

LUCILA O. MANZANAL, PETITIONER, VS. MAURO A. AUSEJO AND PUBLIC SERVICE COMMISSION, RESPONDENTS.

G.R. No. L-31056. August 04, 1988

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for review on certiorari of the orders of the Public Service Commission dated June 30, 1967 and September 1, 1969 in PSC Case No. 66-20-OC, entitled "Mauro A. Ausejo, Complainant, vs. Lucila O. Manzanal, Respondent," wherein the certificate of public convenience to operate a taxicab service in Manila and suburbs of herein petitioner Lucila O. Manzanal was cancelled and revoked and her third motion for reconsideration was denied.

The case stemmed from the affidavit of Mauro A. Ausejo, with the Complaint, Investigation and Enforcement Office (CIEO) of the Public Service Commission narrating a hold up incident on March 13, 1966. In this affidavit, he implicated a taxicab unit whose plate number was said to be "6100" and which was allegedly boarded by three (3) robbers as they escaped from Roxas Boulevard in front of the L & S Building at about 6:00 a.m. of March 13, 1966, after affiant and a companion, Mr. Jose Caballes were accosted and held-up. On the basis of this affidavit, respondent Commission issued a "Show-Cause Order" dated May 25, 1966 upon petitioner, to wit:

"x x x respondent (Petitioner Manzanal) is hereby ordered to appear before this Commission, on this 24th day of June, 1966, at 9:00 o'clock in the morning to show, cause why her certificate of public convenience issued under Case No. 62-4503 should not be cancelled for not rendering safe, adequate and proper service by employing a driver with criminal tendencies, in violation of Section 19(a) of the Public Service Law and Section 47 of the Revised Order No. 1 of this Commission.

"Failure on the part of the respondent to appear at the hearing set will be considered as a waiver of her right to be heard and this Commission will decide the case on its merits." (Page 13, Rollo)

From October 10, 1966 to March 20, 1967, trial was conducted by the respondent Public Service Commission. Mr. Ausejo and Mr. Caballes both narrated the alleged hold-up incident as follows: Both were strolling along the seaside embankment of Dewey or Roxas Boulevard at about 6:00 o'clock in the morning of March 13, 1966 towards the direction of Pasay City. As they were in front of the L & S Building, they noticed that the three (3) men alighted from a vehicle behind them. Immediately thereafter, these men accosted and held-up both of them. Since the two offered some resistance, they attracted the attention of other promenaders as well as the attention of about twelve passing motorist who stopped to watch the spectacle. Two of the hold-uppers went after Mr. Caballes and the other one took care of Mr. Ausejo who fought back and succeeded in disarming the hold-uppers of his knife. He then drew his pistol and tried to shoot him but it jammed. As the two other hold-uppers ran towards his direction, presumably to assist their companion, they were warned that Mr. Ausejo had a gun and so

they stopped and rushed instead to a waiting taxi bearing Plate No. 6100.

At the trial, Mr. Caballes testified that the taxi was red in the entire body while private respondent Ausejo said that the taxi was red and it had parts painted blue. Both however said that the plate color was orange.

On the part of petitioner, Manzanal, she submitted documents disputing the possibility that the taxicab in question was hers. She submitted the decision of the PSC in Case No. 65-2149 where it appears that the commercial name of the taxi is Crisman Taxi and that the color is "red top with emerald green body" and two certifications to the effect that the color of the plate in 1965 was white with maroon background.

On June 30, 1967, the Public "Service Commissioner Enrique Medina issued an order deploring the fact that the respondent did not file a formal answer or explanation. The Commission found that (a) there was no motive on the part of the said witnesses for the complainant to testify against the operator or against the driver of taxi with Plate No. 6100; (b) the attention of the witnesses was concentrated on the number of the registration plate and it is understandable that they paid little or no attention at all to the colors; and (c) the conduct of the operator gave the impression that instead of applying a strong arm against the erring driver, she has tried to protect and shield him.

Accordingly, respondent Commission considered the charges proven since the hold-up incident was duly established and ordered the certificate of public convenience issued in Case No. 62-4503, for five units revoked and cancelled.

Upon denial of her three motions for reconsideration, she filed this petition for review on certiorari assigning these errors:

I. The Respondent Commission erred in cancelling and revoking the certificate of petitioner Manzanal on charges of failure to render safe, proper and adequate service under Sec. 19(a) of the Public Service Act as amended and for employing a driver with criminal record under Sec 47 of the Revised Order No. 1, as there was absolutely no evidence whatsoever presented to prove such charges.

II. The respondent Commission, erred when it cancelled and revoked the certificate of petitioner Manzanal simply because one of her taxicab units allegedly got involved in a hold-up incident when some hold-uppers allegedly boarded the same while escaping since this circumstance is not one of the grounds for cancellation.

III. The respondent Commission erred in finding petitioner Manzanal guilty of protecting and shielding the driver of the taxicab unit in question by not letting him testify and not taking disciplinary action against him, in the face of absolute absence of evidence to support such findings.

Petitioner included in her petition a prayer for the issuance of a preliminary mandatory injunction to allow petitioner to resume operations during the pendency of this petition and to enjoin respondent Commission from allowing another to appropriate her certificate and/or line. She reiterated this prayer in a motion dated January 9, 1970. On February 16, 1970, this Court issued a writ of preliminary injunction upon petitioner posting a bond of P1,000.00 by allowing her to resume operations and at the same time enjoining the 'operations of Yolanda Escolin, whose application for "appropriation" was granted in PSC Case No. 68-9712. Upon motion of said Yolanda Escolin, this Court allowed her to intervene and lifter the preliminary injunction issued upon her filing a bond of P5,000.00. However, on June 23, 1970, this Court modified the order lifting the writ so that the first part thereof allowing petitioner to resume operation of her taxicab service is deemed excluded from said order of

lifting.

Respondent Public Service Commission filed an answer to the petition stating that the cancellation of petitioner's certificate was warranted by the evidence adduced during the hearing pointing to the fact that the petitioner's driver was conclusively involved in the hold-up.

Private respondent Mauro A Ausejo on the other hand, manifested that he has chosen not to file an answer to that petition. He, however, filed his comment to petitioner's motion reiterating the prayer for the issuance of a writ of preliminary injunction. He affirmed therein the presence of Felicisimo M. Valdez the driver of taxicab No. 6100 during the hearings but stated, that he could not be sure then as to whether he was the driver of the vehicle used by the hold-uppers. He likewise stated that he executed an affidavit dated January 5, 1970 to the effect that the sole purpose of his complaint before the Public Service Commission was merely to verify the driver of the taxi then bearing Plate No. 6100 so said driver could help the police in the apprehension and prosecution of the hold-uppers and that in view of the death of said driver the pendency of the investigation, he is willing to forget everything.

We find the petition impressed with merit and agree with petitioner that the charges lodged against her have not been duly proved. The respondent Public Service Commission anchors the charges against petitioner on the following provisions, to wit:

"Section 19. Unlawful acts. - It shall be unlawful for any public service:

(a) to provide or maintain any service that is unsafe, improper, or inadequate, or withhold or refuse any service which can reasonably be demanded and furnished, as found and determined by the Commission in a final order which shall be conclusive and shall take effect in accordance with this Act upon appeal or otherwise. (The Public Service Act, as amended)

"Section 47. Courtesy, character, record, etc. Each operator shall employ only such chauffeurs, conductors, agents, inspectors, auditors, and other employees who are courteous and of good moral character, and in no case shall he employ any person who has been convicted by competent court of homicide and/or serious physical injuries, theft, estafa, robbery, and crimes against chastity. Operators are prohibited from employing as chauffeurs persons who do not have professional drivers' license." (Revised Order No. 1)

Section 19(a) of the Public Service Act contemplates of failure to provide a service that is safe, proper or adequate and refusal to render any service which can reasonably be demanded and furnished. It refers specifically to the operator's inability to provide reliable vehicles to transport the riding public to their places of destination and to the failure to provide an adequate number of units authorized under his franchise at all times to secure the public of sustained service. While, the words "unsafe, inadequate and improper" may be broad enough to cover a lot of things, they must be interpreted in consonance with the purpose of the Public Service Law, which was specifically enacted, among other things, to protect the public against unreasonable charges and poor inefficient service (*Luzon Stevedoring Co., Inc. vs PSC* 93 Phil. 735) and to secure adequate sustained service for the public at the least possible costs. (*Batangas Transportation Co. vs. Orlanes*, 52 Phil. 455). The facts of the case are bereft and wanting of any evidence to the effect that petitioner rendered a service that is unsafe, inadequate and improper. There was no testimony whatsoever that her vehicles are of such kind which may endanger the lives of the passengers or are not suitable for the peculiar characteristics of the area serviced. There is no proof that petitioner is not in a position to cope with the obligations and responsibilities of the service and to maintain a complete

number of units as authorized. While we agree with respondent Commission that said provision does not necessarily require a "passenger-operator" relationship. We disagree that a single hold-up incident which does not clearly link petitioner's taxicab can be comprehended within its meaning.

Section 47 of the Revised Order No. 1, on the other hand, refers to the kind of persons an operator must keep under his employ, namely courteous, of good moral character and no record of criminal conviction. Contrary to the claim of petitioner, this restriction equally applies to those who are already employed as well as those merely seeking admission to the service. (*Pangasinan Transportation Co. vs. CIR*, L-9736, May 20, 1957, 101 Phil. 480) The reason behind this requirement of courtesy and good moral character cannot be assailed and is understandable. A public service operator deals directly with the patronizing community and the nature of such undertaking necessarily demands of the company the maintenance of a personnel with unquestionable record of good moral character for the public entrust their lives, properties and interests in said services and deserve utmost courtesy, efficiency and safety in return. (*ibid.*) But nowhere in the presentation of the facts of the case was there any proof that petitioner violated this provision. There is no proof that she has hired a driver with criminal record or bad moral character or has kept under her employ such driver despite knowledge about his moral behavior, discourteous conduct or criminal record. Besides, the show cause order merely speaks of employing a driver with "criminal tendencies" while Section 47 is couched in unmistakable mandatory terms; it forbids the employment of persons "convicted" of offenses enumerated therein.

All that was proved during the investigation was the hold-up incident of March 13, 1966. But proof of the hold-up incident is not proof of the charges under Section 19(a) of the Public Service Law and Sec. 47 of the Revised Order No. 17. Most importantly, even the precise identity of the taxi cab boarded by the hold-uppers as they escaped had not been established. The only testimony linking the taxicab of petitioner was that of the companion of private respondent Ausejo that he saw the malefactors scamper away and seize a taxi whose plate number was "6100". With respect to the description of the alleged taxi, he said that the taxi was red in the entire body while private respondent Ausejo said that the taxi was red and it had parts painted blue. Both confirmed each other that the plate color was orange.

We find that petitioner has successfully refuted the alleged participation of her taxi. The decision dated December 28, 1965 of respondent Commission granting her petition for approval of her color scheme which authorized all her five (5) units to be painted with emerald green; the certification of Mr. Pedro Morales of the Land Transportation Commission, Chief of the Plate Section, to the effect that the plates for taxis for 1965 have a maroon background; and the certification of Marcelo Vasquez of the Vasquez Bros. & Co., Inc., the makers of vehicle plates for the Land Transportation Commission that the orange colored plates are given to privately owned vehicles and that No. 6100 has been given to both taxis and privately owned vehicles all cast a cloud of doubt on the real identity of the vehicle used by the malefactors.

Even on the assumption that it was petitioner's taxicab that was used by the escaping hold-uppers, there is no evidence that the driver is a co-conspirator in the commission of the offence of robbery. Conspiracy must be proved by clear and convincing evidence. The mere claim that the taxi cab was there and probably waiting is not proof of conspiracy in this case as it should be recalled that there were about twelve vehicles that stopped to view the spectacle. Further, it is possible that the driver did not act voluntarily as no person in the right senses would defy the wishes of armed passengers. Even on the assumption that the driver had participated voluntarily in the incident, his culpability should not be made a ground for the cancellation of the certificate of petitioner. While an employer may be subsidiarily liable for the employee's civil liability in a criminal action, subsidiary liability presupposes that there was no criminal action. Besides, in order that an employer may be subsidiarily liable, it should be shown that the employee committed the offense in the discharge of his duties. While it is true also that

an employer may be primarily liable under Article 2180 of the Civil Code for the acts or omissions of persons for whom one is responsible, this liability extends only to damages caused by his employees acting within the scope of their assigned tasks. Clearly, the act in question is totally alien to the business of petitioner as an operator and hence, the driver's illicit act is not within the scope of the functions entrusted to him. Moreover, the action before respondent Commission is neither a criminal prosecution nor an action for quasi-delict. Hence, there is absolutely no ground to hold petitioner liable for the driver's act.

Finally, under Section 16(n) of the Public Service Act, the power of the Commission to suspend or revoke any certificate received under the provisions of the Act may only be exercised whenever the holder thereof has violated or willfully and contumaciously refused to comply with any order, rule or regulation of the Commission or any provision of the Act. In the absence of showing that there is willful and contumacious violation on the part of petitioner, no certificate of public convenience may be validly revoked.

The following are some instances where the cancellation of a certificate of public convenience were held valid: (1) where the holder is a mere dummy (*Pecson vs. Pecson*, 78 Phil. 522); (2) where the operator ceased operation and placed his buses on storage (*Paredes vs. Public Service Commission*, L-7111, May 30, 1955); and (3) where the operator abandons totally the service (*Collector vs. Buan*, L-11438, July 31, 1958; *Regodon vs. Public Service Commission*, L-11899, Sept. 23, 1958; *Paez vs. Marcelo*, L-1530, March 30, 1962). None of the willful acts in patent violation of the Public Service Law can be attributed to petitioner herein.

Apropos, We find the respondent Commission's finding that the circumstances surrounding the case, specially the conduct of petitioner, gave the impression that the petitioner instead of applying a strong arm against the erring driver has tried to protect and shield him has no basis in fact. While the rule is that the commission's findings of fact, if supported by substantial evidence, are conclusive upon this Court, We are authorized to modify or ignore them when it clearly appears that there is no evidence, to support reasonably such conclusion. (*Javellana vs. La Paz Ice Plant & Cold Storage Co.*, 63 Phil. 621; *Philippine Shipowners Association vs. Public Utility Commissioner*, 43 Phil. 328; *San Miguel Brewery vs. Lapid*, 53 Phil. 539; *Ice & Cold Storage Industries of the Phil., Inc. vs. Valero*, 85 Phil. 7; *Halili vs. Daplas*, 14 SCRA 14)

In the case at bar, it has been duly established that the driver of the taxicab, Felicisimo M. Valdez, was always present during the initial hearings of this case before his death on September 18, 1966. This fact is indicative of his willingness to take the witness stand but death sealed his lips. For her part, petitioner explained that she did not testify because she was candid enough not to pretend to know the exact whereabouts of her taxi at the fateful time. Hence, the conclusion of respondent Commission that she tried to protect or shield her driver by her refusal to refute or deny the claim of respondent Ausejo and Mr. Caballes is not warranted by the facts of the case.

ACCORDINGLY, the instant petition for review is hereby GRANTED and the decision of respondent Public Service Commission (now Land Transportation Franchising and Regulatory Board [LTFRB]) dated June 30, 1967 cancelling and revoking the certificate of public convenience of petitioner to operate a taxicab service in Manila for five (5) units under Case No. 62-4503 as well as the order denying the motion for reconsideration are hereby REVERSED and SET ASIDE.

SO ORDERED.

Narvasa, Cruz, Gancayco and Griño-Aquino, JJ., concur.

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