

MARINDUQUE TRANSPORTATION CO., INC., AND THE ESTATE OF ESCOLASTICA LECAROS, PETITIONERS, VS. PUBLIC SERVICE COMMISSION, AUGUSTO S. AREVALO AND ANGEL AREVALO, RESPONDENTS.

G.R. No. L-18528. July 31, 1963

Ponente: BARRERA, J.

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BARRERA, J.:

This is an appeal by certiorari filed by herein petitioners, Estate of Escolastica Lecaroz and the Marinduque Transportation Co. Inc., as oppositors in Case No. 128737 before the Public Service Commission, seeking to set aside the decision of said Commission rendered on April 13, 1961, granting a certificate of public convenience to herein respondents Augusto S. Arevalo and Angel Arevalo.

The sole question raised in the present appeal is whether petitioners (oppositors below) have been deprived of their day in court and of their right to present their evidence. The record discloses that respondents Augusto S. Arevalo and Angel Arevalo, filed an application for the issuance of a certificate of public convenience to operate 7 jitneys for the transportation of passenger and freight on the line Buenavista-Balacanan via Casan and Boac in Marinduque. In the hearing of July 27, 1960, before a hearing officer of the respondent commission, opposition to said application was filed by herein petitioners. In the course of said hearing, upon motion by counsel for the respondents and without objection of counsel for petitioners, the hearing officer ruled in the following tenor:

"On motion of counsel for applicants, and no objection having been interposed by counsel for oppositors Estate of Escolastica Lecaroz and Marinduque Transportation Co., Inc., let an order be issued commissioning the Justice of the Peace of Buenavista, Marinduque to receive the depositions of the parties and their witnesses."

Thereupon an order in mimeographed form and signed by an associate Commissioner was issued on July 27, 1960, commissioning said Justice of the Peace to "receive on such date or dates as he may designate but not later than September 27, 1960, the testimony of such witnesses as the applicant and oppositors in the aforesaid case may desire to present * * *"

Accordingly, on August 22, 1960, respondents presented before the Justice of the Peace of Buenavista their testimonies and those of their witnesses, together with their documentary evidence. After the respondents rested their case, counsel for petitioners manifested that he had no witnesses at the time because said deposition had been made at the request of the respondents themselves and that he had only submitted to their request. Counsel for respondents, however, argued that the order of the Commission authorized the Justice of the Peace of Buenavista to receive the testimonies of such witnesses as the applicant and oppositors may desire. To this, counsel for petitioners replied that in the mimeographed form of the order to take deposition the word "oppositors" is generally included even without the oppositor requesting for the same. At any rate, counsel for petitioners manifested that he was going to file a formal motion to dismiss before presenting his evidence.

Almost a month thereafter—and petitioners having neither filed their motion to dismiss nor presented the deposition of their witnesses—respondents on September 14, 1960 filed with the Commission a manifestation in which, among others, they prayed that "the case be considered uncontested and that the Commission render its decision on the strength of the evidence already presented by applicants." Subsequently, on September 21, 1960, respondents applied for a provisional permit to operate the jitney line.

To the above motion and manifestation, petitioners replied on September 27, 1960, that they did not agree to the taking of the depositions of their own witnesses nor to the termination of the hearing of the case at Buenavista, Marinduque, because their witnesses resided in Manila and were going to testify before the Commission there; that if the presentation of the motion to dismiss was delayed, it was because to date they had not received the notice from the Justice of the Peace of Buenavista, Marinduque of the filing of the depositions with the Commission, as required by Sec. 21, Rule 18[1] of the Rules of Court, and upon which deposition the motion to dismiss was to be based. Petitioners then prayed that the Commission grant them at least ten (10) days within which to submit the motion to dismiss, the period to be computed from the time they shall have received said notice from the Justice of the Peace of Buenavista.

The Commission took no action on this motion of petitioners, but instead, and notwithstanding the manifestations of the petitioners, it issued on October 4, 1960 an order in the following language:

"The records shows that on motion of counsel for applicants and without objection of counsel for oppositors Estate of Escolastica Lecaroz and Marinduque Transportation Co., Inc., the Commission issued an order on July 27, 1960 authorizing the Justice of the Peace of Buenavista to take the depositions of such witnesses as the applicants and oppositors may desire to present not later than September 27, 1960; that pursuant to said order, applicants on August 27, 1960 (August 22) presented their testimonies and those of 2 other witnesses together with their documentary evidence after which they rested their case; that in the deposition proceedings counsel for oppositors had neither" filed said motion to dismiss nor presented the depositions of their witnesses. In view thereof, and it appearing prima facie from the depositions taken and filed that there is an urgent public need for the operation of a direct services line applied for * * *, the Commission, believes that applicants way be as there (they) are hereby granted a provisional permit to operate 2 jitneys on the line. * * *." (Italics supplied).

The Commission on the same day, October 4, 1960, also issued another order which reads as follows:

"For the purpose of giving oppositors another opportunity to present the deposition of their witnesses and for applicants to present the depositions of rebuttal witnesses, if any, the authority given to the Justice of the Peace of Buenavista, Marinduque, to take the deposition of the witnesses in this case is hereby extended to December 5, 1960, with the warning to the parties that no further extension will be allowed unless for good cause shown."

In view of this order, petitioners, on November 17, 1960 filed another motion dated November 17, 1960, although received by the Commission on November 22, 1960, reiterating" that since some of their witnesses were residing in Manila and the rest at Sta. Cruz, Marinduque, and that it would be most inconvenient and expensive for those residing in Manila to go to Marinduque to make their depositions there, petitioners be permitted to present these witnesses before the Commission itself and praying that a date be set for this purpose, and that the Commission authorizes the Justice of the Peace of Sta. Cruz, Marinduque, instead of Buenavista, to take the deposition of their witnesses residing thereat. Once again, no action was taken by the respondent Commission on this motion.

Meantime the Justice of the Peace of Buenavista, pursuant to the extension of his authority to take depositions, sent to the parties that the depositions of petitioners witnesses was to be made on November 28, 1960. Both parties asked for postponement, the respondent applicants, on November 21, 1960, on the ground counsel had two hearings before the Public Service Commission on the date scheduled for the deposition, and the petitioners, on

November 22, 1960, asking the Justice of the Peace to hold in abeyance the taking of the depositions pending resolution by the Commission of their motion of the same date requesting for the deposition of their witnesses to be taken in Manila and Sta. Cruz, Marinduque. Accordingly, the deposition proceedings in Buenavista were suspended.

All this time, the Commission did not take action on petitioners' previous motions, and petitioners in the meantime could not present their evidence in the case. Finally, respondents on January 16, 1961 filed a petition with the Commission asking that petitioners be declared guilty of laches. To this petition, petitioners replied that they could not be declared guilty of laches because the Commission up to then had not determined their motion to allow them to present witnesses in Manila and Sta. Cruz, Marinduque.

The record reveals that from November 22, 1960, the date of the filing of the motion above referred to, up to April 13, 1961, the date of the promulgation of the decision in question, the respondent Commission did not act on petitioners' motion. On April 13, 1961, respondent Commission rendered a decision granting the respondents the certificate of public convenience to operate the jitney lines. It was only in the said decision that respondent Commission denied petitioners' motion to present witnesses in Manila and Sta. Cruz, Marinduque. The pertinent portion of the decision is as follows:

" * * * the Commission issued another order dated October 4, 1960 extending the authority of the Justice of the Peace of Buenavista to take the depositions of witnesses up to December 5, 1960, with the warning to the parties that no further extension will be allowed unless for good cause shown.

"Oppositors again did not take this further opportunity to adduce evidence thru depositions. Instead on November 22, 1960, when the extension period for the taking of depositions was about to expire, oppositors filed a motion dated November 17, 1960, asking 'that a date be set for the hearing of the case before this Commission for the reception of the testimony of oppositors;' witnesses who are residing here in Manila, and thereafter the Justice of the Peace of Sta. Cruz, Marinduque (not Buenavista) be commissioned to take the depositions of oppositors' witnesses who are residing at Sta. Cruz, Marinduque. We cannot agree to oppositors' allegation in their motion that 'it will be most inconvenient and expensive for those witnesses who are residing at Sta. Cruz, Marinduque to go to Buenavista for their deposition', for Buenavista is easily accessible by bus transportation which oppositors themselves can lawfully offer to their witnesses free of charge according to the exception provided in Section 20(j), number (7) of the Public Service Act. At any rate, if the oppositors really wanted to have the depositions of their witnesses taken in Sta. Cruz, instead of in Buenavista, at the start they should have so stated and should have objected to applicants' motion to have the depositions of all the parties taken before the Justice of the Peace of Buenavista. Furthermore, oppositors have no explanation whatsoever in their motion why the reception of the testimonies of their witnesses allegedly residing in Manila have to take place first before they can proceed with the taking of depositions of their other witnesses in Marinduque. In view of the foregoing, oppositors' motion of November 17, 1960 is hereby denied. In accordance with, applicants' motion dated January 16, 1961, and over oppositors' written opposition against said motion, this case is hereby considered submitted for decision on the depositions taken, filed and offered as evidence by the applicants."

Notified of said decision, the petitioners timely filed a motion for reconsideration of the same, on May 5, 1961. Subsequently thereafter, on May 18, 1961, petitioners filed a motion to set for the date of hearing of the motion for reconsideration as provided for by Sec. 34 of the Public Service Act.[2] The respondent Commission did not act on the latter motion and petitioners filed a second motion of the same tenor dated June 5, 1961. Without any hearing on the petition for reconsideration, and without deciding petitioners' motion to set the date of hearing of the motion for reconsideration, the respondent Commission on May 25, 1961 issued an order denying petitioners' motion for reconsideration. As a consequence petitioners filed the present petition for certiorari.

As heretofore stated, the only question to be resolved is whether petitioners have been denied the opportunity to present their evidence and deprived of their day in court, and whether the respondent Commission, in view of the foregoing facts, had acted in grave abuse of discretion amounting to lack of jurisdiction in issuing the certificate of public convenience to respondents herein.

It should be recalled that the respondent Commission, by its order of October 4, 1960, granted the petitioners up to December 5, 1960 to present the deposition of their witnesses to be taken before the Justice of the Peace of Buenavista. Before that date, however or on November 17, petitioners moved for reconsideration of this order praying . that they be allowed to present before the Commission their witnesses residing in Manila, (who were agents of the Commission itself) —and to set a date for this purpose, and to take the deposition of their witnesses residing in Sta. Cruz, before the Justice of the Peace of that municipality, instead of the Justice of the Peace of Buenavista as ordered. Petitioners, at the same time, asked the Justice of the Peace of Buenavista to suspend the taking of the deposition set for November 28, 1960 pending resolution of their petition by the Commission. Respondents likewise moved for the same suspension on the ground that their attorneys had trials in other courts on that same date. Accordingly, the Justice of the Peace of Buenavista suspended the taking of the depositions.

In the meantime, the motion of petitioners of November 17, remained unacted upon by the Commission for which reason petitioners could not present their witnesses. Again in their opposition to the petition of the respondents of January 16, 1961, asking that petitioners be declared guilty of laches, petitioners again called attention to the fact that their motion to permit the presentation of their witnesses in Manila and that a date for that purpose be set, had not yet been resolved by the Commission. It was only in the decision itself, dated April 13, 1961, that the Commission denied petitioners' plea that they be allowed to present before the Commission their witnesses residing in Manila and to take the depositions of their witnesses in Sta. Cruz, Marinduque before the Justice of the Peace of that municipality. Under these circumstances, it is clear that it is not the fault of petitioners that they were unable to produce their witnesses, but rather it was due to the inaction on the part of the Commission for 5 months —from November 22, 1960 to April 13, 1961—to pass upon the timely and reasonable request of the petitioners. It is to be noted that the motion for reconsideration of the decision of April 13 has never been set for hearing in spite of two petitions to that effect, before the same was denied, contrary to the provision of Section 34 of the Public Service Act, as amended, disposing that "it shall be the duty of the Commission to call a hearing on said petition (for reconsideration) immediately, with notice to the parties and after hearing, to decide on the same promptly, either denying the petition or revoking or modifying the order, ruling or decision under consideration."

Wherefore, the writ of certiorari prayed for by petitioners is granted. Respondent Commission's decision of April 13, 1961, complained of, is hereby set aside and the case is remanded for further proceedings in accordance with law. So ordered.

Bautista Angelo, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala and Makalintal, JJ., concur.

[1] SEC. 2. Notice of filing. - The officer shall give prompt notice of its filing to all the parties.

[2] SEC. 34. Any interested party may request the reconsideration of any order, ruling, or decision of the Commission by means of a petition filed not later than fifteen days after the date of the notice of the order, ruling or decision in the petition. The grounds on which the request for reconsideration is based shall be clearly and specifically stated in the petition. Copies of said petition shall be served on all parties interested in the matter. It shall be the duty of the Commission to call a hearing on said petition immediately, with notice to the parties, and after hearing to decide the same promptly, either denying the petition or revoking or modifying the order, ruling

or decision under consideration. (*Italics supplied.*)

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