

INTERPROVINCIAL AUTOBUS COMPANY, INC., OPPOSITOR AND APPELLANT, VS. ROMAN MABANAG, APPLICANT AND APPELLEE.*G.R. No. L-3302. January 11, 1951*

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

In case No. 34686 of the Public Service Commission, Roman Mabanag applied for a certificate of public convenience to continue the TPU auto-truck service which he was already rendering on the lines Misamis-Pagadian and Misamis-Oroquieta, and to extend the said service to Dipolog, Mapang and Polao, all in the provinces of Occidental Misamis and Zamboanga. The application was opposed by Interprovincial Autobus Co., Inc., a Filipino corporation which is already operating or rendering autotruck service on the same lines. After hearing, the Public Service Commission in a decision dated August 9, 1949, overruled the opposition, granted the application as regards the Misamis-Pagadian and Misamis-Oroquieta lines but denied the extension of the service to Dipolog, Mapang and Polao, because the applicant did not present any evidence as to the need of the proposed extension. The oppositor Interprovincial Autobus Co., Inc. is now appealing from that decision and now petitions us to review the same.

The position taken by the petitioner-appellant is that in reality and according to the evidence, there is no passenger and freight traffic on the lines granted the applicant to warrant conceding the certificate of public convenience to him; that existing traffic on said lines can and is being adequately handled by the appellant; that the applicant is not financially capable or in a position to maintain adequately the line applied for by him; that the oppositor is a pre-war public utility and common carrier which had been rendering adequate service on the lines solicited by the applicant; that granting the application and issuing the certificate of public convenience applied for to the applicant would result in ruinous competition to the great prejudice of the oppositor; that the policy of the government is and has always been to protect old transportation companies and operators, and that in case there is an increase in the traffic, said old companies or operators should be given priority in increasing their equipment and their service in preference to new operators. The decision appealed from in our opinion sufficiently and adequately states the facts and the issues involved in the present case and we quote with approval the pertinent portion of said decision:

"This is an application for a certificate of public convenience to continue the TPU auto-truck service which applicant has been rendering since July 22, 1947 on the lines Misamis-Pagadian and Misamis-Oroquieta by virtue of temporary authorities issued in Cases Nos. 28123, 31830 and 34686, and to extend the said service to Dipolog and Mapang in Zamboanga and to Polao in Occidental Misamis. This application is opposed by the Interprovincial Autobus Co., Inc., an authorized auto-truck operator in the provinces of Occidental Misamis and Zamboanga.

"The evidence presented by applicant tend to show that passenger traffic is particularly heavy on the Misamis-Pagadian and Misamis-Oroquieta lines; that buses operating on these two lines are always fully loaded even at starting points; that passengers invariably scramble for seats as failure to get accommodations mean either a 30-minute wait for the next trip or an overnight stay; and finally that the present authorized

transportation services on the lines served by applicant are inadequate to satisfy public demand. Applicant is a landowner and businessman engaged in the retail of gasoline and spare parts and he promises to maintain and operate a safe, satisfactory, and adequate service should the present application be granted.

"In support of its opposition, the Interprovincial Autobus Co., Inc. presented evidence tending to show that the present auto-truck services in the lines applied for are enough to meet the needs of the traveling public; that due to the paucity of passengers, racing for the purpose of picking passengers ahead is very common among the auto-trucks of competing operators; also, that many emergency TPU auto-trucks operators have either gone out of business or have reduced their operations due to business losses and that even the herein oppositor with all its experience in the transportation business lost P59,446.44 in 1948; that the hours of trips requested by applicant are in conflict with those already authorized to it; and that the service it now renders in the province of Occidental Misamis and Zamboanga is regular, sufficient, adequate, satisfactory, and efficient and its employees disciplined and courteous.

"From an appreciation of the evidence presented as well as the records of the Commission, it appears that there is now a great influx of immigrants to the provinces of Zamboanga and Occidental Misamis disembarking at the port of Oroquieta; that the claim of ruinous competition put up by the oppositor cannot be accepted as according to its own evidence, its operating expenses per kilometer is P0.293 while its gross revenue per kilometer amounted to P0.320 computed on an average of 40 per cent capacity pay-load equivalent to 16 passengers charged at the rate of P0.02 per kilometer per passenger; that in case No. 38313, the herein oppositor has an application for authority to operate additional trips on the lines Misamis-Pagadian and Misamis-Oroquieta showing that contrary to its claims in this case, there is really need for more service on the said lines.

"Applicant having presented no evidence as to the need of the proposed extensions of his services to Dipolog, Mapang, and Polao, the same is hereby denied.

"In view of the foregoing, and considering that the granting to applicant of authority to continue his authorized services on the lines Misamis-Pagadian and Misamis-Oroquieta on daily basis will promote public interests in a proper and suitable manner; that applicant is a Filipino citizen and financially capable of conducting and maintaining the services proposed by him; the Commission hereby overrules the opposition filed in this case and directs that, pursuant to the provision of Section 15 of Commonwealth Act 146 as amended, a certificate of public convenience be issued to applicant for the operation of TPU auto-truck service for the transportation of passengers freight, subject to the following."

It will be seen that the respondent Commission has found that traffic on the lines' in question warrants the transportation service applied for, and that the applicant is capable of rendering said service. As regards the sufficiency of evidence on the traffic on the lines applied for by Mabanag as well as his capacity to render and maintain the service proposed by him, we have the doctrine laid down in the cases of *San Miguel Brewery vs. Lapid*, 53 Phil., 542 and *Manila Yellow Taxicab Co. vs. Danon*, 58 Phil., 75, wherein this court has laid down the doctrine that in reviewing an order or decision of the Public Service Commission, the Supreme Court is not required to examine the evidence de novo and determine for itself whether or not the preponderance thereof justifies the order or decision rendered; that this court will not substitute its discretion for that of the Public Service Commission on questions of fact and interferes only when it appears clearly that there is no evidence to support the order or decision appealed from. We have gone over the record and find that there is evidence to support the decision of the Public Service Commission in the present case. Witnesses for the applicant testified to the fact that as found by the Public Service Commission, at times the passenger traffic was so heavy that passengers could not be accommodated, thereby justifying the auto-truck service or rather the continuation thereof solicited by the applicant in order to relieve congestion and to give adequate service to the public. With respect to the financial and business ability of applicant to render and maintain the service solicited by him, the Public

Service Commission in our opinion correctly found that he is a responsible citizen with financial resources¹ who, since 1947 has been rendering this same service over the same lines. The fact that since 1947 he has been rendering service which the Commission considers as adequate and satisfactory is proof of his financial and business capacity, to say nothing of the experience gained since then.

As to the preference or priority claimed by the oppositor-appellant as an old operator, it brings up the old question of the advantages or disadvantages of regulated monopoly and regulated competition. However, we find it unnecessary to go into this question. It should be borne in mind that the service now applied for under case No. 34686 is not a new one. It involves only a conversion of the emergency certificate of public convenience already given to the applicant and which service he had been rendering since 1947. In case No. 28123 the same applicant Roman Mabanag applied for a certificate of public convenience to operate one unit on the same lines—Misamis-Pagadian and Misamis-Oroquieta. Said application was not opposed by the petitioner-appellant. In case No. 31832 the same applicant applied for and was given authority to increase his service over the same lines by two units instead of but one. Neither was this application opposed by the oppositor-appellant. The present application is intended only to convert this emergency certificate of public convenience which was supposed to end on December 31, 1948, into a regular certificate. It is therefore apparent that the applicant-respondent is not a new operator. He comes, rather, under the new policy adopted by the Commission and the government to give opportunity, encouragement and protection to those persons and entities who immediately after liberation when because of the last war the equipment of the old operators and common carriers had been completely destroyed and lost and their service paralyzed, offered to help and did help in the rehabilitation of the transportation business. Had the government waited for the complete rehabilitation of the old operators who had to rely on the payment of their war damage claims or raise capital with which to replace their lost equipment, the government and the public would have had to wait a long time. However, enterprising individuals and entities with smaller and less elaborate equipment in the form of jeeps, jeepneys, small buses, often times converted from surplus property, offered their services and, as we have seen, have been rendering adequate service. It would now be unfair and unjust not to allow said postwar emergency operators to convert their emergency certificates into regular and permanent certificates of public convenience. Moreover, in giving opportunity and protection to these post-war operators, the government is not really causing prejudice and harm to the old operators. Traffic has considerably increased not only in the cities and centers of populations but also in towns where, because of the increase in the price of commodities for export like copra, in Misamis and Zamboanga, as found by the Public Service Commission in this case, there has been an influx of immigrants from other places, giving business to all transportation service operators, old and new.

Finding no reversible error in the decision appealed from, the same is hereby affirmed with costs.

Moran, C. J., Paras, Feria, Pablo, Bengzon, Tttason, Padilla, Reyes, Jugo and Bautista Angelo, JJ., concur.

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