

PANGASINAN TRANSPORTATION CO., INC., PETITIONER, VS. THE PUBLIC SERVICE COMMISSION, RESPONDENT.*G.R. No. 47065. June 26, 1940*

Ponente: LAUREL, J.

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The petitioner has been engaged for the past twenty years in the business of transporting passengers in the Provinces of Pangasinan and Tarlac and, to a certain extent, in the Provinces of Nueva Ecija and Zambales, by means of motor vehicles commonly known as TPU buses, in accordance with the terms and conditions of the certificates of public convenience issued in its favor by the former Public Utility Commission in cases Nos. 24948, 3U973, 36831, 32014 and 53090. On August 26, 1939, the petitioner filed with the Public Service Commission an application for authorization to operate ten additional new Brockway trucks (case No. 56641), on the ground that they were needed to comply with the terms and conditions of its existing certificates and as a result of the application of the Eight Hour Labor Law. In the decision of September 26, 1939, granting the petitioner's application for increase of equipment, the Public Service Commission ordered:

"Y de acuerdo con lo que se provee por el articulo 15 de la Ley No. 146 del Commonwealth, tal como ha-sido enmendada por el articulo 1 de la Ley No. 454, por la presente se enmienda las condiciones de los certificados de conveniencia publica expedidos en los expedientes Nos. 24948, 30973, 36831, 32014 y la automation concedida en el expediente No. 53090, asi que se consideran incorporadas en los mismos las dos siguientes condiciones:

"Que los certificados de conveniencia publica y autorizacion arriba mencionados seran yalidos y subsistentes solamente durante el periodo de veinticinco (25) anos, contados desde la fecha de la promulgation de esta decision.

"Que la empresa de la solicitante podra ser adquirida por el Commonwealth de Filipinas o por alguna dependencia del mismo en cualquier tiempo que lo deseeare previo pago del precio de costo de su equipo util, menos una depreciation razonable que se ha de fijar por la Comision al tiempo de su adquisicion."

Not being agreeable to the two new conditions thus incorporated in its existing certificates, the petitioner filed on October 9, 1939 a motion for reconsideration which was denied by the Public Service Commission on November 14, 1939. Whereupon, on November 20, 1939, the present petition for a writ of certiorari was instituted in this court praying that an order be issued directing the secretary of the Public Service Commission to certify forthwith to this court the records of all proceedings in case No. 56641; that this court, after hearing, render a decision declaring section 1 of Commonwealth Act No. 454 unconstitutional and void; that, if this court should be of the opinion that section 1 of Commonwealth Act No. 454 is constitutional, a decision be rendered declaring that the provisions thereof are not applicable to valid and subsisting certificates issued prior to June 8, 1939. Stated in the language of the petitioner, it is contended:

"1. That the legislative powers granted to the Public Service Commission by section 1 of Commonwealth Act No. 454, without limitation, guide or rule except the unfettered discretion and judgment of the Commission,

constitute a complete and total abdication by the Legislature of its functions in the premises, and, for that reason, the Act, in so far as those powers are concerned, is unconstitutional and void.

"2. That even if it be assumed that section 1 of Commonwealth Act No. 454, is a valid delegation of legislative powers, the Public Service Commission has exceeded its authority because: (a) The Act applies only to future certificates and not to valid and subsisting certificates issued prior to June 8, 1939, when said Act took effect, and (a) the Act, as applied by the Commission, violates constitutional guarantees.

Section 15 of Commonwealth Act No. 146, as amended by section 1 of Commonwealth Act No. 454, invoked by the respondent Public Service Commission in the decision complained of in the present proceedings, reads as follows:

"With the exception of those enumerated in the preceding section, no public service shall operate in the Philippines without possessing a valid and subsisting certificate from the Public Service Commission, known as 'certificate of public convenience/ or 'certificate of convenience and public necessity,' as the case may be, to the effect that the operation of said service and the authorization to do business will promote the public interests in a proper and suitable manner.

"The Commission may prescribe as a condition for the issuance of the certificate provided in the preceding paragraph that the service can be acquired by the Commonwealth of the Philippines or by any instrumentality thereof upon payment of the cost price of its useful equipment, less reasonable depreciation; and likewise, that the certificate shall be valid only for a definite period of time; and that the violation of any of these conditions shall produce the immediate cancellation of the certificate without the necessity of any express action on the part of the Commission.

"In estimating the depreciation, the effect of the use of the equipment, its actual condition, the age of the model, or other circumstances affecting its value in the market shall be taken into consideration.

"The foregoing is likewise applicable to any extension or amendment of certificates actually in force and to those which may hereafter be issued, to permits to modify itineraries and time schedules of public services and to authorizations to renew and increase equipment and properties."

Under the first paragraph of the aforequoted section 15 of Act No. 146, as amended, no public service can operate without a certificate of public convenience or certificate of convenience and public necessity to the effect that the operation of said service and the authorization to do business will promote "public interests in a proper and suitable manner."* Under the second paragraph, one of the conditions which the Public Service Commission may prescribe for the issuance of the certificate provided for in the first paragraph is that "the service can be acquired by the Commonwealth of the Philippines or by any instrumentality thereof upon payment of the cost price of its useful equipment, less reasonable depreciation," a condition which is virtually a restatement of the principle already embodied in the Constitution, section 6 of Article XII, which provides that "the State may, in the interest of national welfare and defense, establish and operate industries and means of transportation and communication, and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government." Another condition which the Commission may prescribe, and which is assailed by the petitioner, is that the certificate "shall be valid only for a definite period of time." As there is a relation between the first and second paragraphs of said section 15, the two provisions must be read and interpreted together. That is to say, in issuing a certificate, the Commission must necessarily be satisfied that the operation of the service under said certificate during a definite period fixed therein "will promote the public interests in a proper and suitable manner." Under section 16 (a) of Commonwealth Act No. 146 which is a complement of section 15, the Commission is empowered to issue certificates of public convenience whenever it "finds that the operation of the public service proposed and the authorization to do business will promote the public interests in a

proper and suitable manner." Inasmuch as the period to be fixed by the Commission under section 15 is inseparable from the certificate itself, said period cannot be disregarded by the Commission in determining the question whether the issuance of the certificate will promote the public interests in a proper and suitable manner. Conversely, in determining "a definite period of time," the Commission will be guided by "public interests," the only limitation to its power being that said period shall not exceed fifty years (sec. 16 (a), Commonwealth Act No. 146; Constitution, Art. XIII, sec. 8.) We have already ruled that "public interest" furnishes a sufficient standard. (People vs. Fernandez and Trinidad, G. R. No. 45655, promulgated June 15, 1938; People vs. Rosenthal and Osmena, G. R. Nos. 46076 and 46077, promulgated June 12, 1939, citing New York Central Securities Corporation v. U. S. A., 287 U. S. 12, 24, 25, 77 Law. ed. 138, 145, 146; Schenck Poultry Corporation vs. U. S., 295 U. S. 495, 540, 79 Law. ed. 1570, 1585; Ferrazzini vs. Gsell, 34 Phil., 697, 711-712.)

Section 8 of Article XIII of the Constitution provides, among other things, that no franchise, certificate, or any other form of authorization for the operation of a public utility shall be "for a longer period than fifty years," and when it was ordained, in section 15 of Commonwealth Act No. 146, as amended by Commonwealth Act No. 454, that the Public Service Commission may prescribe as a condition for the issuance of a certificate that it "shall be valid only for a definite period of time" and, in section 16 (a) that "no such certificates shall be issued for a period of more than fifty years," the National Assembly meant to give effect to the aforesaid constitutional mandate. More than this, it has thereby also declared its will that the period to be fixed by the Public Service Commission shall not be longer than fifty years. All that has been delegated to the Commission, therefore, is the administrative function, involving the use of discretion, to carry out the will of the National Assembly having in view, in addition, the promotion of "public interests in a proper and suitable manner." The fact that the National Assembly may itself exercise the function and authority thus conferred upon the Public Service Commission does not make the provision in question constitutionally objectionable.

The theory of the separation of powers is designed by its originators to secure action and at the same time to forestall overaction which necessarily results from undue concentration of powers, and thereby obtain efficiency and prevent despotism. Thereby, the "rule of law" was established which narrows the range of governmental action and makes it subject to control by certain legal devices. As a corollary, we find the rule prohibiting delegation of legislative authority, and from the earliest time American legal authorities have proceeded on the theory that legislative power must be exercised by the legislature alone. It is frankness, however, to confess that as one delves into the mass of judicial pronouncements, he finds a great deal of confusion. One thing, however, is apparent in the development of the principle of separation of powers and that is that the maxim of delegatus non potest delegari or delegata potestas non potest delegari, attributed to Bracton (*De Legibus et Consuetudinibus Angliae*, edited by G. E. Woodbine, Yale University Press, 1922, vol. 2, p. 167) but which is also recognized in principle in the Roman Law (D. 17.18.3), has been made to adapt itself to the complexities of modern governments, giving rise to the adoption, within certain limits, of the principle of "subordinate legislation," not only in the United States and England but in practically all modern governments. (People vs. Rosenthal and Osmena, G. R. Nos. 46076 and 46077, promulgated June 12, 1939.) Accordingly, with the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, there is a constantly growing tendency toward the delegation of greater powers by the legislature, and toward the approval of the practice by the courts. (Dillon Catfish Drainage Dist. v. Bank of Dillon, 141 S. E. 274, 275, 143 S. Ct. 178; State v. Knox County, 54 S. W. 2d. 973, 976, 165 Tenn. 319.) In harmony with such growing tendency, this Court, since the decision in the case of *Compania General de Tabacos de Filipinas vs. Board of Public Utility Commissioners* (34 Phil., 136), relied upon by the petitioner, has, in instances, extended its seal of approval to the "delegation of greater powers by the legislature." (*Inchausti Steamship Co. vs. Public Utility Commissioner*, 44 Phil., 366; *Alegre vs. Collector of Customs*, 53 Phil., 394;

Cebu Autobus Co. vs. De Jesus, 56 Phil., 446; People vs. Fernandez & Trinidad, G. R. No. 45655, promulgated June 15, 1938; People vs. Rosenthal & Osmefia, G. R. Nos. 46076, 46077, promulgated June 12, 1939; and Robb and Hilscher vs. People, G. R. No. 45866, promulgated June 12, 1939.)

Under the fourth paragraph of section 15 of Commonwealth Act No. 146, as amended by Commonwealth Act No. 454, the power of the Public Service Commission to prescribe the conditions "that the service can be acquired by the Commonwealth of the Philippines or by any instrumentality thereof upon payment of the cost price of its useful equipment, less reasonable depreciation," and "that the certificate shall be valid only for a definite period of time" is expressly made applicable "to any extension or amendment of certificates actually in force" and "to authorizations to renew and increase equipment and properties." We have examined the legislative proceedings on the subject and have found that these conditions were purposely made applicable to existing certificates of public convenience. The history of Commonwealth Act No. 454 reveals that there was an attempt to suppress, by way of amendment, the sentence "and likewise, that the certificate shall be valid only for a definite period of time," but the attempt failed:

"Sr. CUENCO. Señor Presidente, para otra enmienda. En la misma pagina, lineas 23 y 24, pido que se supriman las palabras 'and likewise, that the certificate shall be valid only for a definite period of time.' Esta disposicion del proyecto autoriza a la Comision de Servicios Publicos a fijar un plazo de vigencia del certificado de conveniencia publica. Todo el mundo sabe que no se puede determinar cuando los intereses del servicio publico requieren la explotacion de un servicio publico y como ha de saber la Comisio'n de Servicios Publicos, si en un tiempo determinado, la explotacion de algunos buses en cierta ruta ya no tiene razon de ser, sobre todo, si se tiene en cuenta; que la explotacido de los servicios publicos depende de condiciones fluctuantes, asi como del volumen del trafico y de otras condiciones. Ademas, el servicio publico se concede por la Comision de Servicios Publicos cuando el interes publico asi lo exige. El interes publico no tiene duration fija, no es permanente; es un proceso mas o menos indefinido en cuanto al tiempo. Se ha acordado eso en el caucus de anoche.

"El Presidente Pro Tempore. Que dice el Comite?

"Sr. Alano. El Comite siente tener que rechazar esa enmienda, en vista de que esto de los certificados de conveVOLUME 70. 231 niencia publica es igual que la franquicia: se puede extender. Si los servicios prestados por la compania durante el tiempo de su certificado lo requiere, puede pedir la extension y se le extendera; pero no creo conveniente el que nosotros demos un certificado de conveniencia publica de uria manera que podria pasar de cincuenta afios, porque seria anticonstitucional."

*****By a majority vote the proposed amendment was defeated. (Sesion de 17 de mayo de 1939, Asamblea Nacional.) The petitioner is mistaken in the suggestion that, simply because its existing certificates had been granted before June 8, 1939, the date when Commonwealth Act No. 454, amendatory of section 15 of Commonwealth Act No. 146, was approved, it must be deemed to have the right of holding them in perpetuity. Section 74 of the Philippine Bill provided that "no franchise, privilege, or concession shall be granted to any corporation except under the conditions that it shall be subject to amendment, alteration, or repeal by the Congress of the United States." The Jones Law, incorporating a similar mandate, provided, in section 28, that "no franchise or right shall be granted to any individual, firm, or corporation except under the conditions that it shall be subject to amendment, alteration, or repeal by the Congress of the United States." Lastly, the Constitution of the Philippines provides, in section 8 of Article XIII, that "no franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the National Assembly when the public interest so requires." The National Assembly, by virtue of the Constitution, logically succeeded to the Congress of the United States in the power to amend, alter or repeal any franchise or

right granted prior to or after the approval of the Constitution; and when Commonwealth Acts Nos. 146 and 454 were enacted, the National Assembly, to the extent therein provided, has declared its will and purpose to amend or alter existing certificates of public convenience.

Upon the other hand, statutes enacted for the regulation of public utilities, being a proper exercise by the state of its police power, are applicable not only to those public utilities coming into existence after its passage, but likewise to those already established and in operation.

"Nor is there any merit in petitioner's contention, that, because of the establishment of petitioner's operations prior to May 1, 1917, they are not subject to the regulations of the Commission. Statutes for the regulation of public utilities are a proper exercise by the state of its police power. As soon as the power is exercised, all phases of operation of established utilities, become at once subject to the police power thus called into operation. *Producers' Transportation Co. v. Railroad Commission*, 251 U. S. 228, 40 Sup. Ct. 131, 64 Law. ed. 239, *Law v. Railroad Commission*, 184 Cal. 737, 195 Pac. 423, 14 A. L. R. 249. The statute is applicable not only to those public utilities coming into existence after its passage, but likewise to those already established and in operation. The 'Auto Stage and Truck Transportation Act' (Stats. 1917, c. 213) is a statute passed in pursuance of the police power. The only distinction recognized in the statute between those established before and those established after the passage of the act is in the method of the creation of their operative rights. A certificate of public convenience and necessity is required for any new operation, but no such certificate is required of any transportation company for the operation which was actually carried on in good faith on May 1, 1917. This distinction in the creation of their operative rights in no way affects the power of the Commission to supervise and regulate them. Obviously the power of the Commission to hear and dispose of complaints is as effective against companies securing their operative rights prior to May 1, 1917. is, against those subsequently securing such rights under a certificate of public convenience and necessity. (*Motor Transit Co. et al. v. Railroad Commission of California et al.*, 209 Pac. 586.)"

Moreover, Commonwealth Acts Nos. 146 and 454 are not

only the organic acts of the Public Service Commission but are "a part of the charter of every utility company operating or seeking to operate a franchise" in the Philippines. (*Streator Aqueduct Co. v. Smith et al.*, 295 Fed. 385.) The business of a common carrier holds such a peculiar relation to the public interest that there is superinduced upon it the right of public regulation. When private property is "affected with a public interest it ceased to be *juris privati* only." When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but so long as he maintains the use he must submit to control. Indeed, this right of regulation is so far beyond question that it is well settled that the power of the state to exercise legislative control over public utilities may be exercised through boards of commissioners. (*Fisher vs. Yangco Steamship Company*, 31 Phil., 1, citing *Munn vs. Illinois*, 94 U. S. 113; *Georgia R. & Bkg. Co. vs. Smith*, 128 U. S. 174; *Budd vs. New York*, 143 U. S. 517; *New York etc. R. Co. vs. Bristol*, 151 U. S. 556, 571; *Connecticut etc. R. Co. vs. Woodruff*, 153 U. S. 689; *Louisville etc. Ry Co. vs. Kentucky*, 161 U. S. 677, 695.) This right of the state to regulate public utilities is founded upon the police power, and statutes for the control and regulation of utilities are a legitimate exercise thereof, for the protection of the public as well as of the utilities themselves. Such statutes are, therefore, not unconstitutional, either as impairing the obligation of contracts, taking property without due process, or denying the equal protection of the laws, especially inasmuch as the question whether or not private property shall be devoted to a public use and the consequent burdens assumed is ordinarily for the owner to decide; and if he voluntarily places his property in public service he cannot complain that it becomes subject to the regulatory

powers of the state. (51 C. J., sec. 21, pp. 9-10.) This is the more so in the light of authorities which hold that a certificate of public convenience constitutes neither a franchise nor a contract, confers no property right, and is a mere license or privilege. (*Burgess vs. Mayor & Aldermen of Brockton*, 235 Mass. 95, 100, 126 N. E. 456; *Roberto vs. Commissioners of Department of Public Utilities*, 262 Mass. 583, 160 N. E. 321; *Scheible vs. Hogan*, 113 Ohio St. 83, 148 N. E. 581; *Mate vs. Curtis [J. L.] Cartage Co.* [1937], 132 Ohio St. 271, 7 N. E. [2d] 220; *Manila Yellow Taxicab Co. vs. Sabellano*, 59 Phil., 773.)

Whilst the challenged provisions of Commonwealth Act No. 454 are valid and constitutional, we are, however, of the opinion that the decision of the Public Service Commission should be reversed and the case remanded thereto for further proceedings for the reason now to be stated. The Public Service Commission has power, upon proper notice and hearing, "to amend, modify or revoke at any time any certificate issued under the provisions of this Act, whenever the facts and circumstances on the strength of which said certificate was issued have been misrepresented or materially changed." (Section 16, par. [w], Commonwealth Act No. 146.) The petitioner's application here was for an increase of its equipment to enable it to comply with the conditions of its certificates of public convenience. On the matter of limitation to twenty five (25) years of the life of its certificates of public convenience, there had been neither notice nor opportunity given the petitioner to be heard or present evidence. The Commission appears to have taken advantage of the petitioner to augment petitioner's equipment in imposing the limitation of twentyfive (25) years which might as well be twenty or fifteen or any number of years. This is, to say the least, irregular and should not be sanctioned. There are cardinal primary rights which must be respected even in proceedings of this character. The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. In the language of Chief Justice Hughes, in *Morgan v. U. S.*, 304 U. S. 1, 58 S. Ct. 773, 999, 82 Law. ed. 1129, "the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play." Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. (Chief Justice Hughes in *Morgan vs. U. S.*, 298 U. S. 468, 56 S. Ct. 906, 80 Law. ed. 1288.) In the language of this Court in *Edwards vs. McCoy* (22 Phil., 598), "the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons to whom the evidence is presented can thrust it aside without notice or consideration." While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, at least when directly attacked. (*Edwards vs. McCoy*, supra.) This principle emanates from the more fundamental principle that the genius of constitutional government is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

The decision appealed from is hereby reversed and the case remanded to the Public Service Commission for further proceedings in accordance with law and this decision, without any pronouncement regarding costs. So ordered

Avancena, C.J., Imperial, Diaz, Concepcion, and , Moran, JJ., concur.

Writ granted.

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