

[G.R. Nos. L-8497 and L-8517. September 21, 1956]

BATANGAS TBANSPORTATION COMPANY AND LAGUNA-TAYABAS BUS COMPANY, PETITIONERS, VS. BINAN TRANSPORTATION COMPANY, AND JOSE SILVA, RESPONDENTS.

D E C I S I O N

MONTEMAYOR, J.:

These are two separate cases appealed from the Public Service Commission, referred to hereafter as the Commission, Biñan Transportation Company, later referred to as Binan Co., applicant, Case No. 68776 and Jose Silva,. applicant, Case No. 72364, of the Commission, now G. R. Nos. L-8497 and L-8517 of this Court. Because the transportation line involved in both cases is the same, namely, Manua-Lemery (Batangas) via Cuenca, and since the evidence for the oppositors in the case of Biñan Co., was reproduced in the Silva case, we deem it proper and convenient to render one single decision for the two.

On October 10, 1952, Biñan Co., being then a public Service operator between certain towns in Laguna and Batangas, filed an application with the Commission, Case No. 68776, for a certificate of public convenience to operate an express service between the following points: Manila-Bauan (Batangas) via Batangas; Manila-Lemery via Cuenca; Manila-Ibaan via San Jose; Manila-Taysan via Rosario, with four units or four round trips for each line. On January 16, 1953, it filed an amended application, discarding three of the proposed lines in its original application and confining itself to the Manila-Lemery via Cuenca lines, but with ten units or ten round trips. The application was opposed by the Batangas Transportation Company and the Laguna-Tayabas Bus Company, referred to hereafter as the Batangas Co. and Lagxma Bus, respectively, already operating on the same line or on a portion thereof, on the ground that there was no necessity for the certificate applied for because there already was sufficient and adequate service on the line and that to grant the application would result in the duplication of services and in ruinous competition, and

that furthermore, the applicant was not financially capable to maintain the service applied for.

Binan Co. proceeded to present evidence in support, of its application, and upon the termination of its presentation, it applied on May 5, 1953 for a provisional permit to operate and to make ten round trips on the Manila Lemery line. In an order dated May 9, 1953, the Commission granted the petition for a provisional permit and authorized Binan Co. to make ten round trips on the Manila-Lemery line, in accordance with the time schedule indicated in the order.

On April 28, 1953, Jose Silva, a public service operator under the name United Bus Lines, under a certificate of public convenience issued in Case No. 43246, and already rendering service on the same line, Manila-Lemery via Cuenca with four units, and on the lines Manila-Lipa with two units, Lemery-Lucena via Tiaong with one unit, and Lemery-Lucena via San Juan de Bolbok with two units, applied for permission to increase his equipment by operating twenty-five additional units, namely, twelve additional units on the Manila-Lemery line, four additional units on the Manila-Lipa line, three units on the Lemery-Lucena via Tiaong line, and six units on the Lemery-Lucena via San Juan de Bolbok line. This application of Silva was opposed by the Batangas Co. and the Laguna Bus, the same oppositors in the application of Binan Co., on the ground that there was no necessity for the increase of units, and trips because the service on the line rendered not only by the oppositors, but by the applicant himself, was sufficient and adequate to serve the necessity and convenience of the travelling public, and also applicant Silva was a frequent violator of his certificate of public convenience, having on numerous occasions violated orders of the Commission and its rules and regulations, and having been penalized repeatedly for said violations, and that at the date of his application, there were complaints pending against him for abandonment of his authorized lines and for operating more than his authorized trips, and that in view of said pending complaints, in which the penalty may be the cancellation or revocation of his certificate of public convenience, he should not be granted an increase of units. Silva's application was on July 8, 1953, also opposed by Binan Co. on the ground that public necessity and convenience did not demand the approval of the application, because the service on the Manila-Lemery via Cuenca line was already sufficient, and that the increase in the service applied for by Silva would only result in ruinous competition, to the prejudice of the travelling public. It may be recalled that at the time of this opposition of Binan Co., it already had the provisional permit to make ten round trips on the Manila-Lemery line, granted to it in May 1953. After the presentation of evidence in support of his application, Silva on December 12, 1953 petitioned for a

provisional permit to operate eight additional units to carry passengers and freight on the Manila-Lemery line, and in an order dated December 23, same year, despite the opposition of the Batangas Co., the Commission granted Silva a provisional permit to operate three additional units on the said line.

Batangas Co., and Laguna Bus presented evidence in support of their opposition to the application of Biñan Co. Thereafter, Silva and the oppositors agreed that said evidence would be reproduced and used in the application of Silva, Case No. 72364, which was done.

In support of the two applications to operate new and additional units and round trips on the Manila-Lemery line, resolutions of the municipal councils of Lemery, Ali-tagtag, Taal, and Cuenca, and the Municipal Board of the City of Lipa as well as the Provincial Board of Batangas, requesting the Commission for more TPU service for the inhabitants, were presented before the Commission. The oppositors presented evidence to the effect that while the Municipal Council of Alitagtag passed the resolution, the same was later withdrawn when the council found out that the service on the line, particularly the local service, was sufficient and adequate.

On September 13, 1954, a decision was rendered on the application of Jose Silva, penned by Associate Commissioned Gabriel P. Prieto, with the concurrence of Commissioner Feliciano Ocampo, denying that portion of his application for additional trips and equipment on the lines Manila-Lipa, Lemery-Lucena via Tiaong, and Lemery-Lucena via San Juan, for the reason that he did not present evidence to justify said additional trips, but granting him ten additional trips on the line Lemery-Manila via Cuenca, including the three already authorized him under the temporary permit.

On November 6, 1954, a decision was rendered in the case of Binan Co., penned by Associate Commissioner Prieto with the concurrence of Commissioner Ocampo, with a dissenting opinion of Associate Commissioner A. H. Aspillera. The majority opinion, with a denial of the opposition by Batangas Co., and Laguna Bus, granted the application, and authorized Binan Co., to operate ten units on the Manila-Lemery via Cuenca line. Said the Commission:

“Despues de haber considerado detenidamente las pruebas de ambas partes; teniendo en cuenta que las pruebas presentadas por los opositores en esta causa son las mismas que fueron reproducidas en la Causa No. 72364 de Jose

Silva y que han sido la base de la decisidn de esta Comision en la referida causa; y tehiendo en cuenta, ademas, que la aqui solicitante Binan Transportation Co., ha obtenido su pexmiso provisional de operar 10 buses en la linea Lemery-Manila via Cuenca antes que el solicitante Jose Silva en la mencionada causa No.-72364, no vemos razones suficientes para modificar nuestra anterior resolucion, dando a la solicitante Binan Transportation Co., autorizacion para operar 10 unidades en la citada linea Lemery-Manila via Cuenca.”

Naturally, the parol evidence submitted for and against the applications was conflicting. While the witnesses for the applicants said that on many occasions passengers had to wait as long as thirty minutes in order to obtain transportation for the reason that the buses passing them to and from Manila were already full, witnesses for the expositors equally claimed that they never had any difficulty in securing transportation and that the buses on this Manila-Lemery line, which they actually boarded, and those they had occasion to observe, were never full, containing sometimes two thirds, or one-half or even less, of their authorized capacity. To us, the best evidence as to the sufficiency or deficiency of the service on a certain line is the actual count or checking made by impartial witnesses, specially since these are in a more favorable position and better qualified to observe the service on a transportation line, and not only on a particular point and isolated occasion, but on different strategic points and continuously for a reasonable period of time. This was actually done by agents of the Commission itself, assigned to various places and points between Lemery and Manila in the months of February, May, June, and July, 1953, who on the result of their observations and checking, filed their reports—Exhibit 4-8. Said reports show that the average passenger load of buses passing the various check points ranged from 50 per cent to 60 per cent of the registered passenger capacity.

Compared to this kind of evidence, namely, actual checking of the volume of passenger traffic on the line in question by agents of the Commission itself, the testimony of witnesses for applicants and oppositors is relatively unreliable. First, because said witnesses are not entirely free from bias, feeling as they do that they owe some degree of loyalty to the party presenting them; and second, they do not make their observations of the volume of traffic during a certain fixed period so as to get the average, but at some hours of the day when they actually boarded a bus and found it to be crowded or practically empty, depending upon the time or occasion, whether or not it was on a week end or a special day where there was a local holiday or celebration, or it was an ordinary day and an hour

when traffic was light. Incidentally, this Court had occasion to rule on this particular subject matter in the case of *Bachrach Motor Co. vs. Elchico Vda. de Fernando* (91 Phil., 584), where we said:

“However, regardless of the real understanding between the parties, there is no doubt that the best evidence on the volume of traffic between two points is the checking or record of the actual number of passengers and the amount of freight actually passing between them every day during a certain period, as compared to and in preference to the mere observations and testimony of passengers, which because of their inaccuracy, casualness, even partiality, cannot be very reliable.”

And we need not accord and place too much emphasis and weight on resolutions of municipal and city councils and provincial boards asking for additional transportation. Sometimes, these resolutions are originated by requests of transportation companies applying for new or additional units. At other times, they are based on isolated complaints of passengers who on certain occasions failed to get transportation immediately. Moreover, it is natural not only for inhabitants of the towns, but for the municipal councils of the same to ask for and get as much and as frequent transportation as possible regardless of the effect of such too frequent trips or unnecessary service, on the transportation companies. To these small town inhabitants and municipal councils, if they could have trips every five, seven, or ten minutes, so much the better, not realizing that to require rival transportation companies to operate buses 1/2 or 1/3 full would mean ruinous competition, which would eventually spell financial collapse; and that to partially make up for the losses, the drivers of competing buses would race each other on the highway in order to pick up passengers, thereby endangering the lives of their passengers, as shown by recent fatal accidents resulting in mass killings and serious injuries. What is more, even this illegal and dangerous practice cannot last long, for it is only a question of time when these rival companies would have to stop operations in order to avoid complete bankruptcy; and if any of the competing operators is lucky enough to survive the disastrous competition, it will have suffered so much loss financially in fighting and downing its rivals that although at last left alone without competition, for a long time at least, it would be in no position to give adequate, efficient and above all, safe service to its customers. So, in the long run, the travelling public would be the loser.

The money spent in this unnecessary, additional service, such as the initial cost of additional units, their maintenance and repair, the consumption of fuel and oil, and the wages of additional drivers and conductors, can better “be devoted by the transportation companies in improving their present service and equipment, increasing the margin of safety for the passengers, and possibly, to accumulate a reserve fund from which to pay indemnities in case of accidents on the highway. We cannot get over the feeling that the Commission has been a little too liberal and free in the granting of certificates of public conveniences not only for additional service or units by competing companies, but also for service by a new company entering a line already adequately served by established operators.

We are inclined to agree with the oppositors, Batangas Co., and Laguna Bus, that without the additional unit and trips granted by the Commission to the Binan Co., and Jose Silva, there was sufficient and adequate service between Manila and Lemery via Cuenca and vice versa. The Batangas Co., with its authorized 20 units on this line operates trips every half hour, which about noon is increased to every hour. Silva himself, before the increase had four trips on the same line, thereby making 24 trips daily in all, at a rate of every twenty minutes. In addition, there are many other trips by several transportation companies, such as the Batangas Co., the Laguna Bus, the Binan Co., and the Laguna transportation from Manila to the town of Batangas via Lipa and back, so that the service between Manila and Calamba is more than adequate, about every two minutes, and between Calamba and Lipa, perhaps every ten minutes.

It is claimed in behalf of applicants that the service rendered by the Batangas Company between Manila and Lemery is express in the sense that its buses can pick up and discharge passengers only at the poblaciones of the towns they pass, so that said service is not available to the people in the barrios on this line. However, these passengers in the barrios seldom go to the terminals like Manila and Lemery. More often than not, their transportation needs are local, from one town to another, and there are many of these local trips made by jeepneys or jitneys. The persons who have need and occasion to go to the centers of population and business like Manila are mostly those residing and engaged in business in the *poblaciones*, who come to Manila to transact business and buy merchandise for their stores.

It will be recalled that one of the grounds for the opposition of the Batangas Co., and the Laguna Bus against the application of Biñan Co., is that the latter was financially incapable of maintaining the service applied for by it. This important point was in issue,

but unfortunately the Commission failed to make any finding on it. On the other hand, the oppositors presented evidence to the effect that the Biñan Co., was far from being financially stable; that it could not pay for the trucks and equipment bought by it, resulting in the issuance of writs of attachment on the same; and that although some attachments were later lifted, it was not because of the payment by Biñan Co., of its obligations to the motor companies, but upon posting of bonds. Speaking on this point, Commission Aspillera in his dissenting opinion in the Biñan case, said:

“I have also my doubts as to the financial capacity of the applicant, the records showing that attachments have been issued against its trucks for non-payment by the company of its long overdue obligations, and although it appears that some attachments were subsequently lifted upon posting of bonds, the fact of non-payment of its obligations creates a doubt as to its financial capacity.”

Counsel for Batangas Co., and Laguna Bus in his memorandum filed in lieu of oral argument, dated October 16, 1955, says that the financial incapacity of Binan Co. to maintain the service applied for by it is confirmed by the fact that on March 21, 1955, less than five months after the promulgation of the decision of the Commission on November 6, 1954, granting its application to operate ten round trips on the Manila-Lemery line, it (Binan Co.) sold its certificate of public convenience on said line together with its ten autotrucks, to the other applicant Jose Silva, as evidenced by the deed of sale, a copy of which is attached to the memorandum; and that furthermore, to show that said ten autotrucks were not in serviceable condition, the vendee Silva obtained permission from the Commission to substitute his own autotrucks in the place of those sold to him, to operate on the Manila-Lemery line. Counsel for Binan Co., in his memorandum does not deny this sale by his client to Silva, but says that said conveyance is not necessarily proof of his company's financial incapacity to operate under the certificate of public convenience granted him by the Commission on the Manila-Lemery line. Then he makes the revelation that the real reason for the sale was the cutthroat competition existing on said line, he claiming that the autotrucks of Batangas Co., powered with diesel oil are operated much more economically than those units of Binan Co., using gasoline; that furthermore, as a result of this cutthroat competition, Batangas Co., without authority of the Commission had reduced the fare from Manila to Lemery from P1.30 to P0.70, which explains the loss claimed by Batangas Co., of about P47,800.00 from January to June, 1955 on this Manila-Lemery line. All this is additional argument against the evils

of ruinous competition, resulting from indiscriminate and ill advised increase of services when not warranted by the volume of traffic.

Going back to Binan Co., as regards its alleged financial incapacity, counsel for Batangas Co., in his memorandum also asserts and attaches documents to support his assertion, that as far back as 1950, Binan Co., owed the Government about P40,000.00 by way of deficiency percentage taxes, surcharges and penalties on its gross receipts realized from its business as a common carrier; that the Government had placed under constructive restraint 18 autotrucks belonging to Binan Co., in order to safeguard the collection of the amount; that in 1955, Binan Co., filed with the Commission for approval a chattel mortgage in favor of Parsons Hardware Company, mortgaging its title, rights, and interests in several certificates of public convenience granted to it by the Commission, together with twelve TPU trucks, in order to secure the payment of a promissory note in the amount of P23,000.00, and that the Collector of Internal Revenue filed a written opposition to the approval of said chattel mortgage, claiming that it had a superior lien on the property used in the business and upon all property rights of Binan Co., and that it was illegal for said company to encumber or mortgage any property placed under constructive restraint, referring presumably to the twelve TPU trucks covered by the chattel mortgage. Under these circumstances, the financial incapacity and embarrassment of Binan Co. and its consequent inability to properly operate the service applied for by it on the Manila-Lemery line becomes more evident.

In support of their contention that the service rendered on the Manila-Lemery line at the time that the applications by the Binan Co., and Jose Silva were filed, was more than sufficient to take care of the traffic on the said line and that, as a matter of fact, said traffic was not even sufficient to adequately compensate for the service, the oppositors, Batangas Co., and Laguna Bus, claim that in the year 1953 and up to July 1954, they suffered losses in the operation of that line. Disposing of this claim, the Commission in its decision in the Silva case, Case No. 72364, said that the best answer to said claim is that, according to their annual report submitted to the Commission for the year 1953, the joint operation of all their authorized lines reflected profit of P768,712.48. To us, it is unfair as well as incorrect to consider the financial result of the over all operation of the two companies to determine whether said company made profit or suffered loss in operating a particular line. We must remember that two oppositors, under a joint management, have an extensive network of transportation lines in the provinces of; Laguna, Batangas, Tayabas, and a portion of Cavite, in relation to Manila. It may be that said oppositors made an over all profit of more than P700,000, but this does not mean that they made a profit on every

line, because as a matter of fact, the oppositors claim, and apparently without contradiction, that in 1953 the Batangas Co., suffered a loss of P6,086.62, and from January to July, 1954, it suffered a loss of P12,215.32, on the Manila-Lemery line. Of course, one may say that said losses on the Manila-Lemery line could adequately be compensated by profits in other lines; but that does not minimize the fact that losses are actually suffered on that line because of insufficiency of traffic, and what is more, that henceforth losses will continue to be suffered in greater volume, not by Batangas Co. alone, but by those granted certificates to operate additional trips and units. Furthermore, from the standpoint of the public, this theory of compensation is not exactly just or fair. If a transportation company operates, say, line A-B and makes profits but suffers losses in operating line C-D, the company may make the necessary adjustments as long as the entire operation leaves it a fair margin profit; but this should not be tolerated for long because the passengers patronizing line A-B should not be made to pay for the losses suffered on the line C-D. The former have the right to demand that the profits made on their line A-B should in part be devoted to the improvement of the service, in the purchase of better equipment with a view to better and more comfortable riding facilities, wider margin of safety, and perhaps, more frequent trips for their convenience, even a reasonable reduction of fare. Furthermore, the public patronizing line A-B may claim that part of the profits to be set aside as a reserve upon which the company may draw for payments for indemnities as a result of accidents. On the losing line C-D, instead of allowing the increase of service by additional units of trips, the Commission should endeavor to correct anomalies such as unfair competition, racing between buses in order to pick up passengers, and stop or eliminate unauthorized vehicles known as "colorum" cars, which rob the regular licensed operators of their legitimate business.

In connection with the ground set up by the oppositors against Silva that he repeatedly had violated the terms of his certificate of public convenience issued by the Commission and the orders of the latter, they presented evidence of said violations and the punishments meted to Silva, consisting of decisions or orders of the Commission. We have taken pains in examining said evidence, found on pages 210-230 of the record of Case No. 72364.

As may be gathered from the copies of eight decisions found on pages 222-28 and 230, the Commission acted on numerous, separate complaints against Silva, in relation to the operation or non-operation of his transportation lines and upon his offer to compromise, the Commission accepted said offers and imposed on him fines ranging from Th to P50. Unfortunately, the decisions fail to show the nature of the violations for which he was fined.

On pages 221, we find a decision of the Commission, dated August 7, 1951, involving in all twenty-four cases or complaints, alleging that on various occasions Silva violated his certificate by not operating his TPU service on the lines authorized to him. Upon his offer to compromise and because the complainant did not object, he was fined P50.

On page 229, we find a decision of the Commission wherein it found that Silva failed to operate his TPU service during the month of January, 1958, and fined him P20 with warning.

On page 220, we find a decision of the Commission, dated October 30, 1951, involving three cases wherein Silva was charged with violation of his certificate by abandoning his TPU service on the lines Manila-Lemery, Manila-Lipa, and Lemery-Lucena in July, August, and September 1951. Upon his offer to compromise, he was fined P15.

On page 218, we find another decision of the Commission, dated September 13, 1952, wherein said Commission acted upon nine separate complaints for making unauthorized trips on the line Candelaria-San Juan, and abandonment of his Manila-Lipa, Manila-Lemery, and Lemery-Lucena, lines, and wherein the Commission also found; some evidence that Silva's operation of his Manila-Lemery, Manila-Lipa, and Manila-Lucena lines was "very irregular and that there were times when these lines were not Batangas Trans. Co., et al vs. Binan Trans. Co., et al, operated at all." Upon Silva's offer of compromise, he was fined P100, with warning.

On page 216, we read a decision of the Commission, dated April 10, 1953, wherein on the basis of the testimony of three agents of the Commission itself, it was found that Silva completely abandoned the operation of his lines Manila-Lipa, Manila-Lemery, and Lemery-Lucena, throughout the whole month of August 1952, without authority of the Commission, and in violation of his certificate of public convenience, and that this abandonment had continued for a long time before the filing of the complaint. the Commission imposed on him a fine of P100, with warning.

On page 215, there is a decision on thirty-five separate complaints against Silva, six filed by agents of the Commission itself and twenty-nine filed by Batangas Co., for operation of unauthorized trips and for dispatching trips to unauthorized points. Upon his offer of compromise, Silva was fined P150.

On page 213, we find a decision of the Commission as late as September 8, 1953 (this was about five months after Silva had filed his present application for ten additional units and

round trips on the Manila-Lemery line, wherein, acting upon petition of the Batangas Co., dated July 27, 1953, asking for the cancellation of the bus lines authorized to Silva, on the ground of abandonment of the Manila-Lipa and Lemery-Lucena lines and persistent violations on Manila-Lemery line, the Commission found that Silva had committed gross violations of his certificate of public convenience by making unauthorized trips on the Manila-Lemery line and operating irregular service on the Lucena-Lemery and Manila-Lipa lines. Said the Commission:

While we cannot find from the evidence that there has been a total abandonment of the Lemery-Lucena and Manila-Lipa lines, we believe that applicant, has committed continuous violations in operating them consisting in irregular operation and starting trips not at the authorized terminals, and in view of this and of previous violations committed by the applicant, we hereby impose on the applicant a fine of P200 for the violations committed on the Lemery-Lucena and Manila-Lipa lines. For making unauthorized trips on the Manila-Lemery line, we hereby impose on the applicant an additional fine of P200, with the stern warning, however, that for the next violation committed by the applicant in any of these lines consisting of irregular service, or not operating up to authorized terminals or making more than the authorized trips, the Commission will proceed to order the suspension or cancellation of the lines. Applicant is therefore advised to henceforth operate these three lines in strict accordance with all the terms and conditions prescribed in his certificate of public convenience."

There are other cases of violations by Silva wherein he was fined from P25 to P50, which need to be mentioned in detail.

After a consideration of these many violations of his certificate of public convenience, specially those referring to abandonment of his lines and the relatively nominal fines imposed for such violations, we are led to the belief that the Commission had been too benevolent and over indulgent in acting upon these violations and in meting out punishments. Imposing fines of P15, P25 or P50 for serious violations is clearly not commensurate and adequate. With such nominal fines, the operator may find it profitable to commit violations where the profits he expects to get from the violation far outweigh the fines imposed upon him. These very light punishment imposed serious violation encourages

disregard, even contempt for orders of the Commission and invite violation of the terms and conditions imposed in the certificates of public convenience issued. In every certificate of public convenience issued to an operator, there is a condition to the effect that abandonment of a line for four consecutive days without authority of the Commission will result in the forfeiture of his right to resume the operation. The decisions above enumerated mention not only one, but several instances of abandonment of his lines not only for four consecutive days, but even for months, and instead of forfeiture of his right to resume operation on those lines, the violator was merely fined.

In view of the foregoing, we believe that there was sufficient and adequate service on the Manila-Lemery via Cuenca lines, being rendered by the Batangas Co., and Silva himself before these two applications in question were filed, and that there was clearly no necessity for the additional twenty units or round trips applied for by the Binan Co., and Jose Silva on the same line, and that the granting of these additional lines would only result in ruinous competition which would not only prejudice the operators themselves, but in the end would also prejudice the public. Furthermore, we are not convinced that even if there were a necessity for additional trips on this line, the Biñan Co., because of its financial incapacity and Jose Silva because of his past violations of his certificate of public convenience not only in other lines but also on this very Manila-Lemery line, are not exactly the parties deserving of the right to operate said additional lines. The appealed decisions of the Commission including its orders for provisional permits are hereby revoked, with costs against the respondents.

Paras, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.