

MANDBUSCO, INC., MANDALUYONG BUS CO., INC., PRECILO CAMAGANACAN, BLAS REYES AND ANASTACIO ESMAO, PETITIONERS, VS. PABLO FRANCISCO, RESPONDENT.

G.R. No. L-23688. April 30, 1970

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

The respondent Pablo Francisco applied for a certificate of public convenience covering the operation of five (5) PUJ jitneys from barrio Pinagbuhatan, Pasig, Rizal to the intersection of High-way 54 and Shaw Boulevards, Mandaluyong, Rizal (otherwise known as the "Crossing") and vice-versa. Hearing was conducted, after due notice and publication, enabling both the respondent applicant and the oppositors Mandbusco Inc., et al., to adduce their respective evidence. On June 15, 1964 a decision was rendered by the Public Service Commission granting the respondent's application, it appearing to a division of three commissioners that:

"After [a] careful study of the evidence pre-sented by the parties, the Commission finds that the proposed service will benefit the people of Bo. Pinagbuhatan considering that there is no direct ser-vice from that place to the crossing of Highway 54 and Shaw Blvd. It can be noted also that the provin-cial capitol, provincial hospital and other big esta-blishments are located past the Poblacion of Pasig and nearer to the other proposed terminal at Highway 54 and Shaw Blvd. and that residents from Pinagbuhatan have to take 2 rides to reach these places"

The dispositive portion of the decision reads:

"Finding further from the evidence adduced by the applicant that he is [a] Filipino citizen, le-gally and financially capable [of operating and main-taining] the same, the oppositions filed in this case are hereby overruled and the certificate of public convenience applied for, may be, as it is hereby GRANTED to the applicant x x x"

It is mainly at the findings above-quoted that the petitioners, all bus operators, have aimed their present petition for review, following the rejection of their motion for reconsideration by the Commission en banc.

The petitioners want to make capital of the declarations of their two witnesses, Federico Dantayana and Arturo Clemente. Let us appraise these declarations.

Dantayana, an official inspector of the Commission, testi-fied that he posted himself somewhere along the route covered by the respondent's application, and conducted a survey of the number of passenger vehicles availing themselves of the use of the Shaw Boulevard in going to and coming from Pasig, Rizal. The inspec-tion sheets offered in evidence show that buses with a usual load-ing capacity of from 65 to 75 passengers each were barely half - filled on the whole, while "jitneys" with a usual loading capacity of 13 passengers each actually carried an average of only 6 passen-gers each for every trip. These facts, the petitioners argue, illus-trate an excess of available passenger vehicles over the actual needs of the riding public. They negate the advisability of allowing the applicant's "jitneys" to serve the route between barrio Pinag-buhatan and the crossing of Highway 54 and

Shaw Boulevard in Mandaluyong.

Closely scrutinizing Dantayana's testimony, we cannot acquiesce in the petitioners' conclusions. The length of the route which the respondent applied for is divided into two parts. The first starts at barrio Pinagbuhatan and ends at the poblacion of the town of Pasig. The second begins at the poblacion and winds up at the crossing of Highway 54 and Shaw Boulevard in Mandaluyong. Dantayana's survey covered passenger vehicles passing through the second part of the route applied for. It appears, however, that the second part is actually only a converging point for passenger vehicles coming from towns east of Pasig, not to mention other passenger vehicles, equally numerous, destined for Manila coming from their terminals located in the Pasig poblacion itself. In short, Dantayan's survey does not at all indicate the volume of the traffic of passenger vehicles coming all the way from barrio Pinagbuhatan. After all, the primary objective of the grant of the certificate of public convenience in question was the welfare of the inhabitants of barrio Pinagbuhatan and other inhabitants along the first part of the route applied for.

The petitioners' only other witness, Arturo Clemente, the president of both the Mandbusco, Inc. and of the Pasig-Manila Bus Operators Association, testified that a total of 125 buses are operating between Pasig, Rizal and Quiapo, Manila, all taking the Shaw Boulevard, which thoroughfare is part of the route applied for by the respondent. Likewise a total of 51 "jitneys" serve that same portion of Shaw Boulevard to and from various points in Pasig. In addition, a total of 171 buses coming from towns east of Pasig pass daily through the latter town, proceed to Shaw Boulevard, and then to Manila. All these public conveyances, the witness pointed out, are more than adequate to meet the transportation, needs of the riding public in the areas served. The petitioners, the witness added, have made substantial investments in their business and, therefore, the allowance of additional public transportation vehicles, clearly unneeded, would result in ruinous competition and threaten the stability of their financial positions.

This argument suffers, however, from the same basic oversight afflicting the testimony of Dantayana. All the vehicles mentioned by Clemente, except possibly for two buses - a matter which we will shortly discuss - do not run the full course of the route applied for by the respondent. The overlapping of service exists only with regard to the second part of that route, and this is clearly unavoidable since the stretch of road from the Pasig poblacion to the crossing serves as a common access to Highway 54 whence passengers embark for separate destinations.

In the course of the hearing the petitioners presented a certificate of public convenience allowing the Mandaluyong Bus Co., Inc. to utilize two of their buses, and a third as reserve, for the line from Pinagbuhatan (Pasig, Rizal) to Plaza Miranda (Quiapo, Manila) via Mandaluyong, Rizal. This, according to petitioners, should completely negate the finding of the Commission that there exists no direct service from barrio Pinagbuhatan to the crossing of Highway 54 and Shaw Boulevard. We disagree. The certificate of public convenience adverted to merely proves that authority has been given to the grantee to operate public utility vehicles in the designated territory. It cannot serve as proof that the grantee has made actual use of such authority. Lacking any positive proof that the petitioners (or any of them) adequately serve the transportation requirements of the inhabitants of barrio Pinagbuhatan and the adjacent places, we are not inclined to overturn the finding of fact of the Commission, realizing as we do, after a reading of the record, that the same is reasonably supported by evidence.[1]

The petitioners invoke the "old operator rule," which is to the effect that a public utility operator should be shielded from ruinous competition by affording him the opportunity to improve his equipment and service before allowing a new operator to serve in the same territory he covers.[2] This rule has no application in this case because the certificate of public convenience granted to the respondent is a maiden franchise covering the particular line connecting barrio Pinagbuhatan and the crossing of Highway 54 and Shaw Boulevard. The

certificate of public convenience authorizing the Mandaluyong Bus Co. Inc. to operate two buses, with one reserve, on the line extending from barrio Pinagbuhatan to Plaza Miranda in Quiapo, Manila, while in a sense overlapping with the authority given to the respondent, was essentially intended to cover the great distance run between barrio Pinagbuhatan and Quiapo, Manila, via Pasig Boulevard, P. Sanchez, V. Mapa, Valenzuela, Old Sta. Mesa, Sta. Mesa Boulevard, Legarda, Tanduay, P. Casal, Ayala Bridge, Concepcion, Arroceros, Quezon Bridge and Quezon Boulevard. Upon the other hand, the grant in favor of the respondent covers only a brief shuttle run of 8 kilometers linking barrio Pinagbuhatan directly with the Pasig poblacion and the crossing of Highway 54 and Shaw Boulevard. The Commission favored the respondent with the certificate of public convenience in question; we are not prepared to substitute our discretion with that of the Public Service Commission in the determination of what can best meet the requirements of public convenience.

The ability of the respondent to finance the maintenance and operation of the service he applied for is likewise questioned by the petitioners. This issue is now academic for the reason that the respondent has, since his receipt of the franchise, actually registered the five units covered by the authority. He has, moreover, registered one reserve unit for the same line, with the approval of the Commission. These units, plus the assets he proved he owns, are sufficient guaranty that the respondent can sustain the service he applied for.[3]

The petitioners, in their brief, invoke the Public Service Commission Memorandum, of May 15, 1963 and its Supplemental Memorandum of July 22, 1963, with a view to establishing that the certificate of public convenience in favor of respondent was issued in violation of these memoranda. The first memorandum comes as a suggestion to all Commissioners that action on all pending applications for certificates of public convenience for the operation of passenger service in Manila, Quezon City, Pasay City, Caloocan, Mandaluyong, Parañaque, San Juan and Makati, be suspended until further studies could be made. The supplemental memorandum contains an order addressed to the Secretary of the Commission enjoining him from calendaring for hearing or for continuation of hearing any application for passenger service in Manila and suburbs; and any decision purporting to have been rendered prior to May 15, 1963 but had not been turned over to the Secretary and recorded prior to the date of the order, should be withheld until further orders. It is not difficult to see that the territory applied for is not among the ones enumerated in the Memorandum of May 15, 1963. The respondent's service stretches mainly across the town of Pasig in Rizal, and if it abuts into a tiny fraction of Mandaluyong, one of the areas covered by the enumeration, the incursion is incidental and does not necessarily render Mandaluyong the mainstream of the respondent's service. Moreover, even if the memoranda in question comprehend the present application, still public welfare and convenience, where positively found by the Commission to be subserved, should prevail.[4]

ACCORDINGLY, the decision appealed from is hereby affirmed. No pronouncement as to costs.

Concepcion, C.J., Reyes, JBL, Dizon, Makalintal, Zaldivar, Fernando, and Villamor, JJ., concur.
Teahankee, J., in the result.
Barredo, J., took no part.

[1] *San Ildefonso Electric Plant, Inc. vs. Ealivag Electric Light and Power Co., Inc.*, L-26770 & L-26771, March 25, 1969, 27 SCRA 404, 411 and the cases cited therein. See also *Rizal Light & Ice Co., Inc. vs. Mun. of Morong, Rizal*, L-20993 & L-21221, September 28, 1968, 25 SCRA 285, 294-295.

[2] *Halili vs. Cruz*, L-21061, June 27, 1988, 23 SCRA 1174, 1181-1182.

[3] *Red Line Transportation Co., Inc. et al. vs. Santo Tomas*, L-18584, January 30, 1967, 19 SCRA 148, 151-152; *Pangasinan Transportation Co., Inc. vs. Tambot*, 95 Phil. 661.

[4] Valle Bros., Inc. vs. Public Service Commission, et al., L-18694, January 31, 1966, 16 SCRA, 39, 44-45.

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