

FILIPINO BUS COMPANY, PETITIONER VS. PHILIPPINE RAILWAY COMPANY, RESPONDENT. PUBLIC SERVICE COMMISSION, INTERVENOR.

G.R. No. 37929, February 16, 1933

Ponente: BUTTE, J.

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BUTTE, J.:

This is a petition for the review of an order of the Public Service Commission brought here under section 35 of Act No. 3108 as amended by Act No. 3316. This section provides in part as follows:

"The Supreme Court is hereby given jurisdiction to review said order of the Commission, and to modify or set aside such order when it clearly appears that there was no evidence before the Commission to support reasonably such order, or that the same was without the jurisdiction of the Commission. * * *"

The dispositive part of the commission's order which is assailed by the petitioner, reads as follows:

"For all the foregoing, a fine of five hundred pesos (P500) plus the payment of cost of investigation in the sum of P25 is hereby imposed upon the respondent company payable within thirty days from receipt hereof, with the understanding that upon its failure to pay the said amount, fine and costs, within the thirty days period, the certificates issued to the respondent shall be suspended until the said amount is entirely paid without prejudice to the collection of the same by way of ordinary proceedings.

"This decision shall take effect from date hereof and shall become final thirty days after the parties were duly notified."

The facts of the case, may be summarized as follows: On September 12, 1932, a complaint was filed with the Public Service Commission (case No. 30939), charging that the Filipino Bus Company (petitioner herein) during the months of January and February, 1932, had repeatedly violated the law and the orders of the Public Service Commission, in the sense that it charged and accepted lower fares for the transportation of passengers than permitted by its authorized schedules and the orders of the Public Service Commission. After the complainant's evidence was submitted (and it seems to us conclusive) the Filipino Bus Company presented no evidence. Its attorney made the following statements:

"Mr. EDILLON (on behalf of the respondent). The respondent has no desire to present any evidence at all. It wishes to state this manifestation to the commission that in the Province of Cebu since January 20, 1932, the question of rates is acute. The respondent finds it hard and difficult to stand the strain of competition without adopting the rates charged by the other competing operators. By force of necessity and in order to preserve its existence, maintain its franchise and serve the interests of public convenience, the respondent is left helpless in the face of no alternatives than to follow the rates prevailing in the Province of Cebu. The respondent stands first for law enforcement and commits itself to adhere to the force of the rules and regulations of this commission on which it relies for protection and security in the field of business. The respondent respectfully prays and calls the attention of this Honorable Public Service Commission to consider the circumstances under which the respondent is laboring in order to exist and minimize its losses occasioned by the rate-cutting

practice and practices of the bus operators competing in the Province of Cebu.

"With the foregoing manifestation, respondent submits the case for decision.

"Mr. ARMSTRONG. Do I understand from your manifestation that you virtually admit the charges contained in the complaint?

"Mr. EDILLON. The manifestation will speak for itself, Mr. Armstrong. I think it is clear." We can find no merit whatever in petitioner's first assignment of error which, in substance, is that the charges were not substantiated by the evidence.

Its second assignment of error is as follows: "That the Public Service Commission erred in imposing a P500 fine—a very excessive penalty for the slight offense charged in the complaint." The brief of the petitioner concludes with the following prayer:

"Wherefore, this Honorable Supreme Court is respectfully prayed to render a judgment: (a) setting aside the order of the Public Service Commission imposing P500 fine upon the petitioner on the ground that there was no evidence before the commission to reasonably support said order; (b) or to reduce the penalty to the amount of P50 plus the costs of investigation, in case this Hon. Supreme Court finds that the charges are clearly sustained by the evidence presented."

In view of said prayer and the appellate powers of this court in relation to the Public Service Commission, this court, on November 23, 1932, entered the following order:

"The court on this 22d day of November, 1932, having under consideration the petition of the Filipino Bus Company vs. Philippine Railway Co. (respondent), G. R. No. 37929, for a review of the decision of the Public Service Commission, dated June 3, 1932, in case No. 30939 in which the said commission imposes upon the Filipino Bus Company a fine of P500 plus P25 the cost of investigation, to be payable within 30 days and if not so paid the certificates of convenience issued to said company shall be suspended, and it appearing that the Public Service Commission is not made a party respondent in the present proceeding for review of the said order of the commission, and a question having arisen as to the jurisdiction of the commission to make the order aforesaid, it is ordered that the clerk of this court forward to the Attorney-General, as law officer of said commission, a copy of the petition for review herein filed, without exhibits, and a copy of the said order of June 3, 1932, of the commission and the Attorney-General is hereby granted a period of fifteen (15) days from the receipt of notice within which to intervene in this cause on behalf of the Public Service Commission and to file such memorandum specially with relation to said jurisdictional question as he may deem proper."

On December 12, 1932, the Attorney-General, on behalf of the Public Service Commission, filed a petition for leave to intervene in this cause on behalf of the Public Service Commission, which was granted and the court was favored with the views of the Attorney-General, presented in a memorandum filed on December 21, 1932.

The Attorney-General finds in section 30 of the Public Service Commission Act (No. 3108 as amended by section 8 of Act No. 3316) the authority and jurisdiction of the commission to impose the fine herein complained of. He cites three decisions of this court in support of his view, namely: G. R. No. 33691, Bohol Land Transportation Co. vs. Butalid and Jureidini[1]; G. R. No. 34815, Pasay Transportation Co. vs. Silang Traffic Company[2]; G. R. No. 36192, Cabacungan vs. Northern Luzon Transportation Inc.[3] A brief review of these cases, we think, will disclose that the question of the jurisdiction of the commission to impose a penalty or fine was not decided or discussed.

In the case of Bohol Land Transportation Co. vs Butalid and Jureidini, which was promulgated January 27, 1931, it appears that the commission, instead of cancelling the certificates of public convenience and necessity of the respondents as desired by the petitioner, merely fined the respondent and approved the transfer of the certificates

to Jureidini. Apparently, the respondent paid the fine but the complainant petitioner was not satisfied with that action and insisted in its assignments of error to the effect that the Public Service Commission should have applied the more drastic penalty of cancelling the certificates. This court confirmed the decision of the commission; but, as stated, the party who was fined did not appeal.

In the case of Cabacungan vs. Northern Luzon Transportation Inc., which was promulgated September 3, 1932, the commission imposed upon the appellant the penalty of P800 plus P25 for the costs of investigation; and ordered the TPU license plates on the appellant's trucks to be removed and confiscated. The fourth assignment of error of the appellant was as follows:

"The commission erred in imposing upon the appellant a fine other than and in excess of the fine provided for in section 30 of Act No. 3108; as section 33 of the said Act should be declared unconstitutional in that it offers wide room for discrimination and abuse by merely setting the maximum limit for such fines which under this Act is excessively and unreasonably high."

The question as to the authority of the commission to impose a penalty was not discussed. But it was argued that the amount fixed in the statute ("not exceeding P200 per day for every day during which such default continues") was so excessive and unreasonable as to violate the provisions of our Organic Law prohibiting cruel and unusual punishments. With regard to this particular argument, this court said the following:

"En cuanto al cuarto senalamiento de error, tambien se suscita en el una cuestion al parecer de derecho constitucional pero que en realidad y verdad no es mas que la de si o no el poder legislativo esta facultado a fijar un limite maximo para las multas, y la de si la multa que no exceda de P200 al dia fijada en el articulo 30 de la Ley No. 3108 es excesiva e irrazonable. La legislatura esta ciertamente facultada a fijar el maximum de la pena pecuniaria que desea imponer por cada infraccion de cualquier orden de la Comision de Servicios Publicos y la referida multa maxima de P200 al dia arriba mencionada no es ni cruel ni inusitada, puesto que la Ley no obliga su imposicion en todos los casos, sino que puede imponerse cantidad menor segun la mayor o menor gravedad de la infraccion."

It is apparent, therefore, from the foregoing that no interpretation of section 30 of Act No. 3108, as amended, as related to the question of the jurisdiction of the commission to impose a penalty, was involved.

In the case of Pasay Transportation Co. vs. Silang Traffic Company, which was decided on December 3, 1931, the appellant assigned in substance the following errors: First, that the Public Service Commission erred in not cancelling the certificate of the respondent; second, in reducing the fine imposed upon the respondent to P75; and, third, in not granting the motion for reconsideration presented by the complainant with reference to the fine imposed upon the respondent.

Here, too, the party upon whom the penalty was imposed by the commission did not appeal and there is no discussion whatever as to the jurisdiction of the commission. The appellant contended that the commission should have cancelled the certificate instead of imposing a penalty. Upon that issue alone this court confirmed the action of the commission. If this court passed over the jurisdictional question *sub silentio* in that case, because the question was not presented by either of the parties, that does not preclude an appellant, or the court on its own motion, from raising the question in a future case in which the issue is squarely presented.

The case at bar stands on a different footing from the cases above cited. This court is now asked to reverse or, in its discretion, to modify a penalty imposed by the Public Service Commission; and we proceed directly to the consideration of the jurisdiction of the Public Service Commission to impose the penalty which we are now asked to reduce. Necessarily, if the commission had no jurisdiction to make the order, this court has no jurisdiction to modify it on appeal.

As the sole enactment, on the basis of which the commission assumed to exercise this jurisdiction, is section 30 of Act No. 3108, as amended by Act No. 3316, that section is quoted here:

"Sec. 30. In default of compliance with any order of the Commission when the same shall become effective the person or public service affected thereby shall be subject to a penalty of not exceeding two hundred pesos per day for every day during which such default continues, to be recovered in an action in the name of the Government of the Philippine Islands, and observance of the orders of the Commission may be enforced by mandamus or injunction in appropriate cases, or by action to compel the specific performance of the order or orders so made, or of the duties imposed by law upon such public service: Provided, That the Commission may compromise any civil or other action arising under this Act, in such manner and for such sum as it may deem just and reasonable."

A cursory reading of the foregoing language indicates that there are no words which delegate to the Public Service Commission the jurisdiction to determine first, whether or not an offense was committed, and second, to determine in its discretion what is the proper penalty, and third, to enter and record with legal effect an order or judgment imposing upon the offender the penalty to which section 30 subjects him. Moreover, the words "shall be subject to a penalty * * * to be recovered in an action in the name of the Government of the Philippine Islands", considered in their context, plainly indicate that the adjudication of the liability for the penalty and the determination of the amount thereof, and the execution for the enforcement thereof, are confided by the statute to a court of competent jurisdiction, and not to the Public Service Commission.

This conclusion, we think, is reinforced by an examination of the other penal clauses¹ of the Public Service Law. There is only one section (section 23) in which the Public Service Commission is given jurisdiction to impose a fine and here that power is granted in express and unmistakable language. The jurisdiction to impose fines or penalties is ordinarily a judicial function; and when the Legislature, in derogation of the judicial department, confers such jurisdiction on an administrative commission of its own creation, it will not leave its purpose to inference but will make it known in clear and unequivocal words, as it did, in this Act, in section 23.

In all the other penal clauses of the Public Service Law (sections 24 [a], 24 [b], 24 [d], 24 [f], 24 [g], 24 [h], 24 [i], section 31, section 32) relating to various violations of the orders of the commission or the provisions of the Public Service Law, the jurisdiction to punish the offender is vested in courts of competent jurisdiction. Section 33, which provides in substance that any public service corporation which shall commit any act prohibited by the statute or omit to perform any act required to be done thereby shall be punished by a fine not exceeding P25,000, makes no express reference to a court of competent jurisdiction, but we think confers upon such a court, and not upon the Public Service Commission, the jurisdiction to impose such a fine. So far as we are advised, the commission has never assumed to exercise that jurisdiction.

The Public Service Commission, being a creature of the Legislature, and not a court, it can exercise only such jurisdiction and powers as are expressly, or by necessary implication, conferred upon it by statute. As we do not find in section 30, or any other provision of the Public Service Law, any delegation to the commission, in express words or by necessary implication, of the authority and jurisdiction to determine the guilt of the appellant, or the discretion to determine the amount of the penalty, or the authority to "impose" the penalty here in question under pain of suspension of the appellant's certificate of public convenience and necessity, we must hold that the commission had no jurisdiction to make the order herein complained of. The order must be declared void and is hereby vacated, without prejudice to any other proceedings that may be brought lawfully against the Filipino Bus Company.

There will be no special pronouncement as to costs.

Avanceña, C. J., Street, Villamor, Ostrand, Villa-Real, Abad Santos, Hull, Vickers, and Imperial, JJ., concur.

[1] Promulgated January 27, 1931, not reported.

[2] 56 Phil., 822.

[3] Page 977, post.

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