

ORLANES & BANAAG TRANSPORTATION COMPANY, INC., ET AL., PETITIONERS, VS. PUBLIC SERVICE COMMISSION AND LAGUNA-TAYABAS BUS COMPANY AND PARSONS HARDWARE CO., INC., RESPONDENTS.

G. R. No. 36713. December 07, 1932

Ponente: BUTTE, J.

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BUTTE, J.:

This is a petition for certiorari filed on December 17, 1931, praying that this court suspend the order of the Public Service Commission, dated November 20, 1931, hereinafter fully set out, and upon final hearing declare said order null and void. On December 18, 1931, this court denied the prayer for suspension of said order and directed the Public Service Commission to certify up to this court the record and proceedings relating to said order. The case was heard on its merits in this court on September 3, 1932, on the petition and answer filed and the briefs and memoranda of the parties in support of their respective contentions.

The record in the case before the Public Service Commission is extensive and covers many collateral issues and correlated facts. We shall mention only the facts that furnish the background for the order of November 20, 1931, here in question.

On September 27, 1930, the Orlanes & Banaag Transportation Co., Inc., a corporation, executed a chattel mortgage in favor of Parsons Hardware Co., Inc. covering certain of its assets, including five certificates, of public convenience authorizing the operation of a bus service over certain routes in the Province of Tayabas. This mortgage was approved by the Public Service Commission in compliance with section 16, paragraph (h) of Act No. 3108 as amended. Upon failure of the mortgagor to pay the debt at maturity amounting to about P51,000, the mortgage was foreclosed by the sheriff of Tayabas who sold the five certificates of public convenience above mentioned to the Parsons Hardware Co., Inc. for P30,000. Four days after the sheriff's sale, that is, on February 9, 1931, the Parsons Hardware Co., Inc. filed with the Public Service Commission a petition for the approval of the sale and transfer to it of said certificates. Due notice of said petition was published and the same was set for hearing on March 24, 1931. The Orlanes & Banaag Transportation Co., Inc. filed an opposition to said petition. On July 16, 1931, the Philippine Trust Company intervened as judicial receiver of the Orlanes & Banaag Transportation Co., Inc., appointed by the Court of First Instance of Tayabas. On August 18, 1931, the Parsons Hardware Company, Inc. transferred to the respondent, the Laguna-Tayabas Bus Company all of its rights, title and interest in the said five certificates of public convenience; and by order of the commission, dated August 27, 1931; the latter was substituted as petitioner in the case instead of the Parsons Hardware Co., Inc. After a series of intermediate proceedings and several postponements, the commission again set the case for hearing for November 11, 1931, but continued it indefinitely again on a motion of Pio Gaudier and Felix Valencia (petitioners herein) who appeared as intervenors and alleged that they were stockholders of the Orlanes & Banaag Transportation Co., Inc. and had filed suit in the Court of First Instance against Parsons Hardware Co., Inc., the Laguna-Tayabas Bus Co., the provincial sheriff of Tayabas, et al., attacking the legality of the sale of said certificates made by the

sheriff to the Parsons Hardware Co., Inc. on February 5, 1931, as aforesaid.

On November 13, 1931, the Parsons Hardware Co., Inc. and Laguna-Tayabas Bus Company presented a motion asking reconsideration of the order of indefinite postponement of November 11, 1931, and praying that "the Commission immediately proceed to definitely dispose of this case and approve the sale without prejudice to whatever action may be taken by the courts with regard to the complaint filed by the intervenors in this case." A hearing was held before Commissioner Del Rosario on November 14, 1931, after notice to all parties. The petitioners presented their evidence. The opponents, though present, offered no evidence; but the intervenors, Pio Gaudier and Felix Valencia, filed a reply to the motion for reconsideration. The hearing held November 14, 1931, resulted in the following resolution and order which was signed by all of the commissioners on November 20, 1931:

"RESOLUCIÓN Y ORDEN

"Se trata de una motion de reconsideration de la resolution de esta Comision de fecha 11 de noviembre de 1931, presentada por los abogados Isidro Santiago, en representation de la Parsons Hardware Co., Inc., y L. D. Lockwood en representation de la Laguna-Tayabas Bus Co. en la que se alega lo siguiente :

"Now comes Parsons Hardware Co., Inc., and the Laguna-Tayabas Bus, through their undersigned attorneys, and respectfully ask for a reconsideration of the resolution of the Commission of yesterday granting the motion presented by intervenors, Pio Gaudier and Felix Valencia, and postponing this case until Case No. 40799 of the Court of First Instance of Manila is definitely decided, and in support of this motion for reconsideration of said resolution set forth:

" '1. That, while it is true that the motion of the intervenors of November 11, 1931, is similar to a previous one granted by order of the Commission of August 28, 1931, and that the circumstances are apparently similar, yet there is a difference as it is very obvious that the object of this last motion is to delay action of the Commission in this case, and it appears that there is a lack of entire good faith in that as it appears in the motion the case first presented in the Court of First Instance of Tayabas was dismissed on September 15, 1931, because of lack of jurisdiction and these intervenors did not present a new case in a competent court until the day before this case was coming up in the Commission. This shows that the intervenors were not interested in prosecuting their supposed legal rights, but in delaying the action of the Commission.

" '2. That this Commission should not delay its action in this case because of an action presented in the Court of First Instance. This Commission does not have to do with legal questions regarding the legality or illegality of the sale, made in favor of the Parsons Hardware Co., and whatever action the Commission takes will not affect the action in the court. We wish to call attention to the fact that, while the sale and transfer is not valid until approved by the Commission, the approval does not validate the same if per se it is invalid. The approval of the Commission will not therefore affect or prejudice the legal rights of the litigants in the court.

" '3. That application for the approval of this sale has been' duly presented and has been pending for several months. Public notice has also been duly given. See Exhibits A and B. It is alleged that the sale was made by the Sheriff of Tayabas in favor of Parsons Hardware Co., Inc. by virtue of a mortgage executed by the Orlanes & Banaag Transportation Co. This mortgage which is the primary transaction has already been approved by this Commission. The substitution of Laguna-Tayabas Bus Co. for Parsons Hardware Co., Inc. has already been admitted in open session on August 28, 1931, as appears in the stenographic record. Deed of Transfer of the rights of Parsons Hardware Co., Inc. to Laguna-Tayabas Bus Co. will be duly presented.

" 'The case is therefore in order for final hearing and disposition and we respectfully submit that it is the duty of the Commission to proceed and dispose of this case without prejudice to whatever action the courts may take.

" '4. That in this connection attention is called to the provisions of paragraph (h) of section 16 of Act No. 3108, which provides:

" ' "The approval herein required shall be given * * *" It should be noted that this is imperative. "If it be shown that there are just and reasonable grounds for making the sale * * *", "and that the same are not detrimental to the public interests."

" ' It therefore seems to be imperative upon the Commission to approve the sale if there are just and reasonable grounds for making the sale, and if the same is not detrimental to the public interest. The sale in this case is only a consequence of a mortgage, which has already been approved by this Commission. Therefore, the "just and reasonable grounds" were determined when the mortgage was approved. Now, the only question which remains is whether or not the sale will be detrimental to the public interests. No question has been raised regarding this point by any of the parties.

" '5. That important rights and financial interests are involved in this matter and delay is causing, and will continue to cause, serious prejudice to the interested parties and also to the public, for it is a matter of record in this Commission that the Orlanes & Banaag Transportation Co. is in the hands of a receiver and has abandoned the operation of many of its lines.

" 'Wherefore, it is respectfully prayed that the resolution of yesterday indefinitely postponing this case be reconsidered; and that the Commission immediately proceed to definitely dispose of this case and approve the sale, without prejudice to whatever action may be taken by the courts, with regard to the complaint filed by the intervenors in this case.'

"De esta moción se envió copia al abogado de los terceristas con notificacion de que se pediria que la moción se viera y se oyera ante esta Comision el dia 14 de noviembre de 1931, a las 9 de la mañana.

"En el dia fijado comparecieron las partes en este asunto habiendose presentado por el abogado Zagala, que representa a los terceristas, su escrito de contestation a la moción de reconsideration.

"Despues de la vista de esta moción de reconsideración del incidente se sometió, de acuerdo con la Ley, a la decision de la Comision en Pleno.

"Obra unido en este expediente marcado Exhibit C una copia del certificado de venta del Sheriff de la Provincia de Tayabas el 5 de febrero de 1931, y como Exhibit D una escritura publica otorgada ante la fe del Notario Publico C. de G. Alvear de fecha 26 de agosto de 1931, que es un documento de compraventa otorgada por Parsons Hardware Co., Inc., a favor de la Laguna-Tayabas Bus Co. de todo su derecho, interes, titulo y participaci6n en los certificados de conveniencia publica adquiridos por la vendedora Parsons Hardware Co., Inc., en la venta hecha por el Sheriff de la Provincia de Tayabas de los certificados de conveniencia de la deudora Orlanes & Banaag Transportation Co. en los expedientes de esta Comision Nos. 16197, 16582, 16667, 20633 y 10756.

"Despues de una consideraci6n de las razones alegadas por los mocionantes en su motion de reconsideración, asi como de los argumentos aducidos por el abogado de los terceristas en su contestation a la referida motion de reconsideración, habida consideration de todos los antecedentes del presents caso, esta Comision llega a la conclusión de que, si bien es verdad que el asunto civil entablado en el Juzgado de Primera Instancia de Manila en el asunto Civil No. 40799 puede afectar en su dia a la aprobaci6n que la Comision pudiera dar en el presente expediente de la venta hecha por el Sheriff de la Provincia de Tayabas de los certificados de conveniencia publica de Orlanes & Banaag Transportation Co. a la compradora Parsons Hardware Co., Inc., pero no es menos cierto tambien que si este asunto quedara pospuesto indefinidamente a las resultas de aquel asunto civil, que no se puede calcular cuando podria tener fin, resultaria que los intereses del comprador, que en este caso es la misma acreedora hipotecaria, podrian quedar lastimados y consecuentemente ineficaces todos estos procedimientos, mientras no se resolviera el asunto civil de referehcia, si se ha de sostener la resolucion de esta Comision de fecha

11 de noviembre de 1931.

"Es verdad tambien que los interesea de estos terceristas podrian quedar afectados si la Comision aprobara ahora esta venta y el Juzgado de Primera Instancia declarara mas tarde que la venta hecha por el Sheriff es nula y de ningiin valor como se alega en la demanda presentada ante el Juzgado de Primera Instancia de esta Ciudad de Manila.

"Tenemos ante Nos por tanto que considerar el interns individual en cuanto afecta a los derechos de los terceristas, que se invocan han sido lesionados, y, por tal motivo, han acudido al tribunal correspondiente en reparacind de sus derechos que creen haber sido lesionados, frente a los derechos de la comunidad o del publico en general, que asi mismo estan afectados en el presente caso, puesto que la Orlanes & Banaag Transportation Co. por la situation dificil de su estado economico vese ahora imposibilitada de seguir operando en las provincias de Laguna y Tayabas como la Comisidn le tiene autorizado en concurrencia con la Laguna-Tayabas Bus Company.

"Por otro lado, no se podria prever quó perjuicio o que danos se causarian a los terceristas demandantes en ,el Juzgado de Primera Instancia si se aprobara esta venta con miras principalmente de que el publico de las provinciaa de Laguna y Tayabas no queden perjudicados por la falta de un servicio que le es tan sumamente necesario.

"Despues de pesar las razones de uno u otro lado y de considerar las cuestiones envueltas en este expediente, y mirando principalmente el interes publico sobre el que esta Comision debe velar, y justificado como lo esta que existen motivos justos y razonables para que se de cierta efectividad a esta venta para que los intereses del publico no queden perjudicados por el consiguiente abandono de la operacion de la Orlanes & Banaag Transportation Co. de su operacion como resultado de la venta de sus certificados, hoy en cuestion, y teniendo en cuenta, por otra parte, que la cesionaria Laguna-Tayabas Bus Co. es otra compania que opera en la misma localidad, que es una compania que esta llevada habil y debidamente, que sirve al publico de una manera propia, adecuada y convenient, y que tiene un capital muy considerable para poder prestar el servicio que ha dejado de prestar la Orlanes & Banaag Transportation Co., esta Comision ha Uegado a la conclusion de que a todas luces es imperativamente necesario que la misma reconsidere su resolueion de fecha 11 de noviembre de 1931, en el sentido de que, sin perjuicio de que se vea este asunto en su dia, se reconozca, como por la presente se reconoce, a la Laguna-Tayabas Bus Co. como cesionaria de facto de los certificados de conveniencia publica adquiridos en venta por la Parsons Hardware Co., Inc., en la subasta publica celebrada por el Sheriff de la Provincia de Tayabas el dia 5 de febrero de 1931, que luego fueron traspasados y cedidos a dicha Laguna-Tayabas Bus Co. con derecho a operar temporalmente bajo dichos certificados hasta nueva orden en contrario de esta Comision.

"En su consecuencia por la presente se autoriza a la Laguna-Tayabas Bus Co. a operar, con caracter temporal, el servicio de transporte terrestre autorizado a la Orlanes & Banaag Transportation Co. bajo los expedientes" Nos. 16197, 16582, 16667, 20633 y 10756, sujetandose estrictamente a las condiciones impuestas en todos y cada uno de los mencionados certificados.

"Esta resolución no resuelve ni afecta en manera alguna la cuestión de la legalidad de la venta verificada por el Sheriff Provincial de Tayabas de los certificados de la Orlanes & Banaag Transportation Co., planteada por los terceristas ante el Juzgado de Primera Instancia de Manila, en el asunto civil No. 40799 y se entiende sin perjuicio de cualquier resultado de dicho asunto.

"Dictada, Manila, a 20 de noviembre de 1931.

(Fdo.) "M. V. DEL ROSARIO

"Comisipnado

"Conformes:

(Fdos.) "ANASTACIO R. TEODOEO

"Comisionado Asociado

"R. A. CRUZ

"Comisionado Asociado"

The order of the commission above quoted of November 20, 1931, is attacked in this certiorari proceeding on two grounds: 'First, that the petitioners here (oppositors below) did not have an "opportunity to defend their rights" at the hearing held before the Commissioner Del Rosario on November 14, 1931. They allege in substance that they were misled into believing that the only question that would be considered at that hearing was the reconsideration of the order of November 11, 1931, postponing indefinitely consideration of the case on its merits. But they made no objection on that ground at the hearing nor in their motion for reconsideration of the order of November 20, 1931, which they filed with the commission on November 28, 1931. The motion for reconsideration filed by the applicants on November 13, 1931, which was duly served, expressly prays "that the commission immediately proceed to definitely dispose of this case", etc. It is to be noted that the application had been pending before the commission since February 9, 1931, and the oppositors at different stages of the proceedings had filed objections to the sale and other pleadings on the merits. The issues were made up. The gravamen of the opposition to the approval of the transfer of the certificates was the alleged illegality of the sale by the sheriff of Tayabas. As that is a question for the courts and not the commission, the commission delayed the decision of the application until some one of the three suits involving that legal question might be decided. After many months of waiting during which the Orlanes & Banaag Transportation Co., Inc. was thrown into receivership and its service demoralized, it became apparent to the commission that in the interest of the parties and "having special regard to the public interest over which the commission ought to watch", the commission, without granting the application for the approval of the transfer of the certificates, devised, in its order of November 20, 1931, what may be called a *modus vivendi*, by which the public might not suffer "by reason of the failure of a service which is so extremely necessary". The order, on its face, is purely interlocutory and temporary, subject to revocation or modification at any time by the commission. The order does not approve the transfer of the certificates to the Parsons Hardware Co., Inc., or its transferee, the Laguna-Tayabas Bus Co.; on the contrary, it plainly holds that question in abeyance until the validity of the sale by the sheriff of Tayabas to the Parsons Hardware Co., Inc., can be judicially determined.

As the commission, therefore, has not determined upon its merits the petition for the approval of the transfer of the certificates to the Parsons Hardware Co., Inc., or its assignees, the Laguna-Tayabas Bus Co., the petitioners' objection that these merits have already been decided and they have not had their day in court, is unsound.

Nor do we find any merit in the second attack that is made upon the order of November 20, 1931, namely, that it is the result of a hearing at which only one of the commissioners (Commissioner Del Rosario) was present. It is alleged that the certificates of the petitioners have been revoked by the order of November 20, 1931, and such revocation can be made, under Act No. 3844, section 2, approved November 9, 1931, only after hearing by at least two of the commissioners. The contention is unsound, in our opinion, in both particulars: First, as we have seen, the order of November 20, 1931, does not revoke the certificates of the petitioners; second, the language of the statute referred to is not to be so narrowly construed as petitioners desire. Section 2, among other things, provides:

"* * * ah contested matters that may be presented before the Commission shall be heard and decided upon by

the Commission in full or at least by two Commissioners, and before any Commissioner is assigned to write the decision or any resolution which affects in some way the right of the parties concerned, the matter shall be voted upon by the members of the Commission who have taken part in the direction of the case: * * *

The record of the proceedings had before Commissioner Del Rosario on November 14, 1931, shows that no decision upon any matter determining the rights of the parties was made by Commissioner Del Rosario. The evidence apparently consisted only of two documents submitted by the applicants and the memorandum filed by the intervenors. The fact that all the three commissioners signed the order of November 20, 1931, seems to us a sufficient compliance with section 2, *supra*. We conclude, therefore, that both with respect to the hearing held on November 14, 1931, and the order of November 20, 1931, there has been a substantial compliance with the requirements of the Public Service Law. We are mindful of that provisions contained in section 24, paragraph (j), of Act No. 3108, which reads as follows:

"A substantial compliance with the requirements of this Act shall be sufficient to give effect to all the rules, orders, acts, and regulations of the Commission and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto."

We are aware of the difficult, complex and unexpected situations which often arise to confront our Public Service Commission—situations that call for earnest study, nice discrimination and a careful balancing of the rights and equities of public utility enterprises on the one hand and the general public on the other, which is entitled to receive adequate, safe and proper service. It is impossible for the Legislature to foresee all those situations and complexities and to describe them in detail in the regulatory statute. However, section 13 of Act No. 3108 as amended by Act No. 3316, contains the following sentence, which has an analogy in the "general welfare" clause of many constitutions:

"The Commission shall have general supervision and regulation of, jurisdiction and control over, all public services and also over their property, property rights, equipment, facilities and franchises so far as may be necessary for the purposes of carrying out the provisions of this Act." Whatever difficulty may be encountered in bringing the order of the commission on November 20, 1931, here in question, precisely within section 15, paragraph (i), we think it was within the power and jurisdiction of the commission to make said order under the general grant of jurisdiction contained in section 13 of Act No. 3108 as amended.

The petition for certiorari is denied with costs against the petitioners.

Avanceña, C. J., Street, ,Malcolm, Ostrand, Villa-Real, Hull, and Vickers, JJ., concur.

DISSENTING

ABAD SANTOS, J.:

No matter whether it is purely interlocutory on its face, the practical effect of the order of the Public Service Commission sought to be reviewed in this proceeding, was to deprive the petitioners of the right to use their certificates of public convenience authorizing the operation of a bus service over certain routes in the Province of Tayabas. It goes without saying that the petitioners could not be deprived of that right without due process of law—without due notice and hearing. "The essential elements of due process of law are notice and opportunity to defend. In determining whether such rights have been denied, the courts are governed by the substance of things and not by mere form." (Simon vs. Craft [Ala. 1901], 182 U. S., 427, 436; 21 S. Ct., 836; 45 Law. ed., 1165.)

In *Lopez vs. Director of Lands* (47 Phil., 23, 32), this court rightly observed: "By 'due process of law', as Daniel Webster said in his argument before the Supreme Court of the United States in the famous Dartmouth Col- lege

Case, is 'by the law of the land * * * a law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is, that every citizen shall hold his life, liberty, property, and immunities, under the protection of the general rules which govern society.' (4 Wheaton, U. S., 518, 581.) 'Due process of law' contemplates, notice and opportunity to be heard before judgment is rendered, affecting one's person or property."

In *Bohol Land Transportation Co. vs. Jureidini* (53 Phil., 560), this court held that before a certificate of public necessity and convenience can be totally or partially revoked, the party thereby affected must be notified and heard.

In *Ex parte Strieker* (109 Fed., 145, 150), the court declared that due process of law means a course of legal proceeding, according to those rules and principles which have been established in our systems of jurisprudence, for the protection and enforcement of private and personal rights. In other words: "Due process of law in each particular case means, such an exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs." (Cooley's Constitutional Limitations, 8th ed., vol. II, p. 741.)

What, then, are the rules and principles which have been established in our system of jurisprudence for the protection of individual rights in the class of cases to which the instant case belongs? In the first place, we have, as indicative of what is generally considered a reasonable safe-guard, the rule that: "When no other provision is made by law no action shall be taken on any motions or applications unless it appears that the adverse party had notice thereof, three days before the time set for the hearing thereof." (Rule 10 of the Courts of First Instance.) In the second place, we have the doctrine laid down by this court in *Cing Hong So vs. Tan Boon Kong* (53 Phil, 437), that: "Where a party litigant, without malice, fault or inexcusable neglect, is not prepared for the trial of a case, the court exceeds the discretion conferred upon it by law in denying to said litigant a reasonable opportunity to prepare for the trial and to obtain due process of law and proper protection under the law."

Turning- now to the case at bar, we find that the matter before the commission, which resulted in the order sought to be reviewed, was a petition for the approval of the sale of five certificates of public convenience owned by the petitioners herein. By order of the commission, the case was set for hearing on March 24, 1931. After granting several postponements, the commission on November 11, 1931, continued the case indefinitely. On November 13, 1931, the respondents Laguna-Tayabas Bus Company and Parsons Hardware Company, Inc., filed a motion for reconsideration of the order of indefinite postponement of November 11, 1931, and prayed that "the Commission immediately proceed to definitely dispose of this case and approve the sale without prejudice to whatever action may be taken by the, courts with regard to the complaint filed by the intervenors in this case." This motion was set for hearing, not by the commission, but by the movants themselves, at 9 a. m., on the following day. Under these circumstances, and in the light of the principles above cited, can it be fairly and reasonably held that the petitioners were deprived of their right to use 'the certificates of public convenience in question, after due notice of hearing?

The order in question is also objectionable on the ground that it was beyond the power of the commission to issue it. The commission had authority under the law either to approve or disapprove the sale, but it had no power to recognize the Laguna-Tayabas Bus Company as assignee de facto—cessionaria de facto—whatever that means. Its jurisdiction was, furthermore, limited to granting the relief prayed for in the motion for reconsideration, namely: "that the resolution of yesterday indefinitely postponing this case be reconsidered; and that the commission immediately proceed to definitely dispose of this case and approve the sale, without prejudice to whatever action may be taken by the courts, with, regard to the complaint filed by the intervenors in this case." Instead, however, of acting on the issues specifically raised by the motion for reconsideration, the commission decided some other

question. While we should make allowance for the complex situations which the commission, has to confront in the discharge of its function, this court is, in my judgment, making a great mistake in sanctioning a practice so fraught with injustice.

I am of the opinion that the order of the Public Service Commission of November 20, 1931, should be declared null and void as prayed by the petitioners.

VILLAMOR, J.: I agree with the preceding opinion of Justice Abad Santos.

IMPERIAL, J.: I concur.

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