

**A. L. AMMEN TRANSPORTATION COMPANY, INC., ET AL.,
PETITIONERS, VS. FROILAN JAPA, RESPONDENT.***G. R. No. L-19643. July 26, 1966*

Ponente: ZALDIVAR. J.

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On April 12, 1961, respondent Froilan Japa filed with the Public Service Commission an application for authority to operate eight TPU buses on the Legaspi-Naga City line and vice-versa (Case No. 61-2694). This application was opposed by petitioners, A. L. Anmen Transportation Co., Inc., Bicol Transportation Company, Inc. and Consolidated Auto Line, Inc., which were under a joint management, upon the grounds that they have a fleet of buses rendering adequate and satisfactory service over the line applied for, and that the application, if granted, would only result to cut-throat or ruinous competition.

During the trial, applicant and his witness Medardo Alvarez testified that on their several trips to and from the cities of Naga and Legaspi, they observed that there were many passengers travelling along the line; that in order that they could be accommodated on the Alatco buses of petitioners they had to go to the starting points of said buses and incur additional expenses because if passengers were to wait in places other than the starting points they would not be picked up as petitioners' buses were almost full to capacity. So much so that many passengers were left behind, especially in the intermediate towns where the buses passed; that although said buses sometimes stopped to pick up passengers, not all could be accommodated because there was no more space. To prove his financial capacity, applicant showed that he has two stores located at Quezon Boulevard investing therein P150,000.00; that he has P8,000.00 in the Philippine Savings Bank in Quiapo, and P30,000.00 deposited in the Bank of Commerce, Hay a Branch; and that he has a lot in Concha Street, Tondo, Manila, but the same has not as yet been registered in his name.

Petitioners, on the other hand, presented one witness, their Assistant to the Operations Manager Felipe Abañó, who testified as follows: that petitioners are authorized operators in the Naga-Legaspi line; that the Alateo is operating 34 round trips a day, the Bicol Transportation Co., 18 round trips, and the Consolidated Auto Lines, 10 round trips; that besides petitioners there are also other individual operators who make a total of 34 round trips a day from Naga to Legaspi or other lines passing Naga and Legaspi; that the first trip of any of the three companies start at 4:00 a.m. and every 15 minutes thereafter; that during the peak hours the buses of oppositors-petitioners with 47-passenger capacity carry an average load of 35 to 40 passengers while those 37-passenger capacity, 25 to 30 passengers; that during the lean hours said buses carry 20 to 25 and 15 to 20 passengers, respectively; that the peak hours in Naga and Legaspi are from 7:00 a.m. to 9:00 a.m. and 3:00 p.m. to 4:30 p.m.; that buses of other operators when leaving Naga or Legaspi carry much less number of passengers than those of oppositors; that buses of petitioners, as well as those of other operators, get fully loaded in the intermediate towns holding market days; that taking into consideration the combined operations of oppositors and those individual operators, the service is more than sufficient to serve the needs of the travelling public along the Naga-Legaspi line. On cross examination said witness stated that in the different municipalities lying between Naga and Legaspi they hold

market days every day of the week, and in some instances two towns hold market days on the same day and twice a week which greatly affected the volume of traffic along the line applied for as passengers had to travel in order to reach the market.

It was also brought out during the hearing, that some of the individual operators on the route applied for had already abandoned their service or had ceased operation. On the basis of the evidence presented the Public Service Commission, on February 22, 1962, rendered decision declaring that the approval of respondent's application would not only promote public interests in a proper and suitable manner but would also serve as replacement of the abandoned services; and finding applicant financially qualified to maintain and operate the proposed line it authorized him to operate four auto-trucks instead of the eight originally applied for, subject to certain conditions as stated in the decision.

Dissatisfied with the foregoing decision, petitioners filed the instant petition for review, assigning the following errors: (1) that the Public Service Commission committed a grave abuse of discretion in declaring that the applicant-respondent is financially qualified to operate and maintain the proposed service; and (2) that the Public Service Commission abused its discretion in declaring that the proposed service would promote public interest and replace the services of operators who had already abandoned their operations.

We believe that the decision of the Public Service Commission should be sustained. The issues posed in this petition for review relate to questions of facts affecting the findings made by the Public Service Commission after considering the conflicting evidence of the parties and the credibility of the witnesses presented. The record shows that there is ample evidence that support the conclusions arrived at by the Public Service Commission. This Court, reiterating rulings made in a line of decisions, declared:

"It appearing that the main issues raised by petitioners 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 the 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 said findings." [1] (M) Transit & Taxi Co., Inc. vs. Santiago Pepito, L-10481, September 29, 1962)

"The only question to be determined is whether or not in the light of the evidence adduced by both parties the Commission acted properly in granting respondent a certificate of public convenience to operate a TPU service on the Finamalayan-Bongabong line. "It is clear that the issue posed by petitioners as stated above merely disputes the findings of fact made by the Commission in its decision, and such being the case it is evident that in the light of the ruling of this Court in a long line of cases their petition cannot be sustained." (Central Bus Corporation, et al. vs. Cunanan, -L-15347, April 29, 1961)[2]

Petitioners lay much stress on their claim that respondent is financially incapable to operate and maintain the proposed service. According to them, while respondent may have a cash bank deposit of P38,000.00 and an investment of P150,000.00 in his two stores, such assets cannot qualify him financially to operate the line, for, possessed of no real property in that the lot respondent alleged to own at Concha Street is not yet registered in his name, no motor vehicle dealer or financing corporation would extend to him credit for the acquisition of the units because they will require real estate property as collaterals aside from the motor vehicles.

This claim of petitioners cannot be sustained in the light of the evidence appearing in the record that respondent had actually acquired and registered the four units authorized by the Public Service Commission in its decision of 1962 and has been operating the same in the Naga-Legaspi line since then. And it appearing that when he was granted the certificate of public convenience his assets was worth P188,000.00 and was allowed to operate only four auto-trucks, We believe that the Public Service Commission did not abuse its discretion in ruling that

respondent was financially capable to operate and maintain the service.

"As to his finances, the applicant testified that, aside from his farm, he had an annual income of P5,000 from his business and he also had P10,000 invested in gasoline which he could readily convert into cash. PANTRANCO argues that P15,000 'is not enough to finance the fourteen units he intends to utilize.' But it should be noted that although applicant has asked for fourteen units, the Commission has authorized him only five, and according to applicant's testimony, he has already purchased two Chevrolet trucks from one Bundalan (registration of which is awaiting the result of the present case) and one new Chevrolet from Liddel, & Co., having) in addition, concluded an agreement for the acquisition of ten more trucks from another bus operator, his uncle Maximo L. Cruz, who is losing in his business. With this un rebutted testimony, we cannot say that the Commission has erred in holding that the applicant is financially capable of maintaining and operating the proposed service." (Pangasinan Transportation Co., Inc. vs. De la-Cruz, 95 Phil., 278, 280)[3]

On September 28, 1964, during the pendency of this appeal, petitioners filed a motion before this Court claiming that they have discovered evidentiary documents which are material and relevant to the issue regarding the financial capacity of the respondents. The petitioners alleged that because of the failure of respondent to pay the installments on the auto-trucks he acquired from the G. A. Machineries, Inc. civil actions were instituted against him and in the three decisions rendered by the Court of First Instance of Bulacan it is stated that some of the buses seized by the company be returned to respondent provided that he pays daily the outstanding balance of his obligation; that those buses not seized be surrendered to said company in case respondent fails to pay the daily installments; and that the mortgage of the certificate of public convenience issued to respondent be maintained to secure the aforesaid obligation. Petitioners prayed that certified copies of these decisions be attached to the records of this case and be taken into consideration in the determination of the issue regarding the financial capacity of the respondent.

Required to comment, respondent filed his opposition to the aforementioned motion, contending that the alleged "recently discovered evidentiary documents" should not be admitted and considered in the determination of this case because even if respondent might have suffered some reverses in his three years of operation, since the original issue in this appeal was whether the Public Service Commission had abused its discretion in declaring respondent financially capable to operate the service, the Court may decide the appeal solely on the merits of the evidence regarding conditions obtaining at the time of the hearing of the case and the rendition of the decision by the Commission.

We believe that respondent's contention is meritorious, these "recently discovered evidentiary documents" are being introduced in this appeal, and this Court cannot admit them. Well settled is the rule that "In reviewing a decision of the Public Service Commission, this Court is not required to examine the proof de novo and determine for itself whether or not the preponderance of evidence really justifies that decision. Our only function is to determine whether or not there is evidence before the Commission upon which its decision might reasonably be based. This Court will not substitute its discretion for that of the Commission on questions of fact and will not interfere in the latter's decision unless it clearly appears that there is no evidence to support it." [4] Since the only function of this Court in reviewing the decision of the Public Service Commission is to determine whether there is sufficient evidence before the Commission upon which its decision can reasonably be based, as it is not required to examine the proof de novo, it is clear that the evidence that should be considered by this Court should be only those presented before the Public Service Commission. For, were we to consider this "new" evidence which is presented only before this Court on appeal, as suggested by petitioners, notwithstanding the fact that at the time the Public Service Commission rendered its decision respondent was financially capable to operate the service applied for, We would be evaluating an evidence which the trial court did not have before it, and certainly. We cannot declare that the Commission had abused its discretion for failing to evaluate this evidence which the

Commission could not have foreseen.

WHEREFORE, the decision appealed from is affirmed, with costs against the petitioners.

Concepcion, C. J., Reyes, Barrera, Dizon, Regala, Makalintal, Bengzon, Sanchez and Ruiz Castro, JJ., concur.

[1] Section 35, Public Service Act; Padua vs. Ocampo, et al., L-7570, September 17, 1955; Batangas Transportation Co. vs. Laguna-Tayabas Bus Co., 104 Phil., 992; A. L. Ammen Transportation vs. Soriano, L-12350, May 26, 1959; Pineda vs. Carandang, 107 Phil., 369; Pangasinan Transportation Co. vs. Nestor, 107 Phil., 1136.

[2] See also Flash Taxicab Co., Inc. vs. Cruz, et al. L-15464 & L-16255, March 30, 1963; Manila Yellow Taxicab Co., Inc. vs. Viluan, L-16243, March 31, 1964; La Mallorca and Pampanga Bus Company, Inc. vs. Mendiola, L-19558, November 29, 1963.

[3] See also Estrella vs. Public Service Commission, et al., L-12641, September 30, 1960.

[4] Pineda vs. Carandang, L-13270-71, March 24, 1960; Ramos vs. Lat, et al., L-14476 & L-15773, May 23, 1960.

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