand (2,000) Electric Meters in blackmarket by the Vigan Electric Light Company to Avegon Co., as anomalous and illegal. Said electric meters were imported from Japan by the Vigan Electric Light Company in behalf of the consumers of electric current from said electric company. The Vigan Electric Light Company has commercialized these privileges which properly belongs to the people.

"We also report that the electric meters in Vigan used by the consumers had been installed in bad faith and they register excessive rates much more than, the actual consumption."

and directing the petitioner to comment on these charges. In reply to said communications, petitioner's counsel wrote to respondent, on February 1, 1962, a letter asking that the conference scheduled for February 12 be postponed to March 12, and another letter stating inter alia:

"In connection therewith, please be informed that my client, the Vigan Electric Light Co., Inc., has not had any dealing with the Avegon Co., Inc., relative to the 2,000 electric meters mentioned in the petition. Attached hereto as Annex '1' and made an integral part hereof is a certification to that effect by Avegon Co., Inc.

"Furthermore, as counsel for Vigan Electric Light Co. Inc., I wish to inform this Honorable Commission that the charge that said company installed the electric meters in bad faith and that said meters register excessive

rates could have no valid basis because all of these meters have been inspected, checked, tested and sealed by your office.

On March 15, 1962, petitioner received a communication from the General Auditing Office notifying him that one Mr. Cesar A. Damole had "been instructed to make an audit and examination of the books and other records of account" of said petitioner, "under the provisions of Commonwealth Act No. 325 and in accordance with the request of the Public Service Commission contained in its letter dated March 12, 1962", and directing petitioner to cooperate with said Mr. Damole "for the successful accomplishment of his work". Subsequently, respondent issued a subpoena duces tecum requiring petitioner to produce before the former, during a conference scheduled for April 10, 1962, certain books of account and financial statements specified in said process. On the date last mentioned petitioner moved to quash the subpoena duces tecum. The motion was not acted upon in said conference of April 10, 1962. However, it was then decided that the next conference be held on April 30, 1962, which was later postponed to May 21, 1962. When petitioner's representatives appeared before respondent, on the date last mentioned, they were advised by the latter that the scheduled conference had been cancelled, that the petition to quash the subpoena duces tecum had been granted, and that, on May 17, 1962, respondent had issued an order, from which we quote;

"We now have the audit report of the General Auditing Office dated May 4, 1962, covering the operation of the Vigan Electric Light Co., Inc. in Vigan, Bantay and Caoayan Ilocos Sur, for the period from January 1 to December 31, 1961. We find from the report that the total invested capital of the utility as of December 31, 1961 entitled to return amounted to P118,132.55 and its net operating income for the rate purposes of P53,692.34 represents 45.45% of its invested capital; that in order to earn 12% per annum, the utility should have a computed revenue by rates of P182,012.78; and that since it realized an actual revenue by rates of P221,529.17, it had an excess revenue by rates of P39,516.39, which is 17.84% of the actual revenue by rates and 33.45% of the invested capital. In other words, the present rates of the Vigan Electric Light Co., Inc. may be reduced by 17.84% or in round figure by 18%.

"Upon consideration of the foregoing, and finding that the Vigan Electric Light Co., Inc. is making a net operating profit in excess of the allowable return of 12% on its invested capital, we believe that it is in the public interest and in consonance with Section 3 of Republic Act No. 3043 that reduction of its rates to the extent of its excess revenue be put into effect immediately,

"Wherefore, Vigan Electric Light Co., Inc. is hereby ordered to reduce the present meter rates for its electric service effective upon the billing for the month of June, 1962, to wit:

Meter Rate—24-Hour Service

For the first 15 kwh per month at P0.328 per kwh

For the next 35 kwh per month at P0.246 per kwh

For the next 50 kwh per month at P0.205 per kwh

For all over 100 kwh per month at P0.164 per kwh

Minimum Charge: P4.90 per month for connection of 200 watts or less plus 0.01 watt per month, for connection in excess of 200 watts.

Temporary Lighting

P0.01 per watt per night Minimum Charge: P1.00 Billings to customers shall be made to the nearest multiple of five centavos. The above rates may be revised, modified or altered at anytime for any just cause and/or in the public interest."

Soon later, or on June 25, 1962, petitioner herein instituted the present action for certiorari to annul said order of May 17, 1962, upon the ground that, since its corporate inception in 1948, petitioner "never was able to give and

never made a single dividend declaration in favor of its stockholders" because its operation from 1949 to 1961 had resulted in an aggregate loss of P118,851.523; that in the conferences above mentioned petitioner had called the attention of respondent to the fact that the latter had not furnished the former a "copy of the alleged letter-petition of Congressman Crisologo and others"; that respondent then expressed the view that there was no necessity of serving copy of said letter to petitioner, because respondent was merely holding informal conferences to ascertain whether petitioner would consent to the reduction of its rates; that petitioner objected to said reduction without a hearing, alleging that its rates could be reduced only if proven by evidence validly adduced to be excessive; that petitioner offered to introduce evidence to show the reasonableness of its aforementioned rates, and even the fairness of its increase; that petitioner was then assured that it would be furnished a copy of the aforementioned letter-petition and that a hearing would be held, if a reduction of its rates could not be agreed upon; that petitioner had not even been served a copy of the auditor's report upon which the order complained of is based, that such order had been issued without notice and hearing; and that, accordingly, petitioner had been denied due process.

In its answer respondent admitted some allegations of the complaint and denied other allegations thereof, particularly the conclusions drawn by petitioner. Likewise, respondent alleged that it granted petitioner's motion to quash the aforementioned subpoena duces tecum because the documents therein referred to had already been audited and examined by the General Auditing Office, the report of which was on file with said respondent; that the latter had directed that petitioner be served a copy of said report; and that, although this has not, as yet, been actually done, petitioner could have seen and examined said report had it really wanted to do so. By way of special defenses, respondent, moreover, alleged that the disputed order had been issued under its delegated legislative authority, the exercise of which does not require previous notice and hearing; and that petitioner had not sought a reconsideration of said order, and had, accordingly, failed to exhaust all administrative remedies.

In support of its first special defense, respondent maintains that rate fixing is a legislative function; that legislative or rule-making powers may constitutionally be exercised without previous notice or hearing; and that the decision in *Ang Tibay vs. Court of Industrial Relations* (69 Phil., 635)—in which we held that such notice and hearing are essential to the validity of a decision of the Public Service Commission—is not in point because, unlike the order complained of—which respondent claims to be legislative in nature—the *Ang Tibay* case referred, to a proceeding involving the exercise of judicial functions.

At the outset, it should be noted, however, that, consistently with the principle of separation of powers, which underlies our constitutional system, legislative powers may not be delegated except to local governments, and only as to matters purely of local concern (*Rubi vs. Provincial Board*, 39 Phil., 660; *U.S. vs. Heinzen*, 206 U.S. 370). However, Congress may delegate to administrative agencies of the government the power to supply the details in the execution or enforcement of a policy laid down by a law which is complete in itself (*Calalang vs. Williams*, 70 Phil., 726; *Pangasinan Transp. Co. vs. Public Service Commission*, 70 Phil.1, 221; *People vs. Roaenthal*, 68 Phil., 328; *People vs. Vera*, 65 Phil., 56; *Cruz vs. Youngberg*, 56 Phil., 234; *Alegre vs. Collector of Customs*, 53 Phil., 394; *U.S. vs. Ang Tang Ho*, 43 Phil., 1; *Schechter vs. U.S.*, 295 U.S., 495; *Mulford vs. Smith*, 307 U.S., 38; *Bowles vs. Willingham*, 321 U.S. 503). Such law is not deemed complete unless it lays down a standard or pattern sufficiently fixed or determinate, or, at least, determinable without requiring another legislation, to guide the administrative body concerned in the performance of its duty to implement or enforce said policy (*People vs. Lim Ho*, 100 Phil., 887; *Araneta vs. Gatmaitan*, 101 Phil., 328; *Cervantes vs. Auditor General*, 91 Phil., 3591; *Philippine Association of Colleges vs. Secretary of Education*, 97 Phil., 806; 51 Off. Gaz., 6230; *People vs. Arnault*, 92 Phil., 252; 48 Off. Gaz., 4805; *Antamok Gold Fields vs. Court of Industrial Relations*, 68 Phil., 340; *U.S. vs. Barrias*, 11 Phil., 827; *Yakus vs. White*, 321 U.S., 414; *Ammann vs. Mallon*, 332 U.S., 245; *U.S. vs. Rock Royal Coop.*, 307 U.S., 533; *Mutual Film Corp. vs. Industrial Commission*, 276 U.S. 230).

Otherwise there would be no reasonable means to ascertain whether or not said body has acted within the scope of its authority, and, as a consequence, the power of legislation would eventually be exercised by a branch of the Government other than that in which it is lodged by the Constitution, in violation, not only of the allocation of powers therein made, but, also, of the principle of separation of powers. Hence, Congress has not delegated, and cannot delegate legislative powers to the Public Service Commission.

Moreover, although the rule-making power and even the power to fix rates—when such rules and/or rates are meant to apply to all enterprises of a given kind throughout the Philippines—may partake of a legislative character, such is not the nature of the order complained of. Indeed, the same applies exclusively to petitioner herein. What is more, it is predicated upon the finding of fact—based upon a report submitted by the General Auditing Office—that petitioner is making a profit of more than 12% of its invested capital, which is denied by petitioner. Obviously, the latter is entitled to cross-examine the maker of said report, and to introduce evidence to disprove the contents thereof and/or explain or complement the same, as well as to refute the conclusion drawn therefrom by the respondent. In other words, in making said finding of fact, respondent performed a function partaking of a quasi-judicial character, the valid exercise of which demands previous notice and hearing.

Indeed, sections 16 and 20 (a) of Commonwealth Act No. 146 explicitly require notice and hearing. The pertinent parts thereof provide:

"Sec. 16. The Commission shall have the power, upon proper notice and hearing in accordance with the rules and provisions of this Act, subject to the limitations and exceptions mentioned and Saving provisions to the contrary:

* * * * *

"(c) To fix and determine individual or joint rates, tolls, charges classifications, or schedules thereof, as well as commutation, mileage, kilometrage, and oilier special rates "which shall be imposed, observed, and followed thereafter by any public service: Provided, That the Commission may, in its discretion, approve rates proposed by public services provisionally and without necessity of any hearing; but it shall call a hearing thereon within thirty days thereafter, upon publication and notice to the concerns operating in the territory affected: Provided, further, that in case the public service equipment of an operator is used principally or secondarily for the promotion of a private business, the net profits of said private business shall be considered in relation with the public service of such operator for the purpose of fixing the rates.

"Sec. 20. Acts requiring the approval of the Commission.—Subject to established limitations and exceptions and saving provisions to the contrary, it shall be unlawful for any public service or for the owner, lessee or operator thereof, without the approval and authorization of the Commission previously had—

"(a) To adopt, establish, fix, impose, maintain, collect or carry into effect any individual or joint rates, commutation, mileage or other special rate, toll, fare, charge, classification or itinerary. The Commission shall approve only those that are just and reasonable and not any that are unjustly discriminatory or unduly preferential, only upon reasonable notice to the public services and other parties concerned, giving them a reasonable opportunity to be heard, * * *." (Italics supplied.)

Since compliance with law must be presumed, it should be assumed that petitioner's current rates were fixed by respondent after proper notice and hearing. Hence, a modification of such rates cannot be made, over petitioner's objection, without such notice and hearing, particularly considering that the factual basis of the action taken by respondent is assailed by petitioner. The rule applicable is set forth in the American Jurisprudence in the following language:

"Whether notice and a hearing is proceedings before a public service commission are necessary depends chiefly upon statutory or constitutional provisions applicable to such proceedings, which make notice and

hearing, prerequisite to action by the commission, and upon the, nature and object of such proceedings, that is, whether the proceedings, are on the one hand, legislative and rule-making in character, or are, on the other hand, determinative and judicial or quasi-judicial, affecting the rights and property of private or specific persons. As a general rule, a public utility be afforded some opportunity to be heard as to the, propriety and reasonableness of rates fixed for its services by a public service commission." (43 Am. Jur., 716; *Italics supplied.*)

Wherefore, we hold that the determination of the issue involved in the order complained of partakes of the nature of a quasi-judicial function and that, having been issued without previous notice and hearing, said order is clearly violative of the due process clause, and, hence, null and void, so that a motion for reconsideration thereof is not an absolute prerequisite to the institution of the present action for certiorari. (*Ayson vs. Republic*, 96 Phil. 271; 50 Off. Gaz., 5810). For this reason, and considering that said order was being made effective on June 1, 1962, or almost immediately after its issuance (on May 17, 1962, although petitioner was not notified until May 21, 1962), we find that petitioner was justified in commencing this proceedings without first filing said motion (*Guerrero vs. Carbonell*, L-7180, March 15, 1955).

Wherefore, the writ prayed for is granted and the preliminary injunction issued by this Court hereby made permanent. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Paredes, Dizon, Regala and Makalintal, JJ., concur.

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