

EASTERN TAYABAS BUS CO., INC., PETITIONER, VS. PUBLIC SERVICE COMMISSION, THE HON. ENRIQUE MEDINA, ATTY. JESUS K. CALDERON, AND BATANGAS LAGUNA TAYA-BAS BUS CO., INC., RESPONDENTS.

G.R. No. L-29623. November 28, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

The authority of respondent Public Service Commission to proceed further with a pending application for a regular bus service covering barrios and towns in the provinces of Camarines Sur and Norte up to the boundary of Pasay and Manila[1] is challenged in this certiorari and prohibition proceeding, filed on October 8, 1968, by petitioner Eastern Tayabas Bus Co., oppo-sitor in such application. The other respondents are Commissioner Enrique Medina, Jesus K. Calderon, an attorney in the Public Service Commission with the rank of public utility adviser, designated by respondent Medina to hear the aforesaid application and Batangas Laguna Tayabas Bus Co., the applicant for such bus service. The jurisdictional questions arose from the failure of respondent Public Service Commission to sustain a motion to dis-miss such application, or to hold its hearing in abeyance, in view of its alleged repugnancy to an existing memorandum Order of re-spondent Commission, declaring it to be its policy not to grant certificate of public convenience along certain lines including that covered by the application of respondent Batangas Laguna Tayabas Bus Co. It is the contention of petitioner that far respondent Commission to adopt a policy that is binding on one operator but not on others, when no distinction exists under the circumstances, is a manifestation of arbitrariness, sufficient to oust it of jurisdiction. Petitioner would likewise justify its plea for the nullification of the action taken on such application by respondent Commissioner on the ground that contrary to the applicable statutory provision[2] the hearing thereon as of the date of its petition had been conducted by respondent Jesus K. Calderon, a public utility adviser, who is not legally empowered to do so.

In a resolution of October 10, 1968, this Court required re-spondent to file an answer and upon petitioner posting a bond of P1,000.00 issued a preliminary injunction restraining respondent Commissioner from proceeding with the hearing or trial on the application, subject of the certiorari and prohibition proceeding. Such an answer was filed on November 4, 1968, seeking the dis-solution of the preliminary injunction and the dismissal of the petition for certiorari and prohibition. The petition was then set for argument on February 26, 1969 with petitioner being given a period of twenty five (25) days to submit a memorandum in lieu of oral argument and respondents arguing the case. With the filing of such memorandum on April 16, 1969, the matter was deemed submitted for decision.

It is our conclusion that the jurisdiction of respondent Public Service Commission has not been ousted by its failure to grant the motion to dismiss the questioned application or at least hold the hearing in abeyance. Nonetheless, the proceeding thus far conducted should be nullified, respondent Jesus K. Calderon, designated by respondent Public Service Commission to hear such application, not being included among the subordinate officials, who, under the applicable statutory provision, is empowered to do so.

1. In its application with respondent Public Service Commission, dated October 9, 1967, respondent Batangas Laguna Tayabas Bus Co., after alleging that it is the holder of various certificates of public convenience for the operation of bus services for passengers and freight in the provinces of Quezon, Laguna, Batangas, as well as portions of Camarines Norte, Cavite and Rizal to Manila and back and that there has been an increase in passenger traffic in the outlying barrios and towns in Quezon and Camarines Norte, proposed to operate regular services on certain lines from such places to the boundary of Pasay and Manila with the use of a total of seventy buses in accordance with a proposed time schedule therein set forth, with the statement that it was then operating seventy (70) equipment in various lines in the provinces of Quezon and Camarines Norte and therefrom to Manila and vice-versa, by virtue of a lease contract duly approved by the Commission with petitioner Eastern Tayabas Bus Company, the lease to expire on March 11, 1968. There was an assertion as to its financial capability to maintain and operate such service, demanded according to it by public necessity and convenience. It did admit that petitioner Eastern Tayabas Bus Co. has the right to operate such lines, but would justify its plea on the ground of such firm lacking sufficient equipment and of avoidance of monopoly.[3]

As could be expected, an opposition was filed by petitioner before us, Eastern Tayabas Bus Co., on November 15, 1967, stressing that such proposed services would be but a duplication, only under a different guise and schedule of trips, of the lines granted to it, that applicant was not financially capable of rendering and maintaining the service, that such application was pre-mature, and that the allegation as to a resulting monopoly was malicious and unfounded. A supplemental opposition was filed on November 28, 1967.[4]

On April 26, 1968, in the course of the hearing of such application, a motion to dismiss or to hold such hearing in abeyance was filed by the oppositor, now petitioner Eastern Tayabas Bus Co. It was there alleged that such application of respondent Batangas Laguna Tayabas Bus Co. was contrary to respondent Public Service Commission's Memorandum Order No. 2, Series of 1965, relied upon by the applicant itself in seeking the dismissal or the holding in abeyance of similar applications in the past thus giving rise to estoppel; that in any event, petitioner should be preferred as the prior operator in providing additional bus services; that it was false and untrue that applicant would have excess personnel and equipment on the expiration of its lease contract with petitioner; and that the claim that a monopoly would be created was "malicious and immoral." [5]

Then came the challenged order of September 23, 1968 by respondent Commission, which insofar as pertinent reads: "Upon consideration of the Motion to Dismiss and/or To Hold Hearing in Abeyance filed by oppositor in the above-entitled case dated April 26, 1968, and finding that said motion goes into the merits of the case, same is hereby [denied], without prejudice to considering same anew in the decision that may be rendered." [6]

1. It would thus appear that the fact of the denial of petitioner's motion and the reasons given for such action do not justify the charge hurled at respondent Commission that it was guilty of grave abuse of discretion. A study of the pleadings filed confirms the above conclusion.

It must be admitted of course that the petition as submitted, with its intimation of a denial of equal protection by respondent Commission indicative of favoritism shown to respondent applicant, possesses more than its share of plausibility. It did present its side in the most favorable light, no effort being spared to magnify alleged shortcomings of respondent Commission, even at the risk of slight exaggeration, yielding the definite impression that petitioner was the victim of arbitrary exercise of authority by respondent Commission. We were thus persuaded to give it due course, especially in view of the other ground alleged of a public official devoid of power to act discharging a function not conferred by law on him. What did turn out after the answer and the hearing is that based on the ground alone of such denial of the motion to dismiss or to hold in abeyance, no warrant exists for an affirmative response to this petition for certiorari and prohibition.

It must not be lost sight of that the jurisdiction to pass on the merit or lack of it of the application in question is unquestionably possessed by respondent Commission. It could be lost of course if in the process of adjudication, there is such arbitrariness or irregularity as to constitute a grave abuse of discretion. As pointed out, there is no such showing. The allegations in the petition call to mind the words of Frankfurter: "It is always easy to conjure up extreme and even oppressive possibilities in the exertion of authority." [7] That does not suffice. It must be shown that the procedure followed is tainted by improvidence or caprice. It would be an entirely different matter if there was a violation of any of what Justice Laurel referred to as the "fundamental and essential requirements of due process in trials and investigations of an administrative character." [8] Such is not the case, however.

The order of September 23, 1968 of respondent Commission complained of did not in reality deny the motion to dismiss or to hold the hearing in abeyance. It postponed final action on the matter. It expressly affirmed that the action taken by it was "without prejudice to considering the same anew in the decision that may be rendered." As of this stage then, it would be quite premature to visit condemnation on such order. To repeat, there is no justification for a finding that a grave abuse of discretion could be attributed to respondent Commission. What Justice Holmes one time said would appear to fit the occasion: "Now that the case has been more fully considered than it could be on the petition for certiorari it seems to us that the facts do not present the nice question upon which the petitioner wished us to pass." [9]

2. Insofar however as this petition is predicated on the un-authorized exercise of power of respondent Jesus K. Calderon, designated by respondent Commissioner Enrique Medina to hear the application, it rests on a firmer foundation. We cannot see, if such indeed were the case, how we can lend approval to what was done.

What do the facts show? It was alleged that at the hearing on September 26, 1968, counsel for petitioner upon learning for the first time that respondent Calderon, while a member of the bar, was not included in the legal division of respondent Commission and was not a division chief, moved for his inhibition or dis-qualification, invoking the appropriate statutory provision [10] as well as two decisions of this Court. [11] Respondent Calderon was deaf to such a plea and insisted on continuing with the hearing on the merits of such application, justifying such adamant stand on the view that while neither a member of the legal division nor a division chief, his being a public utility adviser placed him in the latter category. [12]

Respondents however would seek to blunt the force of the above allegations, while substantially admitting the truth of such facts, by characterizing petitioner's contention as to lack of authority as being "too technical, narrow, and restricted because the rank of Public Utility Adviser is even higher than that of an attorney of the legal division and equivalent in rank to a division chief of the Commission." They would argue further: "Inasmuch as he is a lawyer and qualified to receive evidence, he has the right and is justified in denying petitioner's Motion that he inhibit or disqualify himself from hearing the case." [13]

There the matter rests. On such facts, what is the applicable law? We turn to the controlling statutory provision. It reads: "The Commission may also, by proper order, authorize any of the attorneys of the legal division or division chiefs of the Commission, if they be lawyers, to hear and investigate any case filed with the Commission and in connection therewith to receive such evidence as may be material thereto. At the conclusion of the hearing or investigation, the attorney or division chief so authorized shall submit the evidence received by him to the Commission to enable the latter to render its decision." [14]

Respondent Calderon could not thus have been validly designated to conduct the hearing. The words of the statute leave no room for doubt. They convey only one meaning. The structure of the paragraph and the clarity of expression combine to deny power in respondent Commission to authorize any other official not falling within the class specified. The provision does not need any interpretation, only application. It denies any validity to the

attempted conferment of authority to respondent Calderon, who is manifestly outside its terms. To lend approval to his designation is to condone rather than to condemn a clear violation of the law. This Court cannot be a party to such a nullification of the statutory scheme.[15]

WHEREFORE, the petition for certiorari is granted nullifying all the proceeding thus far conducted by respondent Jesus K. Calderon and ordering respondent Commission to pass upon PSC Case No. 67-6672 strictly in accordance with law. With costs against respondent Batangas Laguna Tayabas Bus Co.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Sanchez, and Barredo, JJ., concur.

Makalintal, J., did not take part.

Ruiz Castro and Teehankee, JJ., in the result.

[1] Case No. 67-6672 of the Public Service Commission.

[2] Section 32, Republic Act No. 146 as amended by Republic Act No. 723 (1952).

[3] Petition, Annex A.

[4] Ibid, Annexes B and B-1.

[5] Ibid, Annex D.

[6] Ibid, Annex N.

[7] Federal Com. Com. v. Pottsville Broadcasting Co., 309 US 134, 146 (1940).

[8] Ang Tibay v. Court, 69 Phil. 635, 641-642 (1940).

[9] Beech-Nut Packing Co. v. P. Lorillard Co., 273 US 629, 633 (1927).

[10] Sec. 32 of Com. Act No. 146 as amended by Rep. Act No. 723 (1952).

[11] Silva v. Ocampo, 90 Phil. 777 (1952) and R. J. Enriquez & Co. v. Ortega, 92 Phil. 352 (1952).

[12] Petition, pars. IV-17 to IV-19 and pars. V-1 to V-7.

[13] Answer, I A.

[14] Section 32 of Com. Act No. 146 as amended by Rep. Act No. 723 (1952).

[15] Cf. People v. Mapa, 20 SCRA 1164 (1967); Pacific Oxygen & Acetylene Co. v. Central Bank, 22 SCRA 917 (1968); Dequito v. Lopez, 22 SCRA 1352 (1968); Padilla v. City of Pasay, 23 SCRA 1349 (1968); Garcia v. Vasquez, 27 SCRA 505 (1969); La Perla Cigar & Cigarette Factory v. Capapas, 28 SCRA 1085 (1969); Mobil Oil Philippines v. Diocares, L-26371, Sept. 30, 1969; Luzon Surety Co. Inc. v. Aguirre de Garcia, L-25659, Oct. 31, 1969.

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