

**FORTUNATO F. HALILI, PETITIONER, VS. ANTONIO HERAS, ET AL.,
RESPONDENTS.***G.R. Nos. L-18889-90. April 30, 1964*

Ponente: BAUTISTA ANGELO, J.

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Petitioner is the owner and operator of the Halili Transit which is engaged in the transportation of passengers and freight within the City of Manila and suburbs. On January 9, 1957, he was granted authority by the Public Service Commission to register and operate 65 buses 40 of which on the line Project 3, Quirino District, via Highway 54 and South Avenue, and 26 buses on the same line via Kamuning-Sampaloc Avenue and Roces Avenue, Quezon City, and via Kamuning-Sampaloc Avenue and Timog Avenue, also in Quezon City, with the condition that he should register the authorized units within 30 days from receipt of a copy of the decision, and that failure on his part to do so will be sufficient cause for the Commission to withdraw the authority granted. Up to October 25, 1957, petitioner registered only a total of 30 autotrucks, and since then he has not registered any additional trucks under the authority granted.

Sometime in July, 1960, respondents, together with other operators, filed several petitions with the Public Service Commission praying for the cancellation of the 35 units which petitioner had failed to register, as well as for authority to register and operate said units themselves. To the petitions, petitioner filed a motion to dismiss on the ground (1) that since the certificate of public convenience sought to be appropriated is still valid and subsisting, it cannot be appropriated and, hence, the petitions are premature; and (2) that the charge, that petitioner violated the terms of his certificate of public convenience is a prejudicial question which the Commission should first hear and determine before it could proceed to consider the petitions for appropriation.

On September 20, 1960, the Commission denied the motion to dismiss on the ground that the petitions actually are in the nature of a complaint for cancellation of the certificate of public convenience due to abandonment of, service and, to avoid duplicity of action, the petitions for cancellation and appropriation were consolidated into one single proceeding. Thereafter, petitioner filed a petition for extension of time to register the 35 buses he failed to register under the certificate in question. By agreement of the parties, all the petitions for cancellation and appropriation, as well as the petition for extension of time to register the 35 buses as aforesaid, were heard jointly.

On August 8, 1961, after due trial, the Commission rendered decision cancelling the authority given to petitioner to operate the 35 buses in question and, in his place, it authorized Antonio Heras and De Dios Transportation Co. to proportionately register and operate the same considering that they were not only established operators in Project 3, Quirino District, but had filed their applications ahead of the other operators. Petitioner interposed the present petition for review.

The first question raised by petitioner refers to the simultaneous hearing held by the Commission relative to the petitions for cancellation and appropriation of the 35 buses in dispute. He contends that if a complaint for cancellation is tried separately the issue would only narrow down to whether there is abandonment of the service

in which case the most that could be imposed would be the payment of a penalty in the form of fine or suspension of the service, whereas if the complaint is heard jointly with the petition for appropriation and the charge is proven, the result would be not only the imposition of that penalty but the cancellation of the corresponding certificate of convenience, all of "which would work to the great disadvantage of petitioner.

There is no merit in this contention for it is well-known that the Public Service Commission is given by law ample power and discretion to consider petitions of this nature either singly or jointly depending upon the convenience of the Commission or of the parties concerned, and if a joint trial is held the Commission may not only impose the penalty that the evidence may justify but take whatever other appropriate action may be warranted by the circumstances. The Commission, therefore, did not commit any error in conducting a joint hearing of the petitions, but should rather be commended because its effect is less circuitous and avoids duplicity of action.

With regard to petitioner's claim that the Commission did not give him the preference to register the 35 units for which he asked that he be given a reasonable time, we likewise find that the same has no merit for it appears from the record that from the time he received copy of the decision in the original case wherein he was allowed to register and operate 65 units along the same line he was only able to register and operate about 80 autotrucks, having failed to comply with the requirement up to the date when the petitions for cancellation were filed by respondents, which cannot but give the impression that petitioner has totally abandoned the privilege given him by the Commission. His claim now that he was not given the same privilege comes too late, more so when it is considered that of the more than 400 buses he was authorized to operate under his other certificates of public convenience he was only able to register 317, without including the 35 units he failed to register under the instant certificate of public convenience.

Neither can we give credit or value to petitioner's claim that his failure to register the units in question is. due to shortage of trucks in the local market, difficulty in securing foreign exchange, or his physical inability due to his protracted present illness, for the Commission found enough evidence eloquently showing that other operators 14 who were simultaneously granted similar certificates of 11 public convenience were able to purchase and secure trucks from several dealers in the local market during the same period. The illness of petitioner certainly is no argument against his compliance with the requirement of the Commission for it can be undertaken if not by his children or by other authorized representatives.

While as a rule, a pioneer-operator should be given the preference to cover the required units when expansion is needed, such cannot favor petitioner for he has completely failed to comply with the requirement for more than 3 years thus giving the impression that he has completely abandoned the service insofar as the units its question are concerned.

WHEREFORE, we hereby affirm the decision of respondent Commission, with costs against petitioner.

Bengzon, C.J., Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

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