

FORTUNATO F. HALILI, PETITIONER, VS. JORGE R. FLORO, RESPONDENT.

G. R. No. L-3465. October 25, 1951

Ponente: JUGO, J.

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JUGO, J.:

This is a petition for the review of the decision of the Public Service Commission granting the respondent Jorge R. Floro a regular certificate of public convenience for the operation of an auto-truck service, with a proposed equipment of thirty-five (35) units, for the transportation of passengers and freight, on the following lines:

Rotonda (Rizal City) Plaza Goiti

Plaza Goiti - Baclaran via Taft Avenue

Plaza Goiti - Baclaran via F.B. Harrison, and

Plaza Goiti - Libertad via F.B. Harrison.

The petitioner Fortunato F. Halili, a pre-war TPU operator, filed opposition to the application on the grounds that prior to the war he had already been rendering transportation service along the said route; that the service at present is sufficient and adequate; that he has preference over the applicant to cover said lines; that if there is any deficiency he is ready and willing at any time to supply same; that the granting of the application would give rise to ruinous and unfair competition; that applicant is not financially capable of operating and maintaining the service applied for; and that the emergency certificates issued by the Public Service Commission have not yet expired as the emergency still exists.

The Public Service Commission granted the application and the petitioner comes to this Court with the petition for review of the decision of the Commission, praying that it be reversed.

In this Court, the petitioner makes the following assignment of errors:

"I

"The Public Service Commission erred in not holding that the service rendered by the buses of the petitioner together with those of other operators on the lines in question is sufficient and adequate.

"II

"The Public Service Commission erred in holding that public necessity and convenience warrant the grant to the respondent of a certificate of public convenience in said lines and in authorizing the respondent to increase his equipment.

"III

"The Public Service Commission erred in not declaring that the service proposed by the respondent would merely constitute a ruinous and unfair competition with the established service of the petitioner.

"IV

"The Public Service Commission erred in not holding that the petitioner, being the old and established operator on the said lines, has the preference to put up such additional service as the Commission may deem necessary on the said lines.

"V

"The Public Service Commission erred in not holding that the respondent is financially capable of operating the service proposed by him.

"VI

"The Public Service Commission erred in granting the respondent a certificate of public convenience."

The trial was held before Attorney Generoso Almario of the Public Service Commission who had been commissioned to take the testimony of the witnesses in this case, without any objection from any of the parties.

The parties, in their briefs, discuss the increase of the population of the City of Manila and neighboring cities and municipalities, including the City of Pasay, although no specific evidence on the point was presented at the trial. It is a fact of general knowledge that the population has increased by more than fifty percent (Special Bulletin No. 1 and Supplement thereto, issued by the Bureau of Census and Statistics, cited by the petitioner), while the number of public service buses and the passenger and freight capacity of each are about equal to the total carrying capacity of the buses rendering service before the war.

Testimonial evidence was presented before the Commission which tended to prove that the passenger buses were overcrowded and overflowing and not sufficient in number, to the great danger and discomfort of the passengers.

The allegation of the oppositor that he can fill up the deficiency at any time is not worthy of consideration, because he should have applied to the Commission for that purpose before the respondent had presented his application and made the requisite preparations for increasing his carrying capacity.

The oppositor has waived his preference, if he had any, in supplying the deficiency.

The oppositor contends that the respondent is not financially able to render the additional service applied for. The Commission found otherwise from the evidence submitted, stating that by virtue of an emergency certificate the respondent had been serving along the line above mentioned with an equipment of twelve (12) units. The total assets in his transportation business amounted to P109,382.94. He had a deposit of P5,000.00 in a bank and a credit line of P35,000 in the Philippine Trust Company. In the year 19W he had a gross income of P352,141.17 from passenger fares and operating expenses of P344,307.96, or a net profit of P7,793.21. Together with his brothers and sisters he owns real estate valued at approximately one half million pesos. He has already made reservations with the Liddell Motors Inc. for twenty-three new trucks.

Section 35 of Commonwealth Act No. 146, known as the Public Service Act provides, among other things, that the Supreme Court has jurisdiction to modify or set aside an order, ruling, or decision of the Public Service Commission "when it clearly appears that there was no evidence before the Commission to support reasonably such order, ruling, or decision, or that the same is contrary to law, or that it was without the jurisdiction of the Commission.

It is not pretended that the decision under review is contrary to law or that it was without jurisdiction of the Commission.

After a review of the evidence presented in connection with the arguments of the parties regarding the conclusions

of fact reached by the Commission, we find that there is ample evidence to support the decision in question with very cogent reasons; we are not at liberty to substitute our own findings of fact for those of the Commission reasonably supported by the evidence even if we had some plausible ground to make the modification, which in the present case we do not have.

In view of the foregoing, the decision under review is affirmed, with costs against the petitioner.

IT IS SO ORDERED.

Paras, C. J., Feria, Bengzon, Padilla, Tuason, Reyes and Bautista Angelo, JJ., concur.

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