

SAN VICENTE SHIPPING, INC., PETITIONER, VS. THE PUBLIC SERVICE COMMISSION, & LAPU-LAPU SHIPPING LINES, MEMBER OF THE CEBU SHIPOWNER’S ASSOCIATION IN CASE NO. 69-8258 OF THE PUBL...*G.R. No. L-32441. January 31, 1977*

Ponente: FERNANDO, J.

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In a motion to dismiss, not particularly noted for brevity, embodied in forty-six pages containing matters that could very well have been omitted, the private respondent Lapu-Lapu Shipping Lines prayed that "this case be dismissed as it has become moot and academic: it appearing that [private respondent] has been confirmed by both the defunct Respondent Public Service Commission and its successor the Board of Transportation in his use and charge of the Basic Rates as amended in the operation of his shipping business in the Philippine Coastwide Trade since its inception to the present time thereby ratifying the rationale of PSC Order dated 5 Aug 70 PSC Case No. 69-6258 * * *." [1] This petition for review against the defunct Public Service Commission originated from its order granting a motion for reconsideration and restoring to private respondent "its status as a beneficiary of the increase of rate" granted in its decision of November 28, 1969. Petitioner, a competitor, averse to having private respondent enjoy such benefits, filed a petition for review in an equally verbose pleading contending that such motion for reconsideration should be set aside on the ground of the lack of the required number of commissioners to grant it, of alleged violation of mandatory laws, of lack of evidence to support the findings, thus constituting a grave abuse of discretion. The answer filed by private respondent was of the same character – only more so. This Court had to contend with almost two hundred pages of reading matter, much of which could very well have been left unsaid.

To go back to the motion to dismiss, petitioner was required to answer. This it did in a pleading submitted on September 1, 1976. Its main thrust is that the orders "issued by the Board of Transportation in B.T. Case No. 73-18210 and B.T. Case No. 74-6754 are all provisional in character and cannot affect the Order issued in PSC Case No. 69-6258, nor render moot and academic the issues submitted in [its] Petition for Review of 26 August 1970, * * *." [2] It would support its stand primarily on the ground that such orders are provisional, the Board not having been as yet fully constituted. [3]

Private respondent was required to reply. On October 27, 1976, it submitted the same. It set forth subsequent resolutions and orders of the Public Service Commission as well as the Board of Transportation, all issued after the challenged order of August 5, 1970 to make its point that there could be no question as to its having been ratified. More specifically, as far as the Board of Transportation is concerned, private respondent included its order dated June 22, 1976. It reads thus: "Acting on the petition for extension of provisional authority filed by applicant-petitioner Antonio S. Cohon dated June 14, 1976 and it appearing that applicant-petitioner's provisional authority will expire on July 11, 1976 while the basic application is still pending final determination by this Board and that being contested, the same may not be finally decided for quite sometime, the Board believes that in the

interest of public welfare and convenience, applicant's provisional authority to operate his five (5) inter-island vessels contained in the orders of the Board dated July 30, 1974, March 18, 1975, July 11, 1975 and January 13, 1976, maybe, as the same is hereby [extended] for a period of one (1) year from July 11, 1976. In consonance with the policy of this Board to adopt and maintain a uniform schedule of shipping rates in the inter-island coastwide trade, the Board, upon consideration of applicant-petitioner's manifestation dated May 3, 1976, as well as the opposition thereto filed by oppositor San Vicente Shipping, Inc., dated June 3, 1976, hereby provisionally authorizes applicant to adopt also the 15% across-the-board increase in passenger and freight rates granted to the Philippine Shipowners Association, et. al., by virtue of the Order dated January 27, 1976 as amended by a subsequent order dated April 5, 1976 issued in Case No. 73-18210, subject to the same terms and conditions embodied in the aforesaid orders." [4]

It does appear clear that there is merit to the motion to dismiss. The matter has indeed become moot and academic. Respondent Public Service Commission had been abolished. It has been replaced by the Board of Transportation. As is evident in the pleadings, the precise issue, the enjoyment by private respondent as a beneficiary of the increase of rates, challenged by petitioner was passed upon by the latter body. Moreover, the Board made clear in its order of June 22, 1976 that the basic application still pending is final determination, the decision not being expected "for quite sometime." [5] Under the circumstances, it would be a needless waste of time and effort for this Court to pass upon the powers of a defunct agency when after all, what is being litigated is precisely under consideration by the administrative agency now entrusted with the regulatory function. In the light of the supervening facts, this is one case not ripe for adjudication, there being as yet no final determination. [6] The order of the Public Service Commission challenged in the present petition, has, to quote a recent decision, lapsed into "innocuous desuetude." [7]

WHEREFORE, the motion to dismiss this petition dated April 30, 1976 is hereby granted, the case having become moot and academic.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] Motion to Dismiss, 45-46.

[2] Comments, 1.

[3] Ibid, 2-5.

[4] Exhibit 3, Reply of Private Respondent.

[5] Ibid, 1.

[6] Cf. *Arrow Transportation Corporation v. Board of Transportation*, L-39655, March 21, 1975, 63 SCRA 193.

[7] Cf. *Acting Director v. Agcaoili*, L-34512, May 25, 1972, 45 SCRA 115.

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