

GENEROSO VILLANUEVA TRANSPORTATION CO., INC., PETITIONER, VS. HECTOR G. MOYA AND PUBLIC SERVICE COMMISSION, RESPONDENTS.

G.R. No. L-31620. October 29, 1971

Ponente: CASTRO, J.

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CASTRO, J.:

By this petition for certiorari and prohibition with preliminary injunction, the Generoso Villanueva Transportation Co., Inc. seeks to annul the decision of the Public Service Commission in case 69-329 granting the respondent Hector G. Moya a certificate of public convenience to operate a 20-unit taxi service in Bacolod City and from that city to any point in the island of Negros. The petitioner also prays for a trial de novo of the said case.

Deprivation of due process of law is asserted against the Commission, in the sense that it rendered the decision in dispute without a hearing on the petitioner's motion to dismiss. In counterplea, it is claimed that the said motion does not show proof of service, nor does it contain any notice of the time and place of hearing, and, therefore, is a mere scrap of paper (citing *Manakil and Tison vs. Revilla and Tũaño*, 42 Phil. 81 (1921); *Roman Catholic Bishop of Lipa vs. Municipality of Unisan*, 44 Phil. 866 (1920); *Tan vs. Dimayuga*, G.R. No. L-15241, July 31, 1962; and *PNB vs. Donasco*, G.R. No. L-18638, February 28, 1963).

The record discloses that on January 13, 1969, Moya filed an application with the Commission to operate a taxicab service in Bacolod City and to any point in the island of Negros. The application, with due notice, was set for hearing on March 31, 1969.

At 8:00 o'clock in the morning of March 31, 1969, the petitioner filed with the receiving section of the Commission a "Motion to Dismiss" the application of Moya. The petitioner therein alleged that the applicant is a holder, by purchase, of a franchise to operate taxicabs in Bacolod City the express terms of which prohibit the holder thereof from applying for additional units during the lifetime of such franchise. At the lower left-hand corner of page 2 of the foregoing motion the following words appear: "Copy furnished Atty. Jesus Torrecareon, for Applicant." As already stated, the motion does not contain any notice of the time and place of hearing.

At the initial hearing on the morning of March 31, 1969, before Commissioner Josue L. Cadiao, the counsel of the petitioner and the attorney of a certain Vicente Tanedo entered their respective appearances for two oppositors. The hearing was, however, post-poned, apparently upon motion of the oppositors, as may be gleaned from the transcript of the stenographic notes taken on that date which reads as follows:

"We are asking for postponement and we are going to file our opposition.

"COMMISSION:

"Case postponed until further assignment. Counsel for oppositors are given five (5) days from today to file their written opposition after which we shall set this case for hearing. Case delegated to Hearing Officer."

The counsel for the petitioner did not notify Commissioner Cadiao at the said hearing that he had filed a motion to dismiss the application of Moya. A copy of the said motion was, at that time, not yet attached to the record of the case.

Neither the petitioner nor the counsel of Vicente Tanedo ever filed any written opposition to Moya's application.

On August 25, 1969 Moya filed an ex parte motion to set his application for hearing at the earliest possible time, alleging the lack of any written opposition thereto.

The officer assigned to hear the case then set it for hearing on August 28, 1969 at 2:30 o'clock in the afternoon. The petitioner was not notified of this action.

On September 3, 1969 Commissioner Cadiao rendered the decision in dispute.

Obviously, by September 3, 1969, a copy of the petitioner's motion to dismiss was already attached to the record of the questioned application, as the said decision of Commissioner Cadiao made specific reference thereto, as follows:

"At this juncture, it should be noted that there is attached to the records of this case a 'Motion to Dismiss' filed by Atty. Jose Ocampo dated March 31, 1969. However, this motion was received by this sala several days after the initial hearing on March 31, 1969. It should be observed that the said 'Motion to Dismiss' does not show any proof of service to the adverse party, applicant herein. Neither did counsel Atty. Ocampo mention this fact in open Court on said date to give due notice to the applicant and to the Commission that oppositor intended to raise a prejudicial question. In view of counsel for oppositor's non-compliance with the rudimentary rules of procedure embodied in Section 6, Rule 15 of the Rules of Court designed to protect the substantial rights of party litigants, the Commission cannot take cognizance nor even consider the aforementioned 'Motion to Dismiss.' (This ruling follows the policy laid down by the Supreme Court in the cases of *Manakil and Tison vs. Revilla and Tuaño*, 42 Phil. 81; *Roman Catholic Bishop of Lipa vs. Municipality of Unisan*, 44 Phil. 866; and many others). This case is, therefore, deemed and declared uncontested."

The Public Service Commission correctly ruled that the petitioner's motion to dismiss was but a mere scrap of paper, pursuant to the doctrine laid down and reiterated by this Court in the cases cited in the Commission's decision.

The said motion admittedly contained, on its face, the words: "Copy furnished: Atty. Jesus Torrecareon, for Applicant"; however, the counsel of Moya denies that a copy of the said motion was ever furnished him. The petitioner, on the other hand, has not proved that it had served a copy thereof on Moya's counsel. Furthermore, the said motion does not contain any notice of the time or place of hearing. Nor did the petitioner inform Commissioner Cadiao, at the initial hearing on the application, of the fact of the filing of the said motion. Had counsel for the petitioner called the commissioner's attention, the defect in the petitioner's motion could probably have been cured. But, as the facts of this case disclose, the petitioner preferred to sit down and wait until long after the application of Moya was granted.

To make matters worse, the transcript of stenographic notes taken on March 31, 1969 shows that a request for additional time within which to file written oppositions was made by the counsels of the two oppositors who entered their appearance on that day. While the counsel for the petitioner refuses to admit having ever made that request, this denial is belied by the mentioned record of the proceedings: Commissioner Cadiao clearly addressed both counsels for oppositors in granting the said request for postponement, thereby showing unmistakably that both oppositors moved for the postponement of the hearing to give them time to file their written opposition. Thus, Commissioner Cadiao's order granting the said request reads:

"Case postponed until further assignment. Counsel for oppositors are given five (5) days from today to file their written oppositions after which we shall set this case for hearing. Case delegated to Hearing Officer."

It is well for advocates to understand and remember the clear and uncomplicated rules concerning the filing, service and proof of motions and other pleadings. These rules, which are meant to secure to every litigant the adjective phase of due process of law, apply to proceedings before the Public Service Commission, in the absence of different and valid statutory or administrative provisions prescribing the ground rules for the investigation, hearing and adjudication of cases before it. (Cf. *Sambrano vs. PSC*, GR 45503, September 20, 1938, 66 Phil. 193)

Of course, there have been instances where absence of strict compliance with rules of procedure was not considered fatal to an erring party's cause. In the matter of defectively filed motions, for instance, we had occasion to so rule in a number of cases. Thus, in *Sunga vs. Lacson* (G.R. No. L-26055, April 29, 1968, 23 SCRA 393), no notice of the motion to dismiss was served by the defendant on the plaintiffs, but because the trial court, upon learning of this fact, promptly re-set its hearing to another day with due notice to all the parties, we held that this action of the court cured what-ever defect there initially was so as to effectively bar the running of any period. In *Sun Un Giok vs. Matusa* (G.R. No. L-10304, May 31, 1957, 101 Phil. 727), although the motion to dismiss was defective due to the movant's failure to specify the date when the motion was to be heard, this Court held that the said defect was cured when the trial court notified the plaintiff that the motion would be heard at some future date. In *De Rapisura vs. Rapadaz* (G.R. No. L-22594, April 29, 1966, 16 SCRA 798), the admission by the other party of her receipt of the motion for reconsideration was held to have cured the failure of the movant to attach to his motion the requisite proof of service.

These cases show the attendance of certain circumstances which were considered substantive enough to truncate the adverse literal application of the pertinent rules violated. No similar or identical justifying circumstance, however, can be invoked in relation to the present recourse. Consequently, the rules have to be applied however harsh the results may be upon the erring party.

ACCORDINGLY, the present petition is dismissed, at petitioner's cost.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Barredo, Villamor, and Makasiar, JJ., concur. Teehankee, J., took no part.

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