

DEL PILAR TRANSIT, INC., PETITIONER, VS. PUBLIC SERVICE COMMISSION, HONORABLE JOSUE L. CADIAO AND DE DIOS TRANSPORTATION CO., AND MANILA DE DIOS TRANSPORTATION CO., INC., RESPON...*G.R. No. L-29573. January 30, 1970*

Ponente: REYES, J. B. L., J.

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Petition for certiorari and prohibition filed directly with this Court to question the validity of the order of the Public Service Commission in its Case No. 59407, dated 6 December 1967, allegedly issued without notice to petitioner Del Pilar Transit, Inc.

The records show that De Dios Transportation Co., Inc., was the grantee of a certificate of public convenience to operate transportation service on lines OBANDO (Bulacan) - PORT AREA (Manila); TAÑGOS (Navotas, Rizal) - PORT AREA (Manila); and DAMPALIT (Malabon, Rizal) - PORT AREA (Manila) via Divisoria and vice-versa (Case No. 59407). The grantee was also authorized to terminal the said lines from Divisoria Market to Aduana Street in the Port Area, passing through Sto. Cristo, E. de Santos, Elcano, Urbiztondo, Dasmariñas, Rosario, Plaza Lawton, Arroceros, P. Burgos, Bonifacio, 25th Street and Aduana, only from 5:00 a. m. to 8:00 a. m. and from 4:00 p. m. to 6:00 p. m. everyday, and also from 12:00 noon to 2:00 p. m. on Saturdays and other half-day workdays.

On 8 November 1952, De Dios Transportation petitioned the Public Service Commission for amendment of its certificate to allow the re-routing of its lines from Divisoria Market, passing through Azcarraga, Quezon Boulevard, Quezon Bridge, Plaza Lawton, Bonifacio Drive up to Aduana, or by passing through Azcarraga, Rizal Avenue, Plaza Goiti, MacArthur Bridge, Plaza Lawton, Bonifacio Drive up to Aduana Street, said grantee proposing to maintain hourly trips on these lines from 5:00 a. m. to 10:00 p. m., which interval of trips may be reduced to 5 minutes and its service extended up to 12:00 midnight on Saturdays, Sundays, eves of holidays and holidays. It was alleged that the proposed change of routes was demanded by public necessity.

It appears that although the petition was tried, with the Halili Transit appearing as lone oppositor, it remained unresolved. Hence, on 15 August 1967, De Dios Transportation filed a motion requesting the Commission to act on the petition on the ground that the present conditions of vehicular traffic, traffic regulations, business necessities and volume of passenger traffic demand the immediate resolution thereof. On 27 September 1967, the motion was heard, during which hearing nobody appeared to oppose the same, notwithstanding publication of the notice of hearing and service thereof to the registered oppositor Halili Transit.

On 6 December 1967, the Public Service Commission granted the petition to re-route the lines, as follows:

"It appearing from the evidence and the records of this Commission that there is no other operator operating on the lines and routes proposed by petitioner, it being the sole operator therein, except on short portions thereof; that the operation of the authorized lines under the original routes, time schedules, restrictions and conditions

are no longer suited to present business conditions, movement of passenger traffic and traffic regulations, the Commission believes, and so holds, that public interest and convenience would best be promoted in a proper, adequate and suitable manner if petitioner were allowed to operate the same number of units on the same lines, eliminating existing restrictions and operating on the proposed routes, timetables and conditions."

The certificate of public convenience was thus accordingly amended to contain the re-routed lines proposed by the grantee. On 6 December 1967, De Dios Transportation Co. commenced its operation on the newly-approved routes.

On 27 September 1968, Del Pilar Transit, Inc., a franchise holder and operator of public utility buses plying from Parañaque, Rizal, to the Bonifacio Monument (Caloocan), filed with this Court the present petition, charging the Public Service Commission of having acted without jurisdiction or with grave abuse of discretion on granting the petition of De Dios Transportation Co. presented 15 years earlier, and without notice to said petitioner, and praying that respondents be enjoined from operating in the approved re-routed lines.

With leave of this Court, the petition was amended to include Manila De Dios Transportation Co. as party respondent, it appearing that the lines covered by Case No. 59407 have been sold and transferred to the latter by the De Dios Transportation Co., which transfer was duly approved by the Public Service Commission on 31 July 1968 in Case C. N. 68-3078 (Annex 3, pages 48-55, Rollo).

Answering the petition, herein respondents De Dios Transportation Co. and Manila De Dios Transportation Co., Inc., contend that petitioner has no right to institute the present proceeding, the latter's line of operation being different from those of the respondents; that having allowed respondents to operate on the re-routed lines since 7 December 1967, or for a period of more than 9 months, without lodging any complaint against it with the Public Service Commission, petitioner is guilty of laches; and that the instant action for certiorari is not the proper remedy available to petitioner.

The records bear out the fact that on 31 July 1968 the Public Service Commission authorized the Manila De Dios Transportation Co., as vendee of the lines previously granted to the De Dios Transportation Co. in Case No. 59407, to operate on the following lines:

Line I - PACO (Obando) - PORT AREA - applicant is authorized to pass via Poblacion, San Roque, Malanday, MacArthur Highway, Rizal Ave., MacArthur Bridge, Taft Ave., P. Burgos, Katigbak Drive, Bonifacio Drive, Aduana, 13th St., Boston, 25th St., Bonifacio Drive, Katigbak Drive, P. Burgos, Taft Ave., MacArthur Bridge and back to the starting point via the same route and vice-versa. It is also authorized to pass via Tinajeros, Isabel, Araneta Ave., Rizal Avenue, MacArthur Bridge, Taft Ave., P. Burgos, Katigbak Drive, Aduana, 13th St., Boston, 25th St., Bonifacio Drive, Katigbak Drive, P. Burgos, Taft Ave., MacArthur Bridge and vice versa. It is likewise authorized to enter the Araneta University Compound using as terminal, the corner of Reparo and Concepcion Streets (Caloocan City) and from there, operate to PORT AREA and vice-versa.

Line II - TINAJEROS (Caloocan) - PORT AREA, applicant is authorized to pass via Acacia, Isabel, Araneta Ave., Samson Road and Rizal Ave., MacArthur Bridge, Taft Ave., P. Burgos, Katigbak Drive, Bonifacio Drive, Aduana, 13th St., Boston, 25th St., and back to the starting point via the same route, and vice-versa.

Line III - NAVOTAS - PORT AREA, applicant is authorized to pass via Sangandaan, Samson Road, Grace Park Rizal Ave., Ext., Abad Santos, Reina Regente, Jones Bridge, Taft Ave., P. Burgos, Katigbak Drive, Bonifacio Drive, Aduana, 13th St., Boston, 25th St., and back to the starting point via the same route, and vice-versa;

Line IV - BALUT - PORT AREA, applicant is authorized to pass via North Bay Boulevard, Sangandaan, Samson Road, Grace Park, Rizal Ave., MacArthur Bridge Taft Ave., P. Burgos, Katigbak Drive, Bonifacio Drive, and back to the starting point via the same route; and vice-versa. It is also authorized to pass via North

Bay Blvd., Earnshaw, Pecson, Solis, Antipolo, Rizal Ave., MacArthur Bridge, Taft Ave., P. Burgos, Katigbak Drive, Aduana, 13th St., Boston, 25th St., Bonifacio Drive, and back to the starting point via the same route, and vice-versa. In the operation of these four lines, applicant is authorized to pass Divisoria as public convenience demands.

(Lines V and VI, BALUT (Tondo) - CITY HALL (Manila) and NORTH BAY BOULEVARD - BONIFACIO DRIVE are not pertinent to the issue in this case, and may be omitted).

Upon the other hand, the extant records of this case show that petitioner Del Pilar Transit, Inc., is a franchise holder and operator of public utility vehicles on the following routes:

PARAÑAQUE (Rizal) - BONIFACIO MONUMENT (Caloocan City) line, via Taft Ave. (Pasay City), E. de los Santos Highway (Makati) and E. de los Santos Highway (Quezon City), granted in Case No. 62-4559 (Annex A-Petition);

BACLARAN - BONIFACIO MONUMENT Line, starting at the intersection of the Military road leading to Camp Nichols passing the Manila South Road, Taft Ave., Ext., Taft Ave., Plaza Lawton, MacArthur Bridge, Rizal Avenue and ends at the intersection of Rizal Ave., Ext. and Samson Road (Caloocan), and vice-versa, approved in Case No. 61-5645 (Annex A-3, Petition).

Although there is allegation that petitioner also operates on certain lines granted in Cases Nos. 63-4309, 61-5644, 61-7074, 64-6724, 65-2657, and 61-5645, no proof to this effect has here been presented. Similarly, while it is true that copies of the orders of the Commission in Cases Nos. 62-1842 and 62-2617, provisionally approving the therein applications for lines MALANDAY (Polo, Bulacan) - LIBERTAD (Pasay) and BACLARAN BONIFACIO MONUMENT, were annexed to the petition, respondents asserted in their answer that said temporary authorizations had already expired on 16 October 1962 and 15 November 1962, respectively. Considering that the said orders expressly, specified, the expiration dates of the provisional authorization of the aforementioned two (2) lines, (Annexes A-1 and A-2, Petition), and petitioner has failed to refute, even to deny, respondents' contention, we can only consider the above enumerated lines in the determination of the question raised in this certiorari and prohibition proceedings.

It is evident from a reading of the bus-routes allowed to both parties that there is indeed duplication in the operation of petitioner's BACLARAN -BONIFACIO MONUMENT Line (Case No. 61-5645) and that of respondents' Lines I, II and IV, but only starting from the Bonifacio Monument, through Rizal Avenue, until Taft Avenue near the City Hall (Manila), where respondents' buses will leave the main thoroughfare, take P. Burgos street, and proceed westward to Katigbak Drive and the Port Area. Petitioner's public conveyances, on the other hand, will keep on to Taft Avenue going southward until their terminal in Baclaran. As regard respondents' Line III, NAVOTAS - PORT AREA, the duplication of lines likewise starts from Bonifacio Monument, through Rizal Avenue Extension (Grace Park), until the intersection of Abad Santos, and Rizal Avenue Extension, where respondents' Port Area bound buses will take Abad Santos, pass through Reina Regente and Jones bridge; whereas petitioners' buses destined for Baclaran will continue on to Rizal Avenue, passing the MacArthur bridge instead. At Plaza Lawton, however, the two lines will again Join until the intersection of Taft Avenue and P. Burgos, where respondents' buses will veer to the latter street on their way to Port Area. Other than in these portions of Taft Avenue, Rizal Avenue and Rizal Avenue Extension, no other identity of the routes of the two companies can be cited.[1]

Such facts do not sustain petitioner's pretense of prejudice by the approval of respondents' re-routed lines. It must be re-membered that the termini of petitioner's line are the Bonifacio Monument and Baclaran, whereas those of respondents are Port Area and the suburban towns of Obando (Bulacan) or Caloocan (Tinajeros), which is some distance away from the Bonifacio Monument, or Navotas or Balut (North Bay Boulevard sector), which are never

reached or served by petitioner's buses. The Public Service Commission, in the order complained of, in fact found that respondents' vehicles are the only public utility buses making direct trips to those places. In short, while petitioner's buses particularly serve that portion of the riding public that take the Baclaran to Bonifacio Monument route, via Manila, those of the respondents serve especially the passengers from those suburban areas like Obando (Bulacan), Malabon, and Navotas bound for Manila (Port Area) and vice-versa. True it may be, that on their way to or from their starting points respondents' buses may take in or drop off passengers at Rizal Avenue or a part of Taft Avenue, there being no prohibition in their franchise to this effect, but that alone would not make herein petitioner or the operator of any line similarly using the Rizal Avenue and Taft Avenue route an interested party who should be notified of the proceeding in PSC Case No. 59407. That respondents' buses have to pass through these main streets to reach their respective destination is unavoidable. To take to the smaller streets would not only be inconvenient to the passengers but impractical as well, considering the condition of our present traffic system. Besides, it must be realized that Rizal and Taft avenues are national roads taken by all northbound vehicles coming from areas south of Manila, like Baclaran, Parañaque and others, and by all southbound vehicles coming from places north of Manila, such as Bulacan, Caloocan, Malabon, Navotas and others. These roads, constituting the main artery of vehicular traffic from the north to the south of the city of Manila, are being used not only by public conveyances operating in Manila and suburbs but even by provincial buses. To hold, therefore, that all such users of these roads are interested parties that must be personally notified of the hearing of respondents' motion for re-routing of their lines would be to require the unreasonable. Thus, in one case, where the termini of the lines applied for by a party are found to be the intersection of N. Domingo and Boston streets and the intersection of N. Domingo and Blumentritt streets (in San Juan, Rizal) and the City Hall in Manila, whereas the termini of the line of the oppositor are located at the intersection of N. Domingo and Blumentritt in San Juan and the intersection of Arlegui and Barbosa streets in Quiapo, Manila, this Court held that the services respectively rendered by the parties therein are entirely different and distinct from each other, although parts of their routes are identical.[2] And where the authorized lines of the oppositor are different from those applied for by the applicant, the former cannot be considered to have substantial interest in the application so as to require his personal notification of the hearing.[3]

Furthermore, there is evidence on record that the motion to re-route their lines was demanded by public interest and convenience. The order of the Commission granting said motion stated:

"In support of the petition, petitioner adduced evidence to the effect that presently, it is the only authorized transportation operator on the lines Obando (Bulacan)-Port Area, Manila; Tañgos (Navotas, Rizal)-Port Area, Manila; Dampalit (Malabon, Rizal)-Port Area, Manila via Divisoria & Balut (Tondo)-Port Area; that the certificate sought to be amended is of pre World War II vintage issued under totally different conditions and circumstances; that said conditions and circumstances have materially changed in the matter of business conditions, traffic regulations and most of all, the volume and movement of passenger traffic; that the important business sectors of Manila had shifted from the western section of the city towards the eastern, that is, towards Rizal Avenue and Quiapo; that while the pre-war service was one catering mostly to businessmen and vendors going to Divisoria, now the bulk of passengers consists of commuters who attend classes in the different universities and Schools in Manila, as well as employees reporting for work daily in the different government and private offices in the city; that when the certificate was issued the MERALCO was then operating its electric car system with its trolley buses and regular buses, both of which went out of existence with the termination of the war; that the restrictions imposed under the certificate were so placed to protect the MERALCO and the Pasay Transportation Co. city transport operators who have long ceased to operate; that the starting and stopping points fixed in the existing certificate no longer respond adequately to the needs and convenience of the present traveling public that have multiplied manifold; that no other operator serves nor operates on the lines and routes authorized to petitioner, nor on the proposed routes except on short portions thereof; that the operation on the original round-about line to Port Area with restricted hours of operation has

become impractical and inadequate; that through actual experience, petitioner knows that it is no longer practical, profitable nor beneficial to the public interest for petitioner to continue operating under the conditions and routes authorized under the certificate."

The rule observed in this jurisdiction places a premium on public convenience and necessity; no grave abuse of discretion, therefore, has been committed by the Public Service Commission in authorizing the re-routing of the lines where, as here found, the interest of the public would thereby be subserved.

It would seem apparent, however, that in the course of the years that elapsed, between the trial of respondent De Dios 1957 petition and the decision in 1967, changes in circumstances and the interests of petitioner as operator in the area had supervened, which the Public Service Commission had not taken into account in its decision based on the evidence submitted by the respondent De Dios. These circumstances, of course, would have justified petitioner Del Pilar Transit in seeking a reopening of the case so that its own interests should be taken into account. Unfortunately, the record is bare of any evidence indicating that petitioner ever called the attention of the Public Service Commission to the change in conditions above adverted to, and to its consequent error in approving the motion for re-routing without notice to affected parties. And except in certain meritorious cases, the es-tablished rule requires, before certiorari proceeding may be resorted to, that the attention of the lower court or agency must first be called to the alleged error that rectification, if proper, may there be made.[4] Petitioner's omission on this point is fatal to the present action.[5]

The great number of cases docketed and pending in this Court imperatively demand that it discountenance petitions for a remedy that inferior courts or boards could have granted upon seasonable application.

FOR THE FOREGOING CONSIDERATIONS, the petition is hereby dismissed, with costs against the petitioner, without prejudice to its seeking appropriate relief from the Public Service Commission, upon showing that it is entitled thereto. The preliminary in-junction heretofore issued is hereby dissolved. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

[1] The lines of respondents as re-routed would not overlap with any portion of Del Pilar Transit's other line, BACLARAN-BONIFACIO MONUMENT via E. de los Santos Highway.

[2] Heras vs. De Guia, L-7581, 24 Oct. 1955; also Samala vs. Saulog Transit, Inc., L-15783, 29 Dec. 1965.

[3] De Leon vs. Goquingco, L-9588, 14 September 1956.

[4] Aquino vs. Estenzo, L-20791, 19 May 1965; Eastern Paper Mills Employees Association vs. Eastern Paper Mills, Inc., L-23958, 28 September 1968.

[5] Arroyo vs. Mencias, L-21186, 31 August 1965, 14 SCRA 1050.

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