Supreme Court E-Library

filed by private respondent and that the Answer filed by the ten heirs and the Answer filed by the Administratrix were both unnecessary, the said heirs or the administratrix could, with leave of court, file an Amended Answer.

In view of the foregoing, the Court rules that the proceedings conducted by the respondent trial judge after the death of the deceased defendant are null and void.

WHEREFORE, the decision of the Court of Appeals is reversed; the petition for *certiorari* is granted; petitioner is ordered substituted for the deceased defendant, Pedro Sepulveda; and the proceedings conducted by the respondent trial judge after the death of the deceased defendant, including the decision rendered by him on January 28, 1976, are set aside; with costs against private respondent.

SO ORDERED.

Fernan, Alampay, Gutierrez, Jr., and *Paras, JJ.*, concur.

SECOND DIVISION

[G.R. No. L-48671. December 12, 1986]

MUNICIPALITY OF ECHAGUE, Represented by MAYOR SALVADOR H. GAFFUD, *petitioner, vs.* **HONORABLE LEOPOLDO M. ABELLERA, Acting Chairman, BOARD OF TRANSPORTATION, and AVELINO BALLAD,** *respondents.*

SYLLABUS

1. ADMINISTRATIVE LAW; PUBLIC SERVICE COMMISSION; CERTIFICATE OF PUBLIC CONVENIENCE; INADEQUATE NOTICE TO AFFECTED

Supreme Court E-Library

PARTY/IES, DENIAL OF ADMINISTRATIVE DUE PROCESS.— The Court cannot consider the alleged publication of the said notice in two unnamed Manila dailies as sufficient compliance of notice to petitioner when the singular date of such supposed publication is not even mentioned by respondents nor disclosed by the records. As a party to be directly affected by the setting up of a ferry service by private respondent, petitioner Municipality is entitled to be directly informed and afforded an opportunity to be heard by the Board. In *Cordero vs. Public Service Commission,* 121 SCRA 249, citing *Olongapo Jeepney Operators Association versus Public Service Commission*, 13 SCRA 303, the Court stated: "The inadequate notification to the interested parties in this case which resulted in the oppositors' failure to be present during the hearing, deprived them of their day in court. The decision rendered in disregard of said right, consequently, is null and void."

2. **ID.; MUNICIPAL COUNCIL OR SANGGUNIANG BAYAN; APPROVAL THEREOF NECESSARY BEFORE ISSUANCE OF CERTIFICATE OF PUBLIC CONVENIENCE BY BOARD OF TRANSPORTATION.**— With respect to the issue of whether an indorsing resolution is a requisite before the respondent Board may award a certificate of public convenience to respondent Ballad, the Court finds that in the case of *Cababa vs. Public Service Commission*, 102 Phil. 1013, it was held that "where a ferry lies entirely with in the territorial jurisdiction of a municipality, previous approval of that municipality is necessary before the Public Service Commission can grant a private operator a certificate of public convenience for its operation. And in *Reyes vs. Pascual*, 1 SCRA 1097, it was similarily ruled that "a private party desiring to operate a municipal ferry service should first be awarded by the municipality the right to operate the service before he could file an application for a certificate of permit with the Public Service Commission."

3. **ID.; SECTIONS 2318-2320, REVISED ADMINISTRATIVE CODE; THE SPECIFIC JURISDICTION AND AUTHORITY GIVEN TO THE MUNICIPALITY BY THE CODE PREVAIL OVER THAT OF THE BOARD OF TRANSPORTATION.**— The specific jurisdiction and authority given by Sections 2318-2320 of the Revised Administrative Code to a municipality to operate or lease the ferry service

Supreme Court E-Library

within its own territorial limits should prevail. The grant of supervision and authority by Administrative Code to municipalities or municipal council over public utilities such as municipal ferries, markets, etc. is specific, and undoubtedly was "intended to provide an additional source of revenue to municipal corporations for their maintenance and operation".

4. ID.; AUTHORITY OF MUNICIPAL COUNCIL OR SANGGUNIANG BAYAN AND BOARD OF TRANSPORTATION, DISTINGUISHED.— The provisions of the Revised Administrative Code which grant to the municipal council or Sangguniang Bayan the power to acquire or establish municipal ferries, are different and should be distinguished from the authority of the Board of Transportation to issue a Certificate of Public Convenience. While the *establishment* of a municipal ferry is first given to a municipality, ferry service will nevertheless be subject to the supervision and control of the Board of Transportation. The winner in a public bidding conducted by the municipal council obtains the privilege to operate the ferry service, but he has to apply for a Certificate of Public Convenience from the Board of Transportation which then has the duty to regulate the operation, route, rates to be charged, as well as specify the kind of equipment to be used for the comfort, convenience and safety of the public using the ferry. Citing in the case *Municipality of Gattaran versus Elizaga,* 91 Phil. 443.

APPEARANCES OF COUNSEL

Eugenio B. Javier, Jr. for petitioner.

Aurora A. Dajoyag for respondent Board of Transportation.

Benedicto Nanca and *Alfredo G. Vergara* for private respondent.

DECISION

ALAMPAY, *J.*:

The petition for *certiorari* in this case seeks for the declaration of nullity of the Decision of public respondent Board of Transportation, dated October 13, 1977; the Order, dated June 26, 1978, denying the motion for reconsideration by petitioners;

Supreme Court E-Library

and for the cancellation or recall of the Certificate of Public Convenience awarded to private respondent Avelino Ballad by said Board. Said petition was given due course in this Court's resolution, dated December 13, 1978.

The sole issue raised in the petition is whether or not, under Presidential Decree No. 1, or the Integrated Reorganization Plan, which vests on the Board of Transportation the jurisdiction and authority to issue Certificate of Public Convenience for the operation of public land, water and air transportation utilities, there would still be need for an applicant for a ferry boat service operating between two points within a municipality to obtain a favorable resolution of the Sangguniang Bayan of said municipality before the Board of Transportation can validly award the corresponding franchise to the applicant, considering the provisions of Sections 2318-2320 of the Revised Administrative Code.

The aforestated sections of the Administrative Code read as follows:

"Section 2318. *Municipal ferries, wharves, markets, etc.* — A municipal council shall have authority to acquire or establish municipal ferries, wharves, markets, slaughterhouses, pounds, and cemeteries. Public utilities thus owned by the municipality may be conducted by the municipal authorities upon account of the municipality or may be let for a stipulated return to private parties."

"Section 2320. *Establishment of certain public utilities by private parties under license.* — Where provision is not made by a municipal council, pursuant to the provisions of the next two preceding sections hereof, for maintaining or conducting the ferries, wharves, markets, or slaughterhouses requisite for the needs of the municipality, the municipal council shall have authority in its discretion, to let the privilege of establishing and maintaining such utilities to private parties by license granted upon such terms as shall be fixed by the council.

"The right to reject any or all bids shall be preserved in all proposals for such bids; and the maximum charges, rents, or fees which may be exacted by the lessees shall be fixed in advance and shall be stated in the proposals for bids. The decision of a municipal council rejecting any bid or awarding any such privilege shall be subject to final revisal by the provincial board."

Supreme Court E-Library

Since 1936, the petitioner municipality, through its then municipal council and later, its Sangguniang Bayan, had been operating a municipal ferry service traversing the Cagayan River to and from the Barangays Soyung-Malitao and Barangays Embarcadero-Dammang East and West, all within the municipality of Echague, Isabela. In this regard, petitioner either operated the ferry service itself, or annually leased the operation of the same to the highest bidder. The regular operation by the petitioner of the ferry service in the manner above stated resulted in an efficient and adequate transport service at reasonable rates to the people of the town and provided some modest revenue to the petitioner and its barangays (Memorandum for Petitioner, pp. 1-2; *Rollo*, p. 79-80).

On November 16, 1977, herein private respondent Avelino Ballad furnished petitioner, through its then incumbent mayor, a xerox copy of a Decision issued on October 13, 1977 by the Board of Transportation granting respondent Ballad a Certificate of Public Convenience to operate a two-motor boat service for the regular and public transportation of passengers and freight between Barrio Soyung-Dammang West and vice-versa across the Cagayan River all in the municipality of Echague, Isabela. In furnishing petitioner with a copy of the Decision in his favor, private respondent gave notice that he would start his ferry boat service operation in January, 1978 and petitioner Municipality has to stop its own ferry boat service within the aforementioned routes.

Petitioner expressed its surprise over said Decision because it is averred that it was never notified of the application of respondent Ballad with the Board of Transportation to operate the ferry service. On January 17, 1977, the respondent Board of Transportation, upon motion of petitioner Municipality, issued an Order suspending the operation of the motor boat service of private respondent after a rehearing of the case by the Board *en banc*.

On February 14, 1978, the petitioner filed a Motion for Reconsideration of the Decision, dated October 13, 1977, on the grounds of lack of notice and deprivation of the opportunity

Supreme Court E-Library

to be heard by respondent Board; and secondly, the award of said Certificate of Public Convenience to respondent Ballad was approved without favorable indorsement by resolution of the Sangguniang Bayan of Echague, Isabela of Ballad's application.

The respondent Board, on June 26, 1978, denied the Motion for Reconsideration and lifted and set aside the Order of suspension on the following explanation:

"After a perusal of the records of this case and the existing provisions of law pertinent to the case at bar, this Board finds the motion for reconsideration to be without sufficient merit, it appearing that by virtue of the provision of Article 3, Paragraph 4(a), Part X, Chapter I of the Integrated Reorganization Plan, adopted and approved under Letter of Implementation No. 1 the Board has the authority to issue a certificate of public convenience for the operation of public land, water and air transportation facilities and services such as motor vehicles, railroad lines, domestic and water carriers, domestic and air carriers and similar public utilities; and it appearing further, that the Motion for Reconsideration was filed out of time and that the decision has become final and executory, hence the Motion for Reconsideration is therefore, DENIED." (*Rollo*, pp. 23-24).

Petitioner's case rests on two principal contentions which are: (1) lack of due process, denied to it by the respondents because the municipality was never notified of the application filed by Ballad with respondent Board; and (2) the absence of any resolution passed by the Sangguniang Bayan of Echague favorably indorsing to the respondent Board, Ballad's application for a certificate of public convenience to operate the ferry service. Petitioner submits that its favorable indorsement is a jurisdictional prerequisite before respondent Board can award a certificate of public convenience to respondent Ballad and thus, the issuance to Ballad of the certificate of public convenience was with grave abuse of discretion amounting to lack of or in excess of its jurisdiction.

Indeed, the records reflect that in the case at bar there was no compliance made with the essential requirements of administrative due process. It appears that the notice of hearing was duly published *once* in two Manila daily newspapers of

Supreme Court E-Library

general circulation in the Philippines (Comment of Respondent Board of Transportation, pp. 12-13; *Rollo*, pp. 57-58). Nonetheless, Respondent Board ruled that petitioner is not entitled to be notified of the hearing inasmuch as petitioner Municipality never informed the respondent Board that it is an operator of a ferry boat service, and that petitioner Municipality being then a *de facto* ferry boat operator, has no personality to oppose the application of private respondent Ballad.

The Court cannot consider the alleged publication of the said notice in two unnamed Manila dailies as sufficient compliance of notice to petitioner when the singular date of such supposed publication is not even mentioned by respondents nor disclosed by the records. As a party to be directly affected by the setting up of a ferry service by private respondent, petitioner Municipality is entitled to be directly informed and afforded an opportunity to be heard by the Board.

In *Cordero vs. Public Service Commission,* 121 SCRA 249, citing *Olongapo Jeepney Operators Association versus Public Service Commission*, 135 SCRA 303, the Court stated:

"x x x x x x x x x

"In this instance, respondent applicant contends that the publication of the notice of hearing in 2 newspapers of general circulation in the province of Zambales is notification not only to the interested parties, but to the whole world in general. This is inaccurate. The order required, in addition to publication, individual notice to the operators affected by the application and whose names appeared in the list attached to the order. The requirement, therefore, is not in the alternative, but conjuctive.

"x x x x x x x x x

"The inadequate notification to the interested parties in this case which resulted in the oppositors" failure to be present during the hearing, deprived them of their day in court. The decision rendered in disregard of said right, consequently, is null and void."

With respect to the issue of whether an indorsing resolution is a requisite before the respondent Board may award a certificate of public convenience to respondent Ballad, the Court finds

Supreme Court E-Library

that in the case of *Cababa vs. Public Service Commission*, 102 Phil. 1013, it was held that "where a ferry lies entirely within the territorial jurisdiction of a municipality, previous approval of that municipality is necessary before the Public Service Commission can grant a private operator a certificate of public convenience for its operation. And in *Reyes vs. Pascual*, 1 SCRA 1097, it was similarly ruled that "a private party desiring to operate a municipal ferry service should first be awarded by the municipality the right to operate the service before he could file an application for a certificate of permit with the Public Service Commission."

The Court does not subscribe to the theory of the private respondent that with the Integrated Reorganization Plan mandated by Presidential Decree No. 1 and promulgated on September 24, 1972, wherein the Public Service Commission was abolished (Par. 8, Art. III, Chapter I, Part X, Integrated Reorganization Plan) and in lieu thereof, the Board of Transportation was created with broader jurisdiction, power and authority (Par. (a), No. 4, Article III, Chapter I, Part X), the power of the Board of Transportation to issue certificate of public convenience for the operation of water transportation utilities is absolute and without any qualification. Respondents argue that the judicial decisions relied upon and invoked by the petitioner were rendered prior to the effectivity of the Integrated Reorganization Plan, and, therefore, the pronouncements therein made are no longer governing. Respondents claim that the earlier court rulings would be contrary to the letter and spirit of the prescribed Integrated Reorganization Plan creating the Board of Transportation in substitution of the former Public Service Commission. Accordingly, private respondents contend that the Board of Transportation has the jurisdiction and authority to grant a certification of public convenience for the operation of a motor boat ferry service within the territorial jurisdiction of a municipality, without need for an indorsing resolution from the municipality concerned (*Rollo*, pp. 30-33).

In resolving this petition, two sets of legal provisions are to be considered:

Supreme Court E-Library

(1). Under Article XX, Chapter 57, Title IX, Book III of the Revised Administrative Code, entitled "Conduct of Certain Public Utilities," Sections 2318-2320 provide that a municipal council shall have authority to acquire or establish municipal ferries; that the municipal authorities may either conduct said public utility upon account of the municipality or let it be a private party who is the highest and best bidder for a period of one year, or upon the previous approval of the Provincial Board, for a longer period not exceeding five years.

(2). Under Paragraph (a)-(c), No. 4, Article III, Chapter I, Part X of the Integrated Reorganization Plan (Presidential Decree No. 1), the functions of the respondent Board of Transportation are as follows:

a.) Issue Certificate of Public Convenience for the operation of public land, water and air transportation utilities and services such as motor vehicles, railroad lines, domestic and overseas water carriers, domestic and international air carriers and similar public utilities;

b.) Establish, prescribe and regulate routes, zones and/or areas of operation of particular operators of public land, water and air service transports; and determine fix and/or prescribe fares, charges and/or rates pertinent to the operation of such public utility facilities and services except in cases where fares, charges or rates are established by international bodies or associations of which the Philippines is a participating member or by bodies recognized by the Philippine Government as the proper arbiter of such fares, charges, or rates;

c.) Establish, fix, and/or prescribe rules, regulations, standards and specifications in all cases related to the issued Certificates of Public Convenience; and administer and enforce the same through the Bureau of Transportation of the Department and appropriate police or enforcement agencies of the Government."

We hold that the specific jurisdiction and authority given by Sections 2318-2320 of the Revised Administrative Code to a municipality to operate or lease the ferry service within its own territorial limits should prevail. The grant of supervision and authority by Administrative Code to municipalities or municipal councils over public utilities such as municipal ferries, markets, etc. is specific, and undoubtedly was "intended to

Supreme Court E-Library

provide an additional source of revenue to municipal corporations for their maintenance and operation" (*Municipality of Gattaran vs. Elizaga*, 91 Phil. 440). On the other hand, the authority conferred on the respondent Board of Transportation, was intended principally to insure and safeguard the convenience, comfort and safety of the public.

We decline to accept the proposition that the operation of the ferry being then exercised by petitioner municipality, pursuant to clear provisions of the law, was removed by a general reorganization plan which was intended only to indicate the agency which would supervise or regulate the operation of public services. The provisions of the Revised Administrative Code which grant to the municipal council or Sangguniang Bayan the power to acquire or establish municipal ferries, are different and should be distinguished from the authority of the Board of Transportation to issue a Certificate of Public Convenience. While the *establishment* of a municipal ferry is first given to a municipality, ferry service will nevertheless be subject to the supervision and control of the Board of Transportation. The winner in a public bidding conducted by the municipal council obtains the privilege to operate the ferry service, but he has to apply for a Certificate of Public Convenience from the Board of Transportation which then has the duty to regulate the operation, route, rates to be charged, as well as specify the kind of equipment to be used for the comfort, convenience and safety of the public using the ferry.

In the case of *Municipality of Gattaran versus Elizaga*, 91 Phil. 443, this situation was clearly explained and We quote:

"x x x x x x x x x

"The two seemingly conflicting jurisdictions one by the Public Service Commission and the other by the municipalities may readily be reconciled. Whether the operation of a municipal ferry be undertaken by the municipality itself or let and given to a private party after public bidding, it should be supervised and regulated by the Public Service Commission. When a private party, winner in a public bidding conducted by the Municipal Council, like Fruto Elizaga, gets the permit to operate a municipal ferry from the municipality, before he

Supreme Court E-Library

can operate, he must first obtain a certificate or permit from the Public Service Commission which upon granting it, will fix the rates to be charged by him as well as specify the kind of equipment to be used by him for the comfort, convenience and safety of the public using said ferry. x x x."

Both Sangguniang Bayan and the Board of Transportation, in effect, act in concert with each other. They do not usurp nor appropriate functions particularly given to the other.

As the ferry service in this case would be operating exclusively within municipal limits of Echague, Isabela, and as the petitioner herein evidently desires to operate the ferries thru its Barangays, the issuance to private respondent Ballad of the Certificate of Public Convenience by the Board of Transportation, renders the action taken by the Board unwarranted and more specially so considering the lack of acquiescence or even previous due notice thereof to the petitioner municipality.

WHEREFORE, the petition for *certiorari* in this case is, therefore, GRANTED and the challenged Decision of respondent Board of Transportation in its Case No. 77-2802, dated October 13, 1977, is now SET ASIDE and the corresponding certificate of public convenience issued to private respondent Avelino Ballad, pursuant to the aforecited decision is hereby declared null and void.

SO ORDERED.

Feria (Chairman), Fernan, Gutierrez, Jr., and *Paras, JJ.*, concur.