

FLASH TAXICAB CO., INC., PETITIONER, VS. ALBERTO CRUZ and PHILIPPINE BANK OF COMMERCE, RESPONDENTS.*G.R. No. 15464 and L-16255. March 30, 1963*

Ponente: REGALA, J.

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Petitioner Flash Taxicab Co., Inc. (Company for short) was the holder of a certificate of public convenience for the operation of 20 taxicabs by virtue of a decision of the Public Service Commission (Commission hereafter) dated February 4, 1947. On May 13, 1957 the above certificate was sold at a public auction pursuant to a writ of execution issued by the Court of First Instance of Manila in Civil Case No. 29752 entitled "Philippine Bank of Commerce vs. Flash Taxicab Co., Inc., et al." At this auction sale, respondent Philippine Bank of Commerce (to be referred to as the Bank hereafter) won the bid and was awarded all the rights, title and interest in the same certificate of public convenience. On June 8, 1957, the lower court issued an order confirming the sale. Five days later, or, on June 13, 1957, the Bank sold the certificate previously mentioned to the other respondent herein, Alberto A. Cruz. The very next day, June 14, 1957, respondents Bank and Cruz jointly petitioned the Commission for the approval of the June 13 sale between them. :

Acting on the joint petition of the herein respondents, and, without notice to the Company, the Commission issued an order dated June 15, 1957 withdrawing the authority of the Company to operate the 20 taxicabs. As a ground therefor, the Commission cited the auction sale of the certificate to the herein respondent Bank.

Thereafter, on June 18, 1957, it issued another Order granting respondent Cruz provisional authority to operate the above service.

Meanwhile, on June 18, 1957, the Company filed in the Court of First Instance a petition for the annulment of the Order confirming the public sale, and, in the Commission, a motion for reconsideration of the Commission's Order of June 15, 1957. When, therefore, on October 17, 1957, the Court of First Instance set aside the sheriff sale and revoked its Order confirming it, the Company filed with the Commission an urgent ex parte motion for the resolution of its basic urgent motion for reconsideration dated June 18, 1957. Acting on this last pleading, the Commission, on April 21, 1958, ruled that the provisional right granted to Alberto A. Cruz to operate the taxi service had no more basis in law. Consequently, it ordered the revocation of the same. Within the prescribed period, Cruz moved for a reconsideration of this last Order. For its part, the Company filed with the Commission a petition for the reinstatement of the withdrawn certificate.

In resolving the last two pleadings filed, the Commission promulgated two inconsistent and diametrically opposed Orders, namely:

- a) an Order dated February 27, 1959, denying the motion for reconsideration filed by Alberto A. Cruz, and
- b) an Order dated March 3, 1959, allowing Alberto A. Cruz to continue operating the taxi service.

Petitioner Company now raises in issue the validity of the Commission's Order dated March 3, 1959 as well as the

Order of June 15, 1957 which set in motion the events which led to the filing of this case.

Reviewing the records of this case, this Court believes that as between the parties herein Alberto Cruz has a clearer right to the operation of the contested taxi service and must thus be awarded the same.

The underlying reason invoked by the Public Service Commission in justification of its order dated March 3, 1959, allowing Alberto A. Cruz to continue operating the taxi service is clearly set forth in the text of the same order, as hereunder quoted:

"* * * The order of the Commission of April 21, 1958 revoked the provisional authority in favor of Alberto A. Cruz on the ground that the Court of First Instance has set aside the Sheriff's sale of the certificate of Flash Taxi Co. in favor of the Philippine Bank of Commerce and therefore there was no basis for the provisional authority, but our records show that long before April 21, 1958' and up to the present time the Flash Taxi Co. has not registered any car for operation as a taxicab, that is, that it has not been able to operate any taxicab even after the provisional authority granted to Alberto A. Cruz was withdrawn, so that it has not and does not render the service required under the certificate."

The aforequoted explanation is in the nature of a finding of fact which under prevailing legislations and jurisprudence, this Court is not at liberty to disturb, unless it is not clearly and sufficiently supported by the evidence. (Rule 43, Sec. 2, Rules of Court; *Espiritu to. San Miguel Brewery*, 53 Phil. 615; *Halili vs. Ice and Cold Storage, etc.*, G.R. No. L-336 and 343, January 25, 1947.)

The Company further contends that it has been denied due process of law when the Order of June 15, 1958, withdrawing its authority to operate under the certificate was issued without prior notice to it. We note from the record, however, that the Company has filed, with the Public Service Commission a motion for reconsideration of the same order of June 15, 1957 and that the Company was duly heard by the Commission on the said motion for reconsideration. That being the case, then the doctrine we enunciated in the case of *Borja vs. Flores*, 62 Phil. 106, finds full relevance and application. In that case, we ruled that although the Commission entered its order without notice or hearing, a requisite provided for by the Public Service Act before suspension, revocation or cancellation of any certificate of public convenience, the defect, if any, was cured by the hearing held on the petitioner's motion to reconsider the order. The force and logic of that rule becomes more impressive when, as in the instant case, the motion for reconsideration had raised in issue all the merits and defenses of the movant which he would have raised in the original hearing had there been any. As a matter of fact, petitioner Company's motion for reconsideration was granted by the Commission.

The operation of the taxi service was, however, nonetheless denied to the Company because of the Commission's finding that the Company had not registered its units.

In view of the foregoing, this Court holds that the Commission had substantially observed the requirements of due process in its promulgation of the Order dated June 15, 1957. Consequently, the same, as well as the Order dated March 3, 1958 are hereby affirmed. The petition for review is hereby dismissed, with costs against the petitioner.

Bengzon, C. J., Padilla, Bautista Angelo, Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

Concepcion, J., concurs in the result.

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