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[G.R. No. L-32676. August 31, 1971]

ARROW TRANSPORTATION CORPORATION, *petitioner*, *vs.* THE HON. FILOMENO C. KINTANAR and SALVADOR B. JAPITANA, *respondents*.

SYLLABUS

1. **PUBLIC SERVICE COMMISSION; VACATED DECISION IS NON-EXISTENT; CASE AT BAR.—** It is clear that the order complained of was without basis. It purported to extend the period for the implementation of a decision which had been vacated and set aside, precisely so that herein petitioner could file its opposition and present its evidence. In other words there was nothing to extend insofar as the period for registration of the units mentioned in the decision was concerned. It is pointless to speak of the authority of the Public Service Commission to grant provisional permits for the operation of public utilities, because no such provisional permit was given here. The order of August 5, 1970 was not one, but simply a grant of extension of time to register a number of units by virtue of a decision which had become non-existent for that purpose. To consider that order as in effect a provisional permit would be inconsistent with the sense of the resolution of the Commission *en banc* granting petitioner's motion to set aside or vacate the decision and ordering that the case be set for hearing *de novo* with notice to said petitioner.

2. **ID.; ID.; A COMMISSIONER HAS NO POWER TO RECEIVE EVIDENCE IN CONTESTED CASES.—** Respondent's contention that the reception of evidence in contested cases may be delegated to one commissioner is beside the point. It is not his power to receive evidence that is questioned, nor even his power to issue ancillary orders in the course of the hearing. For the order complained of, assuming that it is incidental in character, is incidental not with respect to the reception of evidence but with respect to a decision that no longer exists.

3. **ID.; ID.; HEARING; NECESSARY TO DETERMINE WHETHER THERE IS BUSINESS MONOPOLY.—** Respondent's other arguments - that there is need for increased transportation facilities in Cebu; that such need is not being adequately supplied by petitioner; and that the latter's purpose in filing the instant

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petition is to assure himself of a monopoly of the business - are matters that should be addressed to the Public Service Commission, for which purpose precisely a rehearing of respondent's application was ordered, wherein the parties could present their respective sides.

APPEARANCES OF COUNSEL

Carreon & Carreon for petitioner.
R.R. Estampador for private respondent.

D E C I S I O N

MAKALINTAL, *J.:*

In PSC Case No. 70-1604, herein respondent Salvador B. Japitana was the applicant in the Public Service Commission for a certificate of public convenience to operate 20 units of PU automobile service in Cebu. Hearing of the application was set for April 8, 1970 and notices thereof were published in newspapers of general circulation in Cebu. No opposition having been filed, the application was considered as an uncontested case and heard *ex parte* before Commissioner Filomeno C. Kintanar, who rendered a decision on April 30, 1970, ordering the issuance of the certificate of public convenience applied for.

On May 16, 1970 the Arrow Transportation Corporation, a duly authorized operator of a PU automobile service in Cebu, filed a motion for reconsideration of the decision of Commissioner Kintanar, alleging that it was affected by the application but had not been served with a copy thereof nor with a copy of the notice of hearing, as required by the regulations of the Commission and by the terms of the said notice itself. The prayer in the motion for reconsideration was: (1) to immediately recall or set aside or vacate the decision entered on April 30, 1970; (2) to require the applicant to furnish a copy of the application and notice of hearing to the existing affected PU operator, Arrow Transportation Corporation, Cebu City, so that the latter can file its opposition; (3) to set the case for hearing *de novo* with notice thereof to the herein oppositor.

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On June 18, 1970 the Public Service Commission *en banc*, including respondent Commisioner Kintanar, issued an order granting the motion for reconsideration, reopening the case and returning it to the Second Division (of which said respondent was a member) "with the end in view of allowing the oppositor to introduce its evidence."

The basic decision of Commissioner Kintanar granting respondent Japitana's application stated that it would become final thirty (30) days after notice thereof to the applicant, or after April 30, 1970. Under date of July 21, 1970 Japitana filed a petition with the Public Service Commission, alleging that he was "a holder of (a) certificate of public convenience granted with twenty (20) units..."; that he was supposed to register the same from April 30 to May 30, 1970, but that he had only five (5) units then available; and praying that he be given an extension of time to register the twenty (20) units granted to him.

Herein petitioner opposed the request for extension on the ground, *inter alia,* that the order of the Commission *en banc* dated June 18, 1970 had the effect of vacating the decision of April 30, 1970, and consequently there was no basis for the extension prayed for. Overruling the opposition, respondent Commissioner issued an order on August 5, 1970, granting respondent Japitana an extension of 60 days. Petitioner moved to reconsider but was turned down; hence the instant petition for certiorari with preliminary injunction to annul the said order of August 5, 1970. The injunction asked for was ordered issued by resolution of this Court of October 21, 1970.

It is clear that the order complained of was without basis. It purported to extend the period for the implementation of a decision which had been vacated and set aside, precisely so that herein petitioner could file its opposition and present its evidence. In other words there was nothing to extend insofar as the period for registration of the units mentioned in the decision was concerned. It is pointless to speak of the authority of the Public Service Commission to grant provisional permits for the operation of public utilities, because no such provisional permit was given here. The order of August 5, 1970 was not one, but simply a

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grant of extension of time to register a number of units by virtue of a decision which had become non-existent for that purpose. To consider that order as in effect a provisional permit would be inconsistent with the sense of the resolution of the Commission *en banc* granting petitioner's motion to set aside or vacate the decision and ordering that the case be set for hearing *de novo* with notice to said petitioner.

Respondent's contention that the reception of evidence in contested cases may be delegated to one commissioner is beside the point. It is not his power to receive evidence that is questioned, nor even his power to issue ancillary orders in the course of the hearing. For the order complained of, assuming that it is incidental in character, is incidental not with respect to the reception of evidence but with respect to a decision that no longer exists. Respondent's other arguments — that there is need for increased transportation facilities in Cebu; that such need is not being adequately supplied by petitioner; and that the latter's purpose in filing the instant petition is to assure himself of a monopoly of the business — are matters that should be addressed to the Public Service Commission, for which purpose precisely a rehearing of respondent's application was ordered, wherein the parties could present their respective sides.

WHEREFORE, the writ prayed for is granted; the order complained of, dated August 5, 1970, is set aside; and the case is remanded for further proceedings in accordance with the order of the Commission *en banc* dated June 18, 1970. Costs against private respondent.

Concepcion, C.J., Reyes, J.B.L., Dizon, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and *Makasiar, JJ.*, concur.

[G.R. No. L-33088. August 31, 1971]

EMILIANO U. ESCOTO, *petitioner, vs.* ANUNCIACION VDA. DE GRANADA and THE PUBLIC SERVICE COMMISSION, *respondents.*