

MANILA YELLOW TAXICAB CO., INC., ET AL., PETITIONERS AND APPELLANTS, VS. BONIFACIO S. ARAULLO ET AL., RESPONDENTS AND APPELLEES.

G. R. Nos. 41434-41442, 41444-41447, 41449. November 03, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the Manila Yellow Taxicab Co., Inc., Fausto Barredo, Ana Vda. de Corominas, Teodoro R. Yangco and the Makabayan Taxicab Co., Inc., from the decision of the Public Service Commission granting certificates of public convenience to the following applicants to operate: Bonifacio S. Araullo, 5 taxicabs, Case No. 35770 (G. R. No. 41434); Feliciano Belmonte, 5 taxicabs, Case No. 36594 (G. R. No. 41435); Garcia de Galvez, 5 taxicabs, Case No. 36071 (G. R. No. 41436); Rosario Garcia and Alfredo Errea, 5 taxicabs, Case No. 35438 (G. R. No. 41437); Manuel Gonzales, 5 taxicabs, Case No. 36337 (G. R. No. 41438); Benito M. Guido, 5 taxicabs, Case No. 35743 (G. R. No. 41439); Urbano Legaspi, 5 taxicabs, Case No. 35562 (G. R. No. 41440); Asuncion Lopez, 5 taxicabs, Case No. 35654 (G. R. No. 41441); Gabriela Martin, 5 taxicabs, Case No. 35501 (G. R. No. 41442); Amador D. Santos, 5 taxicabs, Case No. 35623 (G. R. No. 41444); Leon M. Santos, 5 taxicabs, Case No. 35622 (G. R. No. 41445); Arcadio Sevilla and Juan Valenzuela, 5 taxicabs, Case No. 35474 (G. R. No. 41446); Standard Import Co., Inc., 10 taxicabs, Case No. 35241 (G. R. No. 41447); and Jose F. Zamora, 10 taxicabs, Case No. 37410 (G. R. No. 41449), without a fixed route within the City of Manila and the suburban municipalities.

The appellants assign in support of their appeal, seven alleged errors as committed by the Public Service Commission in its said decision, which errors will be discussed in the course of this decision.

The principal question to be decided in these appeals, and to which those raised by the appellants in their seven assignments of alleged errors may be reduced, is whether or not there is evidence of record reasonably supporting the appealed decision.

On this point the Public Service Commission in its decision in question states as follows:

"From the results of our own careful observation and investigation of the operation of taxicabs in the city as well as the evidence of record, the commission is satisfied that the taxicab situation has not yet reached that point of saturation which would induce us to rule that no additional units should be allowed to be operated, either by the granting of certificates to new applicants or authorizing the increase of the equipment of the present operators. Therefore as the applicants have shown by their evidence that they are financially able to operate and maintain the taxicab service which they are applying for and that such services will promote public welfare, the commission believes that their applications are deserving of favorable consideration."

Therefore the Public Service Commission has arrived at the conclusion that the public taxicab service in the City of Manila has not yet reached such a state as not to permit the operation of more cars, after a careful observation and investigation of said service and after considering the evidence of record consisting of the testimony of said

applicants and their witnesses.

In the case of *San Miguel Brewery vs. Lapid* (53 Phil., 539), this court, reiterating the doctrine laid down in the cases of the *Philippine Shipowners' Association vs. Public Utility Commissioner and Board of Appeal* (43 Phil., 328) and *Ynchausti Steamship Co. vs. Public Utility Commissioner and Board of Appeal* (44 Phil., 363), stated as follows:

"PUBLIC SERVICE COMMISSION; REVIEW OF ORDERS.— When an order of the Public Service Commission, granting a privilege to an applicant, is reasonably supported by the evidence, there is no reason to reverse the order of the commission, because, as was said in the case of *Dauner vs. Unson* (G. R. No. 28957, promulgated September 29, 1928, not reported), decided by the second division of this court, in reviewing orders of this character, it must be remembered that this court is not required to examine the proof *de novo* and to determine for itself whether or not the preponderance of the evidence really justifies the order issued by the lower court."

The appellants question the sufficiency of the evidence of record to reasonably support the decision in question on the ground that the commission lacks authority to base its decision relative to the existence or inexistence of a public necessity for more taxicabs upon the result of its own observation and investigation of the operation of taxicabs in the City of Manila; that a great part of the oral evidence adduced at the hearing had already been presented by E. Vesnan (Case No. 31423), Austin Taxicab Co. (Case No. 33453), Panfilo Sabellano (Case No. 34983) and Ramon Silos (Case No. 39434) in support of former applications, which evidence the commission deemed insufficient to justify the grant of the total number of cars for the operation of which Esmeralda Vesnan sought authority, and the grant of the applications of the Austin Taxicab Co., Panfilo Sabellano and Ramon Silos; that the additional evidence fails to show that from the taking of the former evidence until the presentation of the new evidence within the period of six months, there has been a change in the economic and social conditions in Manila to justify the increase of the number of taxicabs in operation.

In deciding the former cases above cited, the Public Service Commission made the following remarks in its decision:

"While the commission is satisfied that the present number of taxicab operators, including those herein granted certificates, taking into account the resources at their command, is sufficient to fill the public need for the time being, nevertheless with the data before us we do not feel justified just now in making a definite announcement as to the number of operators and units of taxicabs that should be authorized until a more thorough investigation can be made on that point."

It will be seen that the Public Service Commission was not certain whether or not the number of taxicabs then in operation, together with the additional ones authorized, was sufficient to satisfy the public need, although the commission believed at the time that it was, leaving the final determination of the question until after it has conducted a more thorough investigation. Therefore the fact that the Public Service Commission, in case No. 31423 (G. R. No. 40319) [1], has refused to authorize E. Vesnan to operate 200 bantam taxicabs, granting her only 10 which this court increased to 20, because it then believed, in view of the limited data available, that the public necessity was sufficiently satisfied, does not prevent it from changing its view after a more thorough observation and investigation, not only because it is characteristic of the wise to change their opinion, but also because it reserved to itself such change of opinion. It would have been a clear demonstration of poor judgment if, after having been convinced otherwise, it had persisted in its error.

The appellants deny that the Public Service Commission has the power to base its decision relative to the necessity or lack of necessity of more taxicabs for the convenience of the public in the City of Manila upon the result of its observations and investigations of the operation of taxicabs.

In the case of State ex rel. Northern Pac. Ry. Co. vs. Public Service Commission (95 Wash., 376; 163 Pac, 1143), the Supreme Court of the State of Washington in a decision of March 24, 1917, laid down the following doctrine which was affirmed in the case of State ex rel. Northern Pac. Ry. Co. vs. Public Service Commission (166 Pac., 793):

"The Public Service Commission as an administrative and regulative body is not bound to acquire its information concerning all matters involved in a proceeding before it entirely from the evidence of witnesses or other evidence produced before it, but may take into consideration the results of its general investigations, general information upon a given subject within its powers, and all matters which affect the matter and concerning which it must determine the facts."

According to the above cited American doctrine, the Public Service Commission, the functions of which are administrative and regulative in addition to being quasi-judicial, did not exceed its authority in basing its decision upon the result of its own observation and investigation, in connection with the evidence presented at the hearing. Inasmuch as this court is not required to examine the evidence de novo or to determine for itself whether or not the preponderance of the evidence justifies the order issued by the commission, in accordance with the doctrine laid down in the case of San Miguel Brewery vs. Lapid, supra; inasmuch as said commission has based its decision upon the result of its own observation and investigation and upon the evidence presented at the hearing; inasmuch as this court cannot substitute its own discretion for that of said commission; and it appearing that the evidence reasonably supports said decision, there is no justification for reversing it. (Manila Yellow Taxicab Co. and Aero Taxicab Co. vs. Danon. 58 Phil., 75; Manila Electric Co. vs. Balagtas, 58 Phil., 429.)

As regards the question of whether or not the Public Service Commission erred in not having given the appellants the opportunity to increase their equipment before admitting new companies, said appellants admit having filed applications praying for authority to increase their respective equipment but later, when the applications in these cases were set for hearing, they withdrew said applications alleging that the public convenience did not demand such increase. However, when the commission approved the applications in the cases under consideration and declared that there was need for a greater number of such vehicles, said appellants again filed their applications for an increase of equipment, the total increase sought by them amounting to 380 cars. Therefore the appellants not only had the opportunity to request permission to increase their equipment but also actually applied for it but later withdrew their applications. Inasmuch as the appellants, through their own voluntary desistance, had deprived the commission of its jurisdiction to pass upon their applications for an increase of equipment jointly with the applications under consideration, they cannot now charge that said commission has not given them said opportunity before issuing certificates of public convenience to the new applicants.

For the foregoing considerations, this court is of the opinion and so holds: (1) That the Public Service Commission in the exercise of its quasi-judicial and administrative functions has the power to take into consideration the result of its own observation and investigation of the matter submitted to it for consideration and decision, in connection with other evidence presented at the hearing of a case; and (2) that a transportation company which files an application to increase its equipment and later withdraws it pending the hearing of other applications of similar companies to engage in the same business, has no right to complain of not having been given the opportunity to increase its equipment before the authorization of said new companies.

Wherefore, not finding any error in the appealed decision, it is affirmed in toto, with costs against the appellants. So ordered.

Avancena, C. J., Street, Abad Santos, and Diaz, JJ., concur.

[1]Vesnan vs. Manila Yellow Taxicab Co., 59 Phil., 787.

Malcolm, J., concurs in the result.

BUTTE, J., with whom concur HULL, VICKERS, and GODDARD, JJ., dissenting:

When the seven so-called Vesnan cases, G. R. Nos. 40317 and 40319, were decided by this court last March, I dissented from our decision revoking and modifying the orders of the Public Service Commission in the firm conviction that the orders of the commission in all those cases should be sustained without change. In our dissenting opinion Justice Malcolm and I indicated what we believed to be the accepted principles by which the jurisdiction of this court to review the orders of the Public Service Commission is limited. We dissented because we were unable to agree "that there was no evidence before the commission to support reasonably" its order. But the cases now before us, in my judgment, present a different picture. In the record before us—and upon that alone we must stand—I regret to say that I can find no evidence that reasonably supports the orders of the commission turning sixteen new independent operators and 130 additional taxicabs loose on the public of Manila. Let us examine the record.

The evidence upon which the commission rested its decision in these sixteen cases consists of three parts: (1) The entire record in the so-called Vesnan cases, (2) "other evidence of record", (3) the commission's private observations and investigations.

(1) The evidence in the Vesnan cases Nos. 31423, 33453, 34983 and 34984 resulted in a decision of the commission dated July 29, 1933, in which the commission said:

"While the commission is satisfied that the present number of taxicab operators, including those herein granted certificates, taking into account the resources at their command, is sufficient to fill the public need for the time being, nevertheless with the data before us we do not feel justified just now in making a definite announcement as to the number of operators and units of taxicabs that should be authorized until a more thorough investigation can be made on that point."

That decision plainly shows that the evidence in the Vesnan cases is inconclusive upon the question whether there was any public necessity for more taxicabs in Manila. It left that question in the air "until a more thorough investigation can be made on that point." The record in the cases before us does not show that such a "thorough investigation" had been made. But it is assumed that the "careful observations and investigations" of the commission itself ex parte (which are not in the record) "as well as the evidence of record" in the present cases are the fulfillment of the "thorough investigation" mentioned by the commission in its decision in the Vesnan cases. No evidence in the Vesnan cases was made the basis of any finding of fact in the present cases.

(2) In its decision covering the sixteen certificates herein under review the commission stated:

"* * * the commission believes that the following number of units, in addition to the 340 units owned and operated by the present holders of certificates of public convenience for the operation of taxicabs is justified by the evidence and the results of its own survey and observation of the taxicab situation in the City of Manila and suburbs:

Units

Domingo Vital (No. 35027).....

'20

Stanford Import Co. (No. 35241).....

10

Rosario Garcia & Alfredo Errea (No. 35438).....

5

Arcadio Sevilla & Juan Valenzuela (No. 35474).....

5

Gabriela Martin (No. 35501)

5

Urbano Legaspi (No. 35562).....

5

Leon M. Santos (No. 85622)

5

Asuncion Lopez (No. 35654)

5

Amador B. Santos (No. 35623)

5

Benito M. Guido (No. 35743)

5

Bonifacio S. Araullo (No. 35770).....

5

Gracia de Galvez (No. 36071)

5

N. & B. Stables Co., Inc. (No. 36310).....

30

Manuel Gonzales (No. 36337)

6

Feliciano Belmonte (No. 36594)

5

Jose F. Zamora (No. 37410)

10

Let us examine the "evidence of record" upon which the commission acted.

Nineteen witnesses testified in support of the applications here in question. Fifteen were the applicants themselves or persons directly and financially interested in the applications. Of the remaining four, H. C. Anderson, manager of the Manila Hotel (t. s. n., 147-156), Captain Harry Adamson, secretary of the Army & Navy Club (t. s. n., 160-167) and Henry Chandler, manager of the Elks' Club (t. s. n., 168-172, testified on behalf of the N. & B. Garage to the effect that it would be more convenient to their guests for the N. & B. Garage, with which they had agreements, to furnish them taxicabs instead of garage cars; but none of them was asked or ventured to state any opinion as to the remaining applicants or as to the general question of the public convenience or necessity. The only apparently disinterested witness was John Syler (t. s. n., 64-78), an unemployed teacher, who complained that there were times when "I was unable to get a taxi" (t. s. n., page 72). The last time when he tried to get a taxi and couldn't get one it was "I think about two weeks ago" (t. s. n., page 76). He also testified: "If I come out of my house the first thing I do is to look out the window. If I wait a considerable time and no taxi I walk up to Legarda. If a taxi comes along within a reasonable time I take it. If not, I use a tramcar." In a word, his evidence was so inconsequential, not to say absurd, that the commission does not mention it in its decision nor do any of the appellees quote it in their briefs.

Of all the fifteen witnesses who are either the applicants themselves or persons directly and financially interested in the application, only one, Domingo Vital, testified on the fundamental question of the public interest. All the rest limited their testimony to proving the good faith, experience and financial responsibility of the applicants. Domingo Vital, without giving any facts, gave it as his opinion that nine hundred to a thousand taxicabs are necessary in the City of Manila (t. s. n., 12-13). At the time of testifying, Domingo Vital's application for certificates for twenty taxicabs was pending. Such an expression of opinion, unsupported by any facts and uncorroborated by any other testimony in the case and so unreasonable on its face, coming from a person so vitally affected by the result, should not have been accepted by the commission as the sole convincing evidence of the factual existence of public convenience and necessity. (Cf. *In re Gibson*, P. U. R. [1926-A], 826, 829.) Four witnesses testified in opposition. Had Domingo Vital's opinion been accepted as credible and a sufficient basis been laid thereby for the granting of 130 additional taxicabs, the commission would not have resorted to the novel and -doubtful expedient or falling back upon their own "careful observations and investigations of the taxicab situation in the City of Manila."

(3) Can the commission, when the evidence of public convenience and necessity is as glaringly unconvincing as it is in this record, lawfully supplement the same and convert a bad record into a good one by drawing upon their private observations and investigations which are not made part of the record? I venture to say that, upon authority, they cannot; and, upon reason, they ought not to do so.

If the commissioners may draw on their observations and investigations off the record to turn the scales of the weight of the evidence in favor of one side or the other, the effect is the same as if they rested the decision entirely on such private observations and investigations. This presents a grave question, for if this power be conceded to the Public Service Commission there is no reason why the principle should not apply to every other similar administrative agency.

The Question here raised should not be confused with the right of a commission to take judicial notice of matters of common knowledge. For examples of the latter, see *Re Portland Railroad Company* (P. U. R. [1928-E], 300, 303); and *Commonwealth vs. Reardon* (185 N. E., 40 [Mass.], P. U. R. [1934], 192, 195). I think we would all agree that section 275 of the Code of Civil Procedure as to matters of "public knowledge" that may be judicially recognized may be invoked by a quasi-judicial tribunal like the Public Service Commission. But it would be absurd to say that a commission or a court could take judicial notice of controverted facts.

The majority of the court have come to the conclusion that the commission has the power to take into

consideration, in connection with other evidence presented at the hearing, the results of its own observations and investigations off the record on the matters submitted to them for decision, without stating in the record what facts the members observed or what investigations they conducted. It is stated that this is the "American doctrine". In my judgment, the American practice and the American authorities point to a directly opposite conclusion. We shall now examine these authorities.

The majority rest their conclusion on a single American case, namely, *State ex rel. Northern Pac. Ry. Co. vs. Public Service Commission* (95 Wash., 376; 163 Pac, 1143). Except for that case, like my brethren, I have not found, after an exhaustive search, a single case which lends the slightest semblance of support to the conclusion reached by the majority. If that case, correctly understood, supports the doctrine announced by the majority, it stands alone in American jurisprudence.

However, a critical examination of that case discloses that it does not support the doctrine for which it is cited. The majority opinion quotes the syllabus. If we examine the text itself and the decision as a whole, we will find, first, that the sentence alleged to contain the "American doctrine" is dictum (and loosely phrased, at that); and, second, that it relates to a passage in the decision of the commission in which the commission do nothing but take judicial notice of matters of common knowledge. The passage in the decision of the commission which gave rise to the dictum aforesaid is as follows:

"Although rates may not be adjusted to equalize differences in relative locations of shippers, this additional transportation expense and unnecessary waste is a proper and material factor to be considered in determining whether or not the existing through route is a satisfactory through route; otherwise a through route passing shippers at a distance of 3, 5 or 10 miles could be successfully defended as a satisfactory through route, notwithstanding the presence of service facilities suitable for forming a through route passing directly through the town in which such shippers may be located, as the Northern Pacific Railway line in this instance passes directly through the town of Prosser.

" 'Other factors for consideration in determining whether or not a through route is a satisfactory through route for transportation of property are: A difference in distance on the existing route and the proposed route. A difference in cost of transportation over such routes. These factors are not present in this case in so far as the rail haul is concerned, but the delay in loading and unloading cars, resulting from the extra wagon haul, equals a material difference in distance on the rail haul, while the difference in transportation cost resulting from the same cause is equivalent to a substantial difference in rail rates. All of the factors here considered are subjects of public service regulation and affect the public necessities and convenience.

" 'The public necessities and convenience demand the reestablishment of the old through route with milling in transit privileges, for the reason that with a satisfactory through route and transit privileges grain may be milled at interior points in the state and flour, bran, shorts, chopped and rolled feed and other mill products economically supplied to the various interior communities." (163 Pac, 1146.)

Although the relators in that case took exception to the conclusion announced in the foregoing passage, it does not appear that they excepted in any wise to the argumentation or to the matters of general knowledge set out in the foregoing passage.

In any event, the Public Service Commission of Washington included in the record an extended statement of the facts upon which it based its conclusion, thereby affording the appellate court the opportunity to test the reasonableness of those findings. No such thing was done in the cases before us.

I have found only one case in which a Public Service Commission attempted, in a comparatively slight degree, to base a finding of fact on its ex parte observations and investigations. That is the case of *Oklahoma Natural Gas Co. vs. Corporation Commission* (216 Pac, 917, 923). In determining a proper gas rate, it was necessary for the

commission, as one item, to find the cost of natural gas at the well. The Supreme Court of Oklahoma said:

"The commission then found that the price of gas at the mouth of the well had declined until at the time of making the order it could be purchased for at least one-third less cost to the company. This latter finding is without evidence to support it. Indeed, the commission did not purport to base this finding on any evidence before it, but stated that it had an independent knowledge of this fact, and in making the order did not take as conclusive the testimony with reference to the price of gas.

"The commission should base its findings upon evidence before it. The rights of the parties depend upon facts established at the hearing, and not upon some independent knowledge of the commission acquired after the hearing. There being no evidence to the effect that the price of gas at the mouth of the well had declined, but the evidence all being to the effect that at the time of the hearing the company was compelled to pay 10 cents per thousand cubic feet therefor, we must disregard this finding of the commission. A finding without evidence to support it is arbitrary and baseless." (216 Pac, 923.)

It is a significant fact that of the multiplied thousands of decisions of the Public Service Commissions in the United States in which the commissioners must have had some personal knowledge of some facts of which the commission could not properly take judicial notice, the case in Oklahoma stands alone. Such a handy expedient (the commissioner's "observations" off the record), if lawful, would naturally be put to constant use. The Oklahoma case is the exception which proves the rule.

The leading case in which the Supreme Court of the United States condemned the use of information which is not made a part of the record is *Interstate Commerce Commission vs. Louisville & Nashville Railroad Company* (227 U. S., 88; 57 Law. ed., 431). The language of the court so aptly fits the case before us that any comment is superfluous. The court said:

"The government further insists that the Commerce Act (26 Stat. at L., 743, chap. 128, U. S. Comp. Stat. [1901], p. 3163) requires the commission to obtain information necessary to enable it to perform the duties and carry out the objects for which it was created; and having been given legislative power to make rates it can act, as could Congress, on such information, and therefore its findings must be presumed to have been supported by such information, even though not formally proved at the hearing. But such a construction would nullify the right to a hearing,—for manifestly there is no hearing when the party does not know what evidence is offered or considered, and is not given an opportunity to test, explain, or refute. The information gathered under the provisions of section 12 may be used as basis for instituting prosecutions for violations of the law, and for many other purposes, but is not available, as such, in cases where the party is entitled to a hearing. The commission is an administrative body and, even where it acts in a quasi judicial capacity, is not limited by the strict rules, as to the admissibility of evidence, which prevail in suits between private parties. (*Interstate Commerce Commission vs. Baird*, 194 U. S., 25; 48 Law. ed., 860; 24 Sup. Ct. Rep., 563.) But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such cases the commissioners cannot act upon their own information, as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the commission had before it extraneous, unknown, but presumptively sufficient information to support the finding. (*U. S. vs. Baltimore & O. S. W. R. Co.*, 226 U. S., 14, ante, 104; 33 Sup. Ct. Rep., 5.)"

Besides the decisions above mentioned, the overwhelming weight of authority in the United States is to the effect that in any judicial or administrative proceeding in which the parties are entitled to a hearing, the court or administrative agency may not, without violating the concepts of fair hearing and due process, base a decision in

whole or in part on evidence of facts (apart from judicial notice of matters of common knowledge) which is privately obtained and not presented at such hearing or made a part of the record in such a way that it may be examined and tested on appeal. Out of the mass of decisions supporting this general doctrine, I have selected the following because they involve facts somewhat analogous to the cases before us: *Sabre vs. Rutland Railroad Co.* (86 Vt., 347; 85 Atl., 693); *In re New England Power Corporation* (156 Atl., 390, 393); *Scranton-Spring Brook Water Service Co. vs. Public Service Commission* (160 Atl., 230, 233); *Farmers' Elevator Co. vs. Chicago, Rock Island & Pacific Railway Company* (107 N. E., 841, 843); *Chicago Railways Company vs. Commerce Commission* (336 111., 51; 167 N. E., 840); *Brotherhood of Locomotive Firemen and Enginemen vs. New York Central Railway Company* (339 111., 201; 171 N. E., 148, 150); *Chicago, Burlington & Quincy Railroad Company vs. Commerce Commission* (345 111., 576; 178 N. E., 157); *People's Fruit & Vegetable Shippers' Association vs. Illinois Commerce Commission* (351 111., 329; 184 N. E., 615); *Louisville & Nashville Railroad Company vs. Illinois Commerce Commission* (353 111., 375; 187 N. E., 449); *Wichita Railroad & Light Company vs. Court of Industrial Relations* (P. U. R. [1923-D], 593, 617); *Gallaher vs. Southern New England Telephone Company* (P. U. R. [1924-A], 279, 288); *Re Butte-Anaconda Freight & Express Service* (P. U. R. [1926-C], 492, 494); *Cooper vs. Me Williams & Robinson* (P. U. R. [1928-A], 731); *Hoffman vs. Public Service Commission* (P. U. R. [1931-A], 122, 126, 128); *Re Interstate Transit Lines* (P. U. R. [1931A], 318, 327, 328); *Illinois Central Railroad Company vs. Railroad Commission of Kentucky* (1 Fed. [2d], 805, 806); *West Ohio Gas Co. vs. Public Utilities Commission* (42 Fed. [2d], 899, 900).

Section 35 of the Public Service Law, Act No. 3108, as amended by Act No. 3316, provides that any order made by the commission may be reviewed by this court. This section concludes 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 evidence presented to the Commission, together with the finding of the Commission and any order issued thereon, shall be certified by the secretary of the Commission to the Supreme Court. The procedure for review, except as herein provided, shall be prescribed by rules of the Supreme Court."

How can the secretary of the commission certify to this court the evidence which rests in the breast of the commission and which was never disclosed? and how can this court judicially review an order based on such evidence? It seems to me the decision of the majority places this court in a position where it can never hold that the evidence does not reasonably support the order of the commission if the commission inserts in its decision the bare statement that its own "observations and investigations" sustain the order. If this court must accept the ipse dixit of the Public Service Commission that its ex parte "observations and investigations"—of which we know nothing—establish the reasonableness of its orders, then the statutory and constitutional right of judicial review is a delusion and a farce. Then verily the commission would be a law unto itself, because there is no way of testing the accuracy of the knowledge which rests entirely in the breast of the commission. The Congress of the United States and the Legislature of the Philippine Islands, in my judgment, never intended such a result.

For the foregoing reasons, I am constrained to dissent in the firm conviction that when the Public Service Commission used the undisclosed "results of our own careful observation and investigation" in lieu of evidence, it violated the principles of fair hearing and due process and made an intelligent review on appeal impossible; and there is no other evidence in the record that supports reasonably the orders here under review.

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