

CEBU AUTOBUS COMPANY, PLAINTIFF AND APPELLANT, VS. SIMEON DE JESUS, DEFENDANT AND APPELLEE.*G. R. No. 35128. December 31, 1931*

Ponente: IMPERIAL, J.

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The Cebu Autobus Company, a corporation organized under the law and engaged in the business of land transportation by means of auto-busses, appealed from the decision rendered by the Court of First Instance of Cebu dismissing the action and absolving the defendant from the claim for damages, without express finding as to costs.

The appellant is the holder of a certificate of convenience to operate auto-busses in the Province of Cebu, Philippine Islands, for the transportation of passengers and cargo. On the 20th and 22d of September, 1930 the appellee, as provincial commander of the Insular Police, through lieutenants Vergara, Florentin, and Navarrete suspended the operation of twelve of the appellant's busses on the first day, and eighteen on the second, for failure of said busses or their drivers to take with them a copy of the decision of the Public Service Commission, the trip book, the sign board at the top of the rear of each bus, the time schedule and scale.

Immediately after the suspension, the appellee reported it to the Public Service Commission, which confirmed his acts, and the busses were not permitted to operate until the Court of First Instance issued a preliminary injunction addressed to the appellee.

The appellee and the above-named Constabulary lieutenants in suspending the operation of the appellant's busses acted in a dual capacity, as agents of the Director of Public Works, and as special inspectors of the Public Service Commission; and they ordered and enforced the suspension as they found that the appellant was violating the provisions of the Public Service Commission Order No. 1, and of the Joint Regulations duly approved by the Director of Public Works, the Chief of the Constabulary, and the Public Service Commission, and attested, in turn, by the heads of the Department of the Interior, the Department of Justice, and the Department of Commerce and Communications.

The appellant alleges that it has sustained damages at the rate of P3,000 for each day of suspension, and claims from the appellee the sum of P6,000 as damages.

The appellant assigns the following errors in its brief as committed by the court below:

"First error.—The lower court erred in not holding that section 11 of Act No. 3108 empowering the Public Service Commission to promulgate regulations is unconstitutional, for the reason that it amounts to an illegal delegation of the legislative power.

"Second error.—The lower court erred in not holding that Exhibit 7 (Joint Regulations) and Exhibit 5 (Order No. 1 of the Public Service Commission) are illegal and unconstitutional.

"Third error.—The lower court erred in not holding that Exhibit 7 (Joint Regulations) is unconstitutional

inasmuch as it contains a delegation of judicial powers made in violation of the provisions of the Organic Law of the Philippines.

"Fourth error.—The lower court erred in not holding that even assuming that a delegation of executive powers was made in said Exhibit 7 (Joint Regulations), such delegation is not authorized by the law, and still less by Act No. 3108.

"Fifth error.—The lower court erred in not holding that the defendant-appellee has abused his office in enforcing Exhibit 7 (Joint Regulations).

"Sixth error.—The lower court erred in holding that the complaint in this case was only presented after the defendant's order of suspension had been confirmed by the Public Service Commission.

"Seventh error.—The lower court erred in not holding that the acts performed by the defendant-appellee through his subalterns constitute an open violation of the constitutional provisions with respect to due process of law.

"Eighth error.—The lower court erred in not holding that the defendant-appellee, as provincial commander of Cebu, is responsible for the acts of his subordinate officers and soldiers who acted under his orders.

"Ninth error.—The lower court erred in not sentencing the defendant-appellee to pay the damages sustained by the plaintiff-appellant.

"Tenth error.—The lower court erred in denying the motion for a new trial filed by the plaintiff-appellant." The errors assigned really raise only the following questions: (1) Are the Public Service Commission Order No. 1 and the Joint Regulations, and section 11 of Act No. 3108, under which the former was adopted, valid and legal? and (2) Did the appellee incur civil liability in enforcing said orders?

The appellant contends vigorously that the Public Service Commission Order No. 1 and the Joint Regulations have no legal existence as they were adopted in conformity with the power conferred upon the Public Service Commission by section 11 of Act No. 3108. This section is alleged to be unconstitutional and void because it is an unlimited delegation of powers to the Public Service Commission by the Philippine Legislature. We do not agree with this opinion. The section in question cannot confer such an unlimited delegation of powers for the reason that it expressly provides that the rules the Public Service Commission shall prescribe must not be incompatible with the provisions of the law. Furthermore, it was necessary to confer such power as otherwise the Public Service Commission would not have the means at hand wherewith to put into effect its orders and decrees based upon the general provisions of the law. With reference to the appellee's power to suspend the operation of the appellant's busses, we are also of opinion that he did not exceed his powers, considering that he was acting not only as special inspector of the Public Service Commission but also as an agent of the Director of Public Works who, according to Act No. 3045 as amended, is authorized to suspend the operation of motor cars in general when such operation is a violation of the law.

We agree that as a general rule Constabulary officers, notwithstanding section 52 of Act No. 3045 of the Philippine Legislature, are not vested with authority to suspend for a definite time the operation of a public service in the form of land transportation, because this function has been expressly reserved by the Public Service Law to the commission created for the purpose, and in such a case the operator affected would doubtless have a right to be heard. But the present case does not offer this aspect, and it must be decided in the light of other principles thereto applicable. The appellant had openly violated the Public Service Commission Order No. 1, and Joint Regulations, because the busses did not carry, as required, copies of the decision of the Public Service Commission, the trip book, the time schedule and scale, nor the sign board at the top of the rear of each bus, and this being a continuing offense, the appellee, by himself, or through his agents or officers, could properly prevent the further violation of the law, as in fact they did, because otherwise such manifest infractions of law would have

continued unchallenged. To this must be added the circumstance that the suspension was almost immediately after-wards confirmed and ratified by the Public Service Commission.

As it appears from the foregoing that the appellee acted within the scope of his powers and authority without violating any existing law, it necessarily follows that he cannot be held liable for his acts, performed in the exercise of

Wherefore, the judgment appealed from is affirmed and the preliminary injunction quashed, with the costs of this instance against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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