

BACHRACH MOTOR CO., INC., OWNERS AND OPERATORS OF THE "RURAL TRANSIT"; PETITIONER, VS. ENCARNACION ELCHICO VDA. DE FERNANDO, RESPONDENT.

G.R. No. L-4315. July 09, 1952

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition for review of the decision rendered by the Public Service Commission in case No. 44775 entitled "Encarnacion E. Vda. de Fernando, applicant, vs. Bachrach Motor Co., Inc., oppositor", granting the applicant one (1) round trip a day from Manila to Ilagan and one (1) round trip a day from Manila to Echague, instead of her present authorized two (2) round trips a week between Manila and Ilagan and three (3) round trips a week between Manila and Echague, and granting her a regular certificate of public convenience for the operation of her services in lieu of her present emergency certificate.

Under the registered trade name and style of "RURAL TRANSIT", petitioner Bachrach Motor Co., Inc., is and for many years, even before the last war (Pacific), has been a holder of a permanent or regular certificate of public convenience to operate buses for the transportation of passengers and freight between Manila and different towns of Nueva Ecija, Nueva Vizcaya, Isabela, and Cagayan, including the lines Manila-Echague and Manila-Ilagan, and vice-versa. The respondent through her now deceased husband, Matias A. Fernando, under the name of "Angat-Manila Transportation", was also a regular operator on transportation lines from Manila to Bulacan and Nueva Ecija, and after liberation under an emergency certificate, even to Cagayan, and later under her own name, Encarnacion Elchico Vda. de Fernando, and as successor of her deceased husband. In November 1949, respondent Encarnacion was then operating by virtue of a temporary authority on the lines Cabanatuan-Rizal (Nueva Ecija), Manila-Echague (Isabela), Manila-Cabanatuan, Manila-San Jose, Manila-Ilagan (Isabela), and Grace Park-Divisoria with an authorized equipment of twelve (12) trucks or buses. In an amended application, respondent Encarnacion petitioned for a regular certificate of public convenience to continue the operation of her existing services, and in addition, to increase her equipment and trips on the following lines: Manila-Echague by three (3) units, Manila-San Jose by one (1) unit and Manila-Ilagan (Isabela) by three (3) units, or a total of seven (7) additional units. The petitioner Bachrach Motor Co., Inc., opposed the application. Hearing was held and after applicant Encarnacion had adduced her evidence to support her application, she filed on April 17, 1950, a petition for the issuance of a provisional permit to immediately operate the additional TPU auto-trucks service applied for by her pending final action upon her recent application. The application for provisional permit was set for hearing on May 9, 1950. On said date oppositor Bachrach Motor Co., Inc., was also supposed to introduce its evidence in support of its opposition. On that day instead of presenting its evidence, Bachrach Motor Co., Inc. made a proposition to the effect that the Public Service Commission should appoint and place its own checkers to be assisted by representatives of the two parties, on strategic points along the lines in question. According to the petitioner and not denied by the respondent, pursuant to the agreement of the parties, approved by the Commission, check points were set up in Bayombong (Nueva Vizcaya), Santiago (Isabela), and Ilagan (Isabela).

At each check point, three checkers of the Commission were stationed working in shifts of eight hours, each assisted by representatives of the parties. The checkers stopped and checked all public utility vehicles passing through these three check points, recorded in their books the name of the operator, the day and time of checking, the number of passengers actually transported in each bus, and the destination of each. After eight days of checking, the work stopped because according to the petitioner, two of the checkers stationed in Santiago and an inspector of the petitioner were fired upon by police characters; but according to the decision of the Commission, the checkers in Santiago were threatened with bodily harm by some lawless elements. However, during the eight days that the checkers worked, they were able to compile data which served as a basis, perhaps partial, of the Commissions' decision appealed from. According to that data, the buses of three regular transportation companies, namely, the Rural Transit (Bachrach Motor co., Inc.), the Angat-Manila Transportation (Encarnacion Vda. de Fernando), and the Luzon Bus Line (Manila Railroad Co.) carried only one-third (1/3) of their total capacities. On the basis of this data the petitioner claims that there was no reason for authorizing the respondent to increase her equipment and the number of her trips and of her equipment on these two lines (Manila-Isabela and Manila-Ilagan) because the agreement of the parties as approved by the Commission was that the approval or denial of the application of Encarnacion for increase of her trips and equipment would depend solely on the result of the checking. The Commission and the respondent, however, deny this claim and state that the agreement was that action upon the application for increase would depend not only on the result of the checking, but also on the evidence already submitted, including the records of the Commission.

It should here be stated that pending and during the hearing of this case before the Commission, the oppositor had withdrawn its objection to the mere conversion of the emergency certificate of the applicant into a permanent one on the lines Manila-San Jose and Manila-Cabanatuan and other local points in Nueva Ecija south of San Jose, provided that there is no increase of equipment or trips or extension of lines, and that its opposition was confined to the application for the continuation of applicant's service between Manila-Echague and Manila-Ilagan, especially increase of equipment and trips on these two lines.

The Commission overruled the opposition of the petitioner herein and found that there was heavy traffic on the lines Manila-Isabela and Manila-Echague and vice-versa, that justified the increase in the trips and equipment applied for by the applicant and warranted the issuance of the corresponding certificate of public convenience to her. For a better understanding of the reasons given by the Commission to support its findings and opinion on this point as well as the evidence behind those findings, we are quoting a portion of its decision:

"In view of the foregoing, the only issue before this Commission in the present case is whether or not the applicant should be granted a permanent certificate of public convenience on the lines Manila-Echague and Manila-Ilagan, with increase of trips.

"After a careful examination of the evidence on record, as well as the records of this Commission on existing TPU services on the lines over which the additional services are proposed to be operated by the applicant, the Commission is of the opinion that public necessity and convenience require the grant to the applicant of permanent authority to operate one round trip daily on the line Manila-Echague and one round trip daily on the line Manila-Ilagan. In the report dated May 31, 1950, submitted to the Commission by its Inspector Ambrosio D. Salmon, who supervised the checking of the volume of passengers on the buses passing Bayombong, Santiago and Ilagan, we find on page 2 of said report the following:

'Between Manila and the provinces north of Nueva Ecija, the Rural Transit is the major operator. Then comes the Luzon Bus Line, but it should be remembered that the LBL is outside the jurisdiction of the Commission. Next comes the Angat Transportation with only few trips authorized during certain days of the week. While the result of the checking may not be considered as the actual normal movement of traffic on long hauls, because of the unusual activities of dissidents precisely during our stay there, and the incident in Santiago, there are

strong indications of the existence of heavy traffic between both ends of the lines each company is actually serving. That this is true is shown by the fact that the Rural Transit dispatches two buses at the same time fully loaded with paying passengers from Ilagan to Manila. As per entry on the records of Ilagan Check Point, the Rural Transit made trips as early as 3:00 a.m., from Ilagan which is unauthorized. Such manner of making trips clearly proves that there is excess of passengers to carry (Check Book record, Ilagan).'

"While it is true that the average load of the buses passing said check points is about 1/3 of the registered capacities, it should be noted that said checking covered only a period of eight (8) days, because the checkers of the Commission who were stationed beginning May 17, 1950, at the northern part of Santiago were threatened with bodily harm by some lawless elements for which reason the Commission ordered the closing of the check points on May 24, 1950, so as not to endanger the lives of the checkers. It should also be stated that the checking was made at a time when the dissidents were unusually active in that region and curfew hours were observed in view of which people were afraid to go out and make long trips. Furthermore, it appears from the reports of the checkers that there are numerous private or "T" trucks operating and transporting paying passengers between the points served by the regular operators and that there is no doubt that the operation of those colorum trucks has considerably reduced the passenger load of all the buses of the duly authorized operators and that if the operation of the said colorum trucks is eliminated by the present campaign against such illegal operation, this would result in increased passenger load of the regular 'TPU' buses. It should also be noted that the Luzon Bus Line is outside of the jurisdiction of this Commission and therefore the 'TPU' auto-truck service presently being rendered by the said entity in the Cagayan Valley cannot be depended upon to serve public needs inasmuch as the said service is not subject to the Commission's control and supervision."

As to the real nature and scope of the agreement entered into between the parties on May 9, 1950, the petitioner claiming that the decision on the application for increase of service and equipment on the Manila-Isabela and Manila-Echague lines was to depend solely on the result of the checking ordered by the Commission, the respondent equally claiming that it should depend not only on the result of such checking but also on the evidence already submitted with the Commission, we tried to ascertain it from the record of the case, but the transcript of the proceedings had on that day is missing from, the record or had not been sent up to us, the last proceedings appearing on the record being that of March 16, 1950. However, regardless of the real understanding between the parties, there is no doubt that the best evidence on the volume of traffice between two points is the checking or record of the actual number of passengers and amount of freight actually-passing between them every day during a certain period, as compared to and in preference to the mere observations and testimony of passengers, which because of their inaccuracy, casualness, even partiality, cannot be very reliable.

It will be remembered that the stopping of the checking after eight days was not due to any fault of herein petitioner. In fact it was petitioner that suggested the checking. As may be seen from the portion of the Commission's decision above quoted, the said Commission believes that the data obtained by the checkers is not accurate because it coincided with a time or period when because of the activities of the dissidents, people were not inclined to travel. Assuming this to be correct, what would be the actual volume of traffic in normal times? That remains to be determined and accurately. It is of public knowledge that the dissidents in central and northern Luzon have been more or less active, and for quite a long time and if because of this, traffic has decreased, then this is not the appropriate time to increase services and equipment on these lines. Again, the Commission says that because of the existence of unauthorized operators, commonly known as "Colorum cars" on these lines, which are robbing the regular authorized transportation companies of their passengers and freight, traffic on the said lines has considerably decreased. Assuming this to be true, what should be done is first to eliminate that illegal and unauthorized competition by colorum operators and after that has been removed and eliminated and the normal traffic for the regular operators has returned, assuming that said traffic is really heavy, then that would be the appropriate time and occasion to increase services and equipment; otherwise to authorize increase of trips and equipment now would result in buses making these long trips, not only one-third (1/3) full as shown by the record

of the checkers, but even much less, say, one-fourth or one-fifth full. Besides the present operators still have an adequate, even wide margin of capacity or space to absorb and take care of any increase in traffic due to any improvement in the peace and order situation or the gradual elimination of illegal and unauthorized competition bearing in mind that the buses running on these lines are or were two-thirds (2/3) empty.

Petitioner herein complains that the Commission has accorded too much weight to the report of its inspector, Ambrosio Salmon, without giving petitioner a chance to cross-examine him, to say nothing of the fact that the report was not under oath. We are inclined to agree with the petitioner on this point that in order to check the veracity and accuracy of the report, it should be verified or at least ratified by the inspector in court on the witness stand, and that the petitioner-oppositor should have been allowed to question and cross-examine him on said report.

As to the claim of the petitioner that even if the Commission finally and correctly finds that the traffic on the two lines in question justify the increase of services and equipment, the corresponding certificate should be issued to it as an older and pre-war operator, the record shows that it has forfeited its pretended preference. It is true that as held by this Court in a number of cases, things being equal, the older regular transportation operator should be given an opportunity to either improve its services or to increase the same in order to meet increased traffic. However, where said operator either fails or neglects to make the improvement or effect the increase in services, especially when given that opportunity, new operators should be given a chance to give the service needed by the public. In the present case, according to the Public Service Commission the petitioner-oppositor after the war was given an opportunity to increase its equipment and was granted sufficient time to do so, but that it has failed to increase said equipment with the result that the schedule of its trips was modified to suit the reduced amount of its equipment, far short of that originally authorized by the Commission.

In view of the foregoing, that part of the decision of the Commission appealed from, granting the increased services and equipment applied for by respondent Encarnacion Vda. de Fernando on the line Manila-Ilagan and the Manila-Echague and vice-versa, is reversed; but that portion of the decision authorizing the conversion of the emergency certificates of respondent Encarnacion, covering her present services, including the Manila-Ilagan and Manila-Echague lines into permanent ones, is affirmed; and all this without prejudice to respondent Encarnacion later applying for anew and being granted by the Commission, an increase in equipment and services on the lines at present denied, should she prove by competent evidence, specially by actual checking at strategic points, similar to that done in this case, by the Commission and the parties, but during a more extended period, that present volume of traffic so warrants. No costs.

Feria, Bengzon, Padilla, Tuason, Bautista Angelo, and Labrador, JJ., concur.

DISSENTING

PARAS, C. J.:

I am constrained to dissent from the opinion of the majority and to vote for the affirmance of the decision of the Public Service Commission.

The nature of the function of the Supreme Court with reference to appeals from an order or decision of the Public Service Commission is expounded by Chief Justice Moran in his Comments on the Rules of Court, 3d Ed., Vol. I, p. 840, as follows: "It has been held that the Supreme Court, in reviewing an order or decision of the Public Service Commission, is not required to examine the proof de novo and determine for itself whether or not the preponderance of evidence really justified the order or decision rendered by the Commission. The only function

of the Supreme Court is to determine whether or not there is evidence before the Commission upon which its order or decision might reasonably be based, or whether the same is without the jurisdiction of the Commission, or contrary to law. The cases before the Public Service Commission are mostly administrative involving not legal questions on business and transportation, and, following the legislative mandate, the Supreme Court will refrain from substituting its discretion for that of the Public Service Commission on questions of fact and will interfere only when it appears clearly that there is no evidence in support of the order or decision rendered by the Public Service Commission." The principle of non-interference with the findings of fact of the Public Service Commission, unless there is no evidence to support reasonably said findings, has been recently reiterated by this Court in G. R. Nos. L-4100 and L-4102, *Interprovincial Autobus Company, Inc. vs. Luis Clarete*, supra, p. 275.

In the case at bar, it cannot be fairly stated that there is no evidence reasonably supporting the appealed decision of the Public Service Commission. There is ample testimony to the effect that the increased services applied by the respondent on the lines in question are necessary. Said evidence tends to show the following facts, correctly set forth in the brief for the respondent, page 11: "People sleep in bus stations to be assured of seats in the bus leaving the following day, only to be refused for lack of space, and are forced to stay another night to be able to get the bus leaving the second day. Cargoes are practically neglected. People with cargo are often refused in the bus."

It is not true that the respondent had agreed to submit the case for decision solely on the basis of the traffic checks, as may be seen in the following manifestation made by counsel for the respondent during the hearing below: "Atty. Cruz: '* * * and I also agree that the checking results together with the (evidence of) record will form as the basis for deciding the case.' "

It appears also that the Public Service Commission has based its decision, as may be gleaned from the passages thereof quoted in the majority opinion, on the report of its inspector who supervised the checking of the volume of passengers on the buses passing Bayombong, Santiago and Ilagan, to the effect that there are strong indications of the existence of heavy traffic between both ends of the lines served by the actual operators. The majority assails said report on the ground that it was not under oath and the inspector was not placed on the witness stand. It is significant, however, that the Public Service Commission, in the exercise of its administrative functions, may rely on its own investigation and observation; and we are inclined to give weight to the report because the Inspector may be fairly assumed to have performed his duty regularly.

It should also be pointed out that the petitioner was a pre-war operator, with authorized 208 buses in operation. After the war, notwithstanding several extensions, the petitioner was able to register and operate only 109 buses. As a matter of fact, the majority, in denying preference to the petitioner to increase its services, states as follows: "In the present case, according to the Public Service Commission the petitioner-oppositor after the war was given an opportunity to increase its equipment and was granted sufficient time to do so, but that it has failed to increase said equipment with the result that the schedule of its trips was modified to suit the reduced amount of its equipment, far short of that originally authorized by the Commission." The necessity for increased services on the lines in question may necessarily be inferred from the fact that the petitioner has put into operation only about one-half of its authorized units before the war, and from the fact (of which we can take judicial notice) that demands for transportation facilities throughout the Philippines are now equal to, if not in excess of, pre-war levels. That there is, indeed, excess of passengers on the lines in question is shown by the circumstance that, as reported by the inspector of the Public Service Commission, the petitioner made authorized trips as early as 3:00 o'clock in the morning, two buses being dispatched by the petitioner at the same time fully loaded. We quote from the report of the inspector: "That this is true is shown by the fact that the Rural Transit dispatches two buses at the same time fully loaded with paying passengers from Ilagan to Manila. As per entry on the records of Ilagan Check Point, the

Rural Transit made trips as early as 3:00 a. m., from Ilagan which is unauthorized. Such manner of making trips clearly proves that there is excess of passengers to carry (Check Book record, Ilagan)."

The majority opinion places emphasis on the result of the checking for eight days of the actual volume of traffic on the lines in question, namely, that the average load of the buses passing the check points was about one-third of the registered capacities. The Public Service Commission has explained the apparent reason for the result of the checking. Moreover, said result cannot be considered as a safe criterion for the volume of traffic throughout the year, and should be weighed only in conjunction with the other evidence on record.

Pablo, J., concurs.

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