

43 Phil. 328

[G. R. No. 18440. April 26, 1922]

PHILIPPINE SHIPOWNERS' ASSOCIATION, PETITIONER, VS. THE PUBLIC UTILITY COMMISSIONER AND THE BOARD OF APPEAL, CREATED BY SECTION 30, ACT NO. 2307, AS AMENDED, RESPONDENTS.

D E C I S I O N

STATEMENT

This is a petition to review an order of the defendants requiring the plaintiff, as a common carrier, to charge a freight rate on rice by weight only.

It is alleged that the plaintiff is a corporation duly organized under the laws of the Philippine Islands, composed of numerous persons and entities, each of whom is engaged in the business of common carrier, of freight and passengers, in the coastwise trade of the Islands. That it is organized for mutual protection of its associated members and the development of domestic and foreign maritime commerce. That on October 26, 1912, the Board of Rate Regulation promulgated an order, known as No. 16, establishing rates, rules, and regulations for the transportation of freight and passengers in the coastwise trade of the Philippine Islands. That the order provided that, unless otherwise specified, common carriers in applying such rates should use the unit, whether of weight or volume, which would produce the largest tariff. That, under the provisions of such order, carriers are required to charge freight on rice by measurement. That on September 13, 1918, the Public Utility Commissioner made an order requiring plaintiff to charge freight on rice by measurement in accordance with law. That in January, 1919, the Director of Commerce and Industry duly presented to the Public Utility Commissioner an application seeking to have Order No. 16 amended by providing that the tariff rate on rice should be by weight instead of by measurement, which would bring about a considerable reduction in the rate. That on November 15, 1921, after a hearing, the Public Utility Commissioner amended Order No. 16, reducing the freight rate on rice and requiring carriers to charge by weight only. That

on November 29, 1921, the plaintiff petitioned the Commissioner for a rehearing and stay of this decision pending the hearing. The Commissioner ordered a rehearing, but refused to grant the stay. That a rehearing was duly had, and on the 5th of December, 1921, the respondent Board entered an order, affirming the decision of the Public Utility Commissioner. It is then alleged that plaintiff is dissatisfied with the decision of the Board, for the following reasons:

(a) That there was no evidence before the respondent Board to support reasonably said decision.

(b) That the reduction is unreasonable and disastrous.

(c) That the reduction means a loss of thirty-nine per cent (39%) on existing freight rates on rice, rendering the rate unremunerative and confiscatory.

(d) That the order so confirmed by the respondent Board is prejudicial to public interests.

Wherefore, petitioner prays that the record and all proceedings of the Board be certified to this court, and that, upon the hearing and consideration thereof, the decision of the Board be annulled and set aside.

Pending further proceedings, this court made an order, requiring all proceedings of the Board be certified, and, pending the hearing, granted a temporary injunction, restraining the enforcement of the decision of the defendants.

On January 4, 1922, the defendants, through the Attorney-General, filed an answer in which they deny the alleged grounds for the petition marked (a), (b), (c), and (d) above quoted, and pray for an order sustaining the decision of the defendants.

Johns, J.:

It appears from the certified record that all of the parties in interest were notified of the hearing before the Commissioner, and that many of the shipowners and common carriers appeared, through their respective attorneys, and filed a demurrer to the petition, which was argued and overruled, after which evidence was offered pro and con upon the petition to lower and modify the rate on rice. That a full hearing and investigation was had upon the merits.

The original order, known as No. 16, was issued October 26, 1912, and was modified on

September 13, 1918. The petition for the change of the rate on rice, of which the plaintiff complains, was filed in January, 1919, and on November 15, 1921, the Public Utility Commissioner amended Order No. 16, requiring freight rate on rice to be charged by weight only. It is pointed out that nearly three years intervened from the time of the filing of the original petition and the decision of the Commissioner, and complaint is made of the delay and the power of the Commissioner to make his decision at the time it was made.

Be that as it may, the authority of this court is limited and defined by section 37 of Act No. 2307, creating a Board of Public Utility Commissioners and prescribing its duties and powers, which provides as follows:

“The Supreme Court is hereby given jurisdiction to review said order of the Board, and to set aside such order when it clearly appears that there was no evidence before the Board to support reasonably such order, or that the same was without the jurisdiction of the Board. The evidence presented to the Board, together with the finding of the Board and any order issued thereon, shall be certified by the Board to the Supreme Court. The procedure for review, except as herein provided, shall be prescribed by rules of the Supreme Court.”

The Act does not specify the time within which the Commissioner shall render his decision upon a hearing. Neither does it authorize this court to review the decision of the Commissioner by reason of his failure or neglect to render a decision within a given time.

Upon that question, the remedy, if any, is with the Legislature.

The petitioner claims that there is no evidence “to support reasonably said decision.” “That the reduction is unreasonable and disastrous.” That it means a loss of 39 per cent on existing freight rates on rice, “rendering the rate unremunerative and confiscatory.” That the order “is prejudicial to public interests.”

Here, again, the power of this court is limited to a review of the order of the Board, “and to set aside such order when it clearly appears that there was no evidence before the Board to support reasonably such order, or that the same was without the jurisdiction of the Board.”

It is assumed, and not denied, that the Commissioner did have jurisdiction of the subject-matter, and, under section 37, the question before this court is not one of public policy or public interest. Neither does section 37 contemplate that, in such a review, this court should

substitute its own opinion for that of the Commissioner's. The only power which this court has is to set aside the order when it clearly appears that there was no evidence "to support reasonably such order."

An examination of the record shows that a large amount of testimony was taken by the Commissioner before the final order was made, and that there was a full and fair investigation made of the case on the merits. That the shipowners were represented by able counsel and given every opportunity to present evidence to sustain their contention, and that, after such hearing, their contention was overruled, and the order in question was made.

Although it might be true that, under the facts presented, this court would reach another and different conclusion, its powers and duties are limited and denned by section 37 above quoted, and from an examination of the record, we cannot say, as a matter of law, that it appears that there was no evidence before the Board to reasonably sustain the order. As a matter of fact, there is ample evidence to support the order. Petitioner also contends that the testimony is conclusive that the loss on the steamship *Sorsogon* for the year 1918, would have been P23,660.41, and for the steamship *Y. Sontua*, for the same period, P12,311.76. It is true that it appears from the evidence marked Exhibit B that there would have been that difference in the gross receipts for those vessels during the year 1918, but that is not evidence that, under the fixed rate, the vessels would have been operated at financial loss.

Under all the authorities, the shipowners are entitled to a reasonable rate on their investment, but the fact that the order in question would mean a reduction of 39 per cent on the freight rate for rice does not carry with it or imply that the vessels would have been operated at a financial loss.

Under section 37, the powers and duties of this court are limited and defined. For such reason and upon the facts shown in the record, the temporary restraining order is dissolved and the petition dismissed, without costs to either party. If conditions have changed, the petitioner can file a new petition and have another hearing. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

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