

GREGORIO ROBLES, PETITIONER, VS. CONCEPCION FERNANDO BLAYLOCK, JACOBO ABRAJANO, AND ALADINO ANDRADE, RESPONDENTS.

G.R. Nos. L-24123, L-24124, L-24125 & L-24126. March 27, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

In this appeal, petitioner Gregorio Robles attacks the single judgment of the Public Service Commission (PSC) of January 5, 1965 rendered in four cases,[1] viz:

"In view of the foregoing, it appearing that public convenience will be promoted in a proper and suitable manner by the grant of authority for the operation of additional automobile taxicabs in the Municipality of Olongapo, Zambales and from said town to any place in the Island of Luzon accessible to motor vehicle traffic and vice-versa; that the applicants herein are all Filipino citizens and financially capable to operate the taxicab services applied for, the Commission hereby approves the instant applications and orders the issuance to the applicants [of] the corresponding certificate of public convenience, to wit:

Name of

Applicant

Case No.

Number of Units

Authorized

1. Gregorio Robles

60-766

Ten (10) Units

2. Concepcion Fernando

Blaylock

60-1681

Five (5) Units

3. Jacobo Abrajano

62-4654

Twenty (20) Units

4. Aladino Andrade

63-3820

Five (5) Units.”

Following are the events that led to this appeal:

On December 14, 1959, petitioner Gregorio Robles was, for the first time, issued a certificate of public convenience and necessity by the PSC to operate a taxicab service of five (5) units within the municipality of Olongapo, Zambales, and from said place to any point in the island of Luzon accessible to motor vehicle traffic.[2]

On February 24, 1960, respondent Concepcion Fernando Blaylock applied for PSC authority to operate a taxicab service with ten (10) units within the municipality of Olongapo, Zambales, and suburbs.[3] This application was opposed by petitioner Robles.

On March 30, 1960, Robles asked for, and was granted, unopposed, an increase of five units.[4] Again, on July 1, 1960, PSC, upon his application, authorized him to operate another five units.[5] Then, on August 15, 1960, Robles lodged another petition for increase of equipment[6] for "ten (10) or more" additional units "as public necessity and convenience may require." A specific averment there was: "That in case the Public Service Commission finds that there is a need of more Taxicab service in said territory, that he is willing and ready to put up the additional service necessary."

On September 30, 1960, respondent Blaylock's application, heretofore adverted to,[7] after hearing, was approved by the PSC for five units to be operated within Olongapo and from there, to any point in the island of Luzon. Oppositor Robles appealed that case to this Court.[8]

On October 7, 1960, Blaylock applied with PSC for an additional equipment of five units.[9]

On December 15, 1960, PSC, upon Robles' petition, ordered the proceedings in pending PSC cases for additional taxicabs, namely, Cases 60-766 (application of Robles) and 60-1681 (application of Blaylock), suspended until Robles' appeal before this Court in G.R. No. L-17629 be finally resolved.

While the aforesaid proceedings thus remain suspended, three first-time applicants sought also to become operators of taxicab service in Olongapo and from there to all points in Luzon, viz: On August 14, 1962, respondent Jacobo Abrajano, for 30 units;[10] on July 5, 1963, respondent Aladino Andrade, for 5 units;[11] and on March 30, 1964, Rolando Feliciano, for 30 units.[12]

Then came the decision of this Court in G. R. No. L-17629 aforementioned, promulgated on March 31, 1964. We there affirmed the grant of five units to respondent Blaylock, but her authority to operate was, by this Court, "[m]odified as to the area of operation x x x which must be within Olongapo, Zambales, and its suburbs."

The foregoing decision paved the way for the resumption of hearings in the PSC with respect to the pending taxicab service applications. Upon petition of Robles on July 22, 1964, Associate Commissioner Jose Fornier held joint hearings of the cases of the five applicants, namely, Robles, Blaylock, Abrajano, Andrade, and Feliciano. Robles' opposition to all the other applications is based upon what is known as the prior operator rule and his expressed willingness to fill the need for additional units.

On January 5, 1965, PSC rendered a decision in four cases involved in this appeal. Rolando Feliciano's application was, for reasons undisclosed in the record, omitted therefrom. As mentioned earlier in this opinion,

PSC granted authority to Robles to operate an additional ten units; to Blaylock, an additional five units. Newcomer Abrajano was authorized to operate twenty units; and newcomer Andrade, five units.

Robles then filed in this Court the present petition for review of the foregoing PSC decision.

1. Before this Court, Robles invokes the prior operator rule. Applicability thereof is made to rest on his August 15, 1960 petition to increase his equipment by "ten (10) or more" taxicab units in PSC Case 60-766. He now claims that, upon the basis of the PSC finding of necessity for forty (40) more units, and taking away the five (5) units granted to Blaylock, he should have been awarded thirty-five (35) units, instead of merely ten (10) units.

Since PSC already gave 10 units to Robles, the bone of contention narrows down to 25 units, i.e., the 20 units PSC awarded to Abrajano and the 5 units to Andrade.

Robles' posture vis-a-vis newcomers Abrajano and Andrade should be examined together with the PSC findings that -

“x x x After a careful examination of the evidence on record as well as the results of our own investigation, we find that there is indeed need for authorizing additional taxicab service in Olongapo. We believe, however, that for the present, the authorization of forty (40) additional units will be sufficient and adequate to serve the needs of the public in the territory applied for considering that both Robles and Blaylock are now operating a total of twenty (20) units in Olongapo. Since Robles and Blaylock have applied for only ten (10) and five (5) additional units, respectively, the other twenty-five (25) units must be apportioned to the new applicants Abrajano and Andrade. Although Andrade's application was filed later than the application of Abrajano, we believe, however, that it will be for the best interest of the public that four taxicab operators be authorized in a rapidly developing town like Olongapo in order to promote a healthy and progressive competition among them to the end that each operator will be constrained or encouraged to maintain the maximum degree of efficiency in his service.”[13]

By established jurisprudence, what has just been expressed deserves full assent. It has been said that in the public service field, “[c]ompetition if wholesome and constructive should be allowed because it tends to promote satisfaction and efficiency in the management and operation of the public service.”[14] Here, no intimation is made by Robles that the competition offered by Abrajano and Andrade is not "wholesome and constructive," or that it is ruinous or destructive, or prejudicial to him. The paramount consideration is public convenience, which certainly would not be served if petitioner is allowed "to play the role of dog in the manger.”[15] The cardinal rule in cases of this nature, so Mr. Justice Jose B. L. Reyes of this Court once said, "is to adhere to what is best for the interest of the public, and favor what would best serve the public convenience.”[16] On this score alone, Robles' appeal must fail.

One special circumstance weighs heavily against petitioner's cause. Robles' averment in his petition here is that the grant of 40 units to the four applicants, including himself, added to the already authorized 20 units of Robles and Blaylock, "is a 200% increase" and "is excessive and not reasonably supported by the evidence." And a principle entitled to respect is that a grantee cannot avail of the prior operator rule if he denies the need for more units on the same line.[17]

Not escaping attention is petitioner's prayer in PSC Case No. 60-766 for authority to increase his taxicab equipment "to ten (10) or more units as public necessity and convenience may require." This fact alone cannot overturn the PSC decision under review – for at least two reasons:

First. Implicit in the PSC decision is its finding that Robles is financially fit to increase its taxicab service by ten units only. This cannot be disturbed by this Court, unless unsupported by substantial evidence.[18] A dig into the record shows that Robles' financial capacity to operate more units has not been satisfactorily established. His

assets are: (1) a 121 sq. m. - parcel of land in Sta. Rita, Olongapo, with a current value of P5,000.00; (2) a 450 sq. m. - lot, with a house thereon, located in Olongapo, with an assessed value of P4,850.00; (3) a 930 sq. m. - lot and improvements thereon, in Olongapo, with an assessed value of P6,790, 00; (4) a bank current account of P5, 000.00; (5) 40 taxicab units in Zambales (25 units in Subic, 15 units in Olongapo), but mortgaged to the Development Bank of the Philippines for P87,000.00; (6) 10 taxicab units in Baguio, still mortgaged to a motor company, the amount of which mortgage petitioner did not offer in evidence; and (7) 9 private cars, also mortgaged, to be used by petitioner in connection with his herein application for increased units. Upon petitioner's foregoing evidence, we are not prepared to say that PSC erred in granting Robles ten units only.

Second. Petitioner's prayer for ten or more units, strongly suggests that with the use of the phrase "or more," he wishes to be given preference to put up an unlimited number of additional units - more than ten - whenever public necessity and convenience require. We have heretofore held that existing operators cannot be given preference to increase their equipment if "they failed in their obligation to apply for such increase at the time when necessity arose." [19] Petitioner then cannot, thru vague allusions as to the number of units he desires to add to his taxicab service, or by the simple expedient of using the words "or more", establish a manacle-hold on the taxicab business and prevent others from engaging in such business. This is an undesirable result that this Court should, in the public interest, seek to prevent. For, it breeds that kind of a monopoly that rebels against the system of free enterprise; it rams headlong against the time-tested concept of sound competition as the accepted means to promote the general welfare; it fosters self-interest, not public convenience.

Therefore, when Robles asked for 10 or more units, he should be considered to have prayed only for 10 units. He cannot file a petition sweeping in scope that would cover or fill up necessity for service that, to him, apparently does not as yet exist. He should be deemed to have waived his privilege of preference with respect to the taxicab service that exceeds 10 units. [20] He specified 10 units. He proved his financial ability to operate not more than those 10 units. He was given 10 units. He has no cause for complaint.

2. Petitioner's gripe against the grant to Blaylock of 5 units is upon a different setting. Blaylock's authority, as it is with all the other applicants, was to operate additional taxicabs "in the Municipality of Olongapo, Zambales and from said town to any place in the Island of Luzon accessible to motor vehicle traffic and vice-versa." It is indeed true that in the previous Supreme Court case between Robles and Blaylock (G.R. No. L-17629, promulgated March 31, 1964), Blaylock's PSC award of 5 taxicabs was limited by this Court, in the area of operation, to "Olongapo, Zambales, and its suburbs." Because there her PSC application expresses her desire to establish a taxicab service only in Olongapo and suburbs, and her evidence does not show that she intended to operate the taxicab service from Olongapo to any point in Luzon Island accessible to motor vehicle traffic and vice-versa.

Robles complains that the grant to Blaylock in the present case is "over a territory bigger than that originally granted her." But this is true only after the decision of this Court in G.R. No. L-17629 was rendered as aforesaid. The fact is that the PSC order giving notice of Blaylock's application herein, as published - i.e., before the date of this Court's decision in G.R. No. L-17629 - speaks of her as an authorized operator (by the PSC) "within the Municipality of Olongapo, Zambales, and from said municipality to any place in the island of Luzon." Mrs. Blaylock's oral evidence shows that her proposed operation covered an area similar to that applied for by the other applicants. We thus perceive no error in PSC's approval of Blaylock's zone of operation in the case at bar.

3. Quite apart from all the foregoing, we note from the record a procedural defect fatal to Robles' present petition for review.

To perfect an appeal to this Court from a final decision of the PSC, it is necessary to file with the PSC "a notice of appeal and with the Supreme Court twelve (12) copies of a petition for review of the award, order or ruling

complained of, within a period of thirty (30) days from notice of such award, order or decision." [21]

The PSC joint decision dated January 5, 1965 was received by petitioner on January 6, 1965. On February 5, 1965, petitioner filed in this Court a "Motion for an Extension of Time within which to file the Petition for Review and for Stay of Decision Pending Review." Notice of appeal was filed in the PSC only on February 12, 1965, thirty-seven days after he received notice of the PSC joint decision. In a comparable situation, this Court ruled that "although the petition for review was filed with this Court within the reglementary period, petitioners filed their notice of appeal with the [Workmen's Compensation] Commission 5 days late or 15 days after they were notified of the decision," which "is certainly an error fatal to the present action." [22] The present petition merits no better treatment. It must be dismissed.

For the reasons given, the petition for review is dismissed. Costs against petitioner.

SO ORDERED.

Reyes, Acting C.J., Dizon, Makalintal, Bengzon, Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., on leave.

[1] PSC Case 60-766, Gregorio Robles, Applicant; PSC Case 60-1681, Concepcion Fernando Blaylock, Applicant; PSC Case 62-4654, Jacobo Abrajano, Applicant; PSC Case 63-3820, Aladino Andrade, Applicant.

[2] PSC Case 128020.

[3] PSC Case 130541.

[4] PSC Case 130299.

[5] PSC Case 131499.

[6] PSC Case 60-766.

[7] PSC Case 130541.

[8] G. R. No. L-17629.

[9] PSC Case 60-1681.

[10] PSC Case 62-4654.

[11] PSC Case 63-3820.

[12] PSC Case 64-2114.

[13] Emphasis supplied.

[14] Raymundo Transportation Co., Inc. vs. Cervo, 91 Phil. 313, 316; emphasis supplied.

[15] Manila Yellow Taxicab vs. Public Service Commission, 90 Phil. 301, 309.

[16] Papa vs. Santiago, 1967B Phil. 31, 35, citing In Re Gregorio, 77 Phil. 908, 914, and cases cited therein, and Carmelo and Oriol vs. Monserrat, 55 Phil. 644.

[17] La Mallorca and Pampanga Bus Co., Inc. vs. Mendiola, G.R. No. L-19558, April 29, 1966, citing Isidro vs. Ocampo, G.R. No. L-12331, May 29, 1959.

[18] Valle Bros., Inc. vs. Public Service Commission, G.R. No. L-18694, January 31, 1966; Del Pilar Transit, Inc. vs. Silva, G.R. No. L-21547, July 15, 1966; A.L. Ammen Transportation Co., Inc. vs. Japa, L-19643, July 26, 1966; Mandaluyong Bus Co. vs. Enrique, *infra*; Sorita vs. Public Service Commission, G.R. No. L-20965, October 29, 1966; Bachrach Transportation Co., Inc. vs. Camunayan, G.R. No. L-21168, December 16, 1966; Red Line Transportation Co., Inc. vs. Santo Tomas, 1967A Phil. 126, 128-129, citing Mindoro Transportation Co., Inc. vs. Torcuator, G.R. No. L-18479, February 28, 1963, and Pangasinan Transportation Co., Inc. vs. Tambot, 95 Phil. 661.

[19] Mandaluyong Bus Co., Inc. vs. Enrique, G.R. No. L-21964, October 19, 1966, citing Philippine Long Distance Telephone Co. vs. City of Davao, G.R. No. L-23080, September 20, 1965; *emphasis supplied*.

[20] Cf.: Halili vs. Floro, 90 Phil. 245, 247; Philippine Long Distance Telephone Co. vs. City of Davao, *supra*; Mandaluyong Bus Co., Inc. vs. Enrique, *supra*.

[21] Section 1, Rule 44, Rules of Court.

[22] Pabores vs. The Commissioner, Workmen's Compensation Commission, 104 Phil. 505, 509, citing Martha Lumber Co., Inc. vs. Lagradante, 99 Phil. 434, 439.

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