

**FORTUNATO F. HALILI, PETITIONER, VS. RUPERTO CRUZ,
RESPONDENT.***G.R. No. L-21061. June 27, 1968*

Ponente: ZALDIVAR, J.

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This is a petition for review of the decision of the Public Service Commission, in its Case No. 61-6113, granting to respondent-appellee Ruperto Cruz a certificate of public convenience to operate a transportation service for passengers and freight, with authority to operate ten units on the line he applied for.

Herein respondent filed, on September 19, 1961, with the Public Service Commission an application, praying for the grant of a certificate of public convenience to operate, under PUB denomination, ten buses between Norzagaray (Bulacan) and Piers (Manila), via Novaliches Road, A. Bonifacio Road, Blumentritt Street, Rizal Avenue, MacArthur Bridge, Aduana and 13th Streets; and on the return trip, via Boston Street, MacArthur Bridge, Rizal Avenue, Blumentritt Street, A. Bonifacio Road, and Novaliches Road. The application was opposed by De Dios Transportation Co. Inc., Raymundo Transportation Co. Inc., PDP Transit Inc., Villa Rey Transit, Inc., and by herein petitioner-appellant Fortunato F. Halili who was the operator of the transportation service known as "Halili Transit." Petitioner, in his opposition alleged, substantially, that he was an operator of a bus service on the line applied for, enumerating at the same time the other lines he operated which were traversed by the route mentioned in respondent's application; that his service, as well as that of other bus operators on the route, was more than adequate to meet the demands of the traveling public; that the grant of the application would merely result in wasteful and ruinous competition, and that the respondent was not financially capable of operating and maintaining the service proposed by him.

After several hearings in which the parties presented their evidence, oral and documentary, the Public Service Commission rendered a decision, on February 13, 1963, granting a certificate of public convenience to respondent Ruperto Cruz to operate ten buses under PUB denomination on the line Norzagaray (Bulacan)--Piers (Manila) passing through the routes applied for. The decision states, among others, as follows:

"After a careful study of the evidence presented by the contesting parties, we find the following facts established; that applicant is applying for a service from Norzagaray to Piers and vice-versa; that not one of the oppositors herein operate a service up to Piers--most of them go up to Divisoria and the rest up to Folgueras; that there are commuters starting from Norzagaray up to Piers; that applicant has the experience in the operation of a PUB service and that applicant has the means with which to operate and maintain the service herein applied for.

"From the facts in evidence, this Commission is of the belief that the weight of evidence tips in favor of the applicant.

"It appearing, therefore, that applicant is a Filipino citizen, that he is financially capable to operate and maintain the service herein applied for, and that public convenience and necessity will be promoted by the approval of this application, and furthermore, that the oppositions of the oppositors herein are without merit,

the same are overruled and the instant application APPROVED."

It is the above-mentioned decision of the Public Service Commission that is now sought to be reviewed by this Court.

Petitioner contends that:

1. "The finding of the Public Service Commission that there was a public need for the operation by respondent of ten buses on the line Norzagaray (Bulacan) -- Piers (Manila) is not supported by the evidence;
2. "The Public Service Commission erred when it did not recognize the fact that petitioner-appellant was rendering sufficient and adequate service on the line in question; and
3. "The Public Service Commission erred in failing to give petitioner-appellant the right of protection to investment to which petitioner-appellant is entitled."

In support of his first two contentions petitioner argues that the 500 passengers found by the Commission as commuting daily from Norzagaray to Manila could easily be accommodated in the buses of existing operators; that the existing operators were authorized to operate 31 buses which made around 100 round trips a day; that since a bus could accommodate about 50 passengers, the existing authorized services could easily accommodate not only the 500 but even 5000 passengers a day. Petitioner also asserted that the Commission failed to consider that 200 of the 500 commuters worked in the Republic Cement Factory located at Norzagaray and so there were really only 300 commuters daily traveling on the Norzagaray--Manila line. Petitioner further claimed that the new terminal proposed in the application was not based on actual need, because there were no importing firms, or business establishments, or manufacturing concerns, in Norzagaray, whose employees had to make trips to the piers at the south harbor in Manila. On the question of public necessity, petitioner pointed out that the evidence presented by the respondent consisted only of the testimony of two witnesses who did not make any formal or systematic study of the movement and frequency of public utility buses, so that their testimonies were based only on casual observations. On the other hand, as petitioner pointed out, the oppositors presented five witnesses, two of whom made meticulous, systematic and daily observations on the line applied for. Petitioner urged that according to Exhibits "1", "1-A" to "1-R", consisting of different pages of entries in a checkbook at the various PSC checkpoints in the proposed line, buses passing the checkpoints were carrying only from 1 to 5 passengers -- which fact proved that the existing operators more than adequately served the needs of the public.

Petitioner likewise asserted that public necessity did not require the operation of the ten buses applied for by the respondent because of the fact that on December 20, 1961, the Public Service Commission granted to herein petitioner, in Case No. 61-5807, authority to operate only 10 buses on the line Norzagaray--Manila, even if he had applied for 20 buses; and that out of the many applications to operate buses from Paradise Farms (Bulacan) to Manila, only 10 buses were authorized.

The first two contentions of petitioner raise questions of fact. This Court has repeatedly held that where the Public Service Commission has reached a finding, after weighing the conflicting evidence, that public necessity and convenience warrant the operation of additional public utility service, the finding must not be disturbed as long as there is evidence reasonably supporting such finding.[1] In reviewing the decision of the Commission, this Court is not even required to examine the proof de novo and determine for itself whether or not the preponderance of evidence really justifies the decision. The only function of this Court is to determine whether or not there is evidence before the Commission upon which its decision might reasonably be based.[2]

The Commission stated in its decision that "after a careful study of the evidence presented by the contesting parties x x x the Commission is of the belief that the weight of evidence tips in favor of the application." There is

evidence on record that there are numerous students, professionals, merchants, and employees in both government and private concerns, that commute daily between Norzagaray and Manila and the intermediate points along the line;[3] that along the same line have emerged numerous centers of population, residential subdivisions and housing projects, industrial projects like the Republic Cement Factory, Angat River Dam and Hydro-electric Power Project, and hollow blocks manufacturing establishments;[4] that commuters experienced difficulties in getting accommodated on buses traveling between Norzagaray and Manila; that the Villa Rey Transit used to make two trips from Angat to Manila via Norzagaray, the La Mallorca Pambusco also two trips from Norzagaray to Manila via Sta. Maria, and the Halili Transit likewise two trips from Norzagaray to Manila via the Novaliches Road; that said trips were fully loaded at Norzagaray such that many commuters from Norzagaray had to take jeeps which brought them only up to Sta. Maria and Bocaue and there waited for other means of transportation to bring them to Manila;[5] and that commuters from Manila to Norzagaray also had to resort to broken trips for lack of direct trips.[6] We are persuaded that the evidence in the record support the decision appealed from.

Petitioner claims that the Public Service Commission did not consider the checker's reports (Exhs. 1, 1-A, to 1-R), on the face of which it appears that there was no overcrowding in the buses checked at the various checkpoints. The Commission, however, states in its decision that it had arrived at its finding "after a careful study of the evidence presented by the contesting parties," -- and necessarily the evidence thus studied included the checker's reports. But assuming, *gratia argumenti*, that said reports were not considered the failure of the Commission to consider the reports would not constitute a reversible error, because we find that the reports refer to trips of buses from Manila to Ipo, Sapang Palay, San Jose and back, and from upland to lowland and back, and none of the buses checked had trips along Norzagaray-Manila or Manila-Norzagaray line. The relative weight of these checker's reports as evidence must have been considered by the Commission before making its decision. As we have stated, the finding of fact of the Public Service Commission is conclusive on this Court. Thus, in a case, this Court said:

"It appearing that the main issues raised by petitioner merely affect questions of fact which by their very nature involve an evaluation of the relative weight of the evidence of both parties, or the credibility of witnesses who testified before the Commission, following the law and jurisprudence applicable to the matter in this jurisdiction, said questions are now conclusive upon this Court, and cannot be looked into, it appearing that there is sufficient evidence to support its findings." [7]

The claim of petitioner, that he was rendering adequate service on the line in question as would preclude the necessity of another operator, is untenable. In the first place, as shown in the record, petitioner does not have a direct line from Norzagaray to the Piers - the line that is applied for by respondent. In the second place, there is evidence to the effect that oppositor Halili was authorized 48 trips between Norzagaray and Folgueras,[8] but it was making two trips only.[9] This circumstance indicated that there was shortage of transportation units or facilities, and that the line was not adequately serviced by the petitioner. Thus, in a case concerning the non-operation of authorized units, this Court said:

"Apart from the existence of competent evidence in support of these findings, certain undisputed facts therein contained reveal that the assignment of error under consideration is manifestly untenable. We refer to the circumstance that, of the 75 buses that the Raytranco is authorized to operate in all its lines, its right with respect to 30 has been leased, 14 to Rizman and 16 to Laguna--Tayabas Bus Company. Again, though still entitled to operate 45 units in its remaining lines, the Raytranco has registered only 17 buses, aside from the circumstance that such buses are not in continuous operation. These facts lead to the conclusion that there must be a shortage of transportation facilities in the lines aforementioned and that the Raytranco is unable to meet fully the demands of public convenience therein." [10]

Petitioner claims, in his third contention, that the Public Service Commission failed to give him the protection that he is entitled to, being an old and established public service operator. As a general principle public utility operators must be protected from ruinous competition, such that before permitting a new operator to serve in a territory already served by another operator, the latter should first be given opportunity to improve his equipment and service. This principle, however, is subject to justifiable exceptions. The primary consideration in the grant of a certificate of public convenience must always be public convenience. Thus, this Court said:

"While it is the duty of the government as far as possible to protect public utility operators against unfair and unjustified competition, it is nevertheless obvious that public convenience must have the first consideration...."[11]

The public convenience is properly served if passengers who take buses at points in one part of a line are able to proceed beyond those points without having to change buses. On this point this Court said:

"It is the convenience of the public that must be taken into account, other things being equal, and that convenience would be effectuated by passengers who take buses at points in one part of a line being able to proceed beyond those points without having to change buses and to wait the arrival of buses of a competitive operator. We can perceive how under such conditions one public utility could gain business at the expense of a rival."[12]

In the instant case, public convenience would be properly served if commuters from Norzagaray going to Piers in Manila could go to their destination without the need of changing buses. Certainly the Public Service Commission has power to grant a certificate of public convenience to a new operator, and the old operator cannot with reason complain that it had not been given opportunity to improve its equipment and service, if it is shown that the old operator has not placed in the service all the units of equipment that it had been authorized to operate, and also when the old operator has violated, or has not complied with, important conditions in its certificate.[13] In the instant case, it has been shown that petitioner had not operated all the units that it was authorized to operate.

IN VIEW OF THE FOREGOING, the decision of the Public Service Commission, sought to be reviewed, is affirmed; with costs against petitioner-appellant.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Red Line Transportation Co. Inc., vs. Matias Santo Tomas, G.R. No. L-18472, January 30, 1967; La Mallorca and Pampanga Bus Co., Inc., vs. Mercado, G.R. No. L-19120, November 29, 1965; Halili vs. Dallas, G. R. No. L-20282, May 19, 1965; La Mallorca and Pampanga Bus Co., Inc., vs. Mendiola, G. R. No. L-19558, November 28, 1963; MD Tran-sit & Taxi Co., Inc., vs. Pepito, G. R. No. L-16481, September 29, 1962; Pineda vs. Carandang, G. R. No. L-13270-71, March 24, 1960.

[2] Pineda vs. Carandang, Nos. L-13270-71, March 24, 1960; La Mallorca and Pampanga Bus Co., Inc. vs. Mendiola, L-19558, November 29, 1963; Del Pilar Transit, Inc., vs. Silva, et al., L-21547, July 15, 1966.

[3] T.S.N., April 18, 1962, pp. 25-31; July 25, 1962, pp. 45-51; July 31, 1962; pp. 63-66, 73-76; August 17, 1962, p. 219.

[4] T.S.N., April 18, 1962, pp. 27-28, 30-31; October 2, 1962; pp. 171-172.

[5] T.S.N., April 18, 1962, pp. 22-27; July 31, 1962; pp. 64-66; November 7, 1962, pp. 220-221.

- [6] T.S.N., November 7, 1962, p. 220.
- [7] MD Transit and Taxi Co., Inc., vs. Santiago Pepito, G. R. No. L-16481, September 29, 1962.
- [8] T.S.N., October 2, 1962, pp. 395-398.
- [9] T.S.N., April 18, 1962, p. 271.
- [10] Zarate, et al., vs. Rizal-Manila Transit Co., G. R. Nos. L-11300 and L-11301, May 29, 1959.
- [11] Raymundo Transportation Co., vs. Perez, 56 Phil. 274.
- [12] Mindanao Bus Co., vs. Paradise, G. R. No. 38442 (1933); 58 Phil. 970. (See Pangasinan Transportation Co., vs. Manila Railroad Co., 60 Phil. 617, 621.)
- [13] Mirasol Transportation Co., Inc., vs. Negros Travelways Corporation and Matus, 64 Phil. 317.

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