

ELPIDIO JAVELLANA, ET AL., PETITIONERS, VS. THE PUBLIC SERVICE COMMISSION, ET AL., RESPONDENTS.

G.R. No. L-9088. April 28, 1956

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

On January 15, 1964, respondent Artemio G. Barron filed an application with the Public Service Commission for a certificate of public convenience to operate an exclusive ferry service between Calapan, Oriental Mindoro and Batangas, Batangas and vice versa, and between the same municipalities but via the town of Lobo, Batangas, which applications was amended on January 20, 1954.

On February 4, 1954, petitioners Elpidio Javellana, Marcelo Cruz, and Januario Jalandonl (motorboat service operators on the same lines) filed motion to dismiss the petition on the ground that the Commission had no jurisdiction to act upon and grant the application for the reason that the motorboat service between the points above referred to was not a ferry service but was in reality coastwise trade falling within the jurisdiction of the Bureau of Customs. The motion for dismissal was denied and thereafter the Commission proceeded to hear the case up to September 8, 1954, at which time only the applicant had presented evidence that the service applied for would promote, public convenience and necessity in a proper and suitable manner, and oppositors-petitioners had not yet begun presenting their evidence in support of their opposition.

On September 17, 1954, respondent Artemio G. Barron filed a petition before the Commission asking for the issuance of a provisional permit to operate the alleged ferry service to meet public demand. This was opposed by petitioners-oppositors on the ground of lack of jurisdiction, non-compliance by the applicant with the provisions of the Revised Administrative Code-concerning ferry service, and because there was no public demand for the said service. In an order dated February 9, 1955, the Commission granted a provisional permit but not Javellana, et al. vs. Public Service Commission, et al. an exclusive one, authorizing the applicant to operate the service applied for, employing in the same motor vessels "R. O. Barron I" and "R. O. Barron, II", subject to the conditions contained in the said provisional permit. On February 9, 1955, applicant requested authority to operate the motor vessel "Batangas Liner" as an additional unit on the same Jerry service, and the Commission, in an order dated February 23, 1955, granted said request.

Petitioners-oppositors filed a motion for reconsideration of the two orders of February 9th and 23rd, 1955. In an order dated April 11, 1955, the Commission denied the motion for reconsideration. To set aside these three orders of the Commission, petitioners herein have filed the present petition for a writ of certiorari.

The following undisputed facts which we consider pertinent in the consideration, of this case may be stated. The petitioners as well as the respondent at the time of the application for certificate of public convenience in question were old operators of motor vessels on the same lines already mentioned between Calapan, Oriental Mindoro and Batangas, Batangas. The motor vessels "R. O. Barron I", R. O' Barron II" and "Batangas Liner" have a gross tonnage of 244.61, 248-47 and 70, respectively. The respondent had presented before the Commission resolutions

of the Provincial Boards of the provinces of Batangas and Oriental Mindoro and the Municipal Councils of Calapan and Batangas recommending and endorsing to the commission the approval of applicant's petition to operate the ferry service in question. On the basis of the evidence so far presented before the Commission it made the following findings:

"The evidence presented by applicant shows that he is a Filipino citizen with residence in Cavite City; that he is the owner registered in the Bureau of Customs of the motor vessels "R. O. Barron 7" and "R. O. Barron 12"; that the motor vessel R. O. Barron" was on November 20, 1948 cleared by the Bureau of Customs to operate as a ferry boat between Batangas, Batangas and Calapan, Oriental Mindoro; that motor vessels "R. O. Barron 7" and "B. O. Barron II" were licensed and permitted to engage in the coastwise trade of the Philippines for the period of one year from August 10, 1953 and from May 5, 1953, respectively; that said licenses expired on August 9, 1954 and May 4, 1954, respectively; that in addition to the motor vessels "R. O. Barron I" and "It. O. Sarron II" applicant will acquire by purchase or lease two PT boats to be used for the proposed ferry service if authorized by this Commission; that he is financially capable of operating the ferry service applied for; that the Provincial Board of Oriental Mindoro, Provincial Board of Batangas, the Municipal Councils of Calapan, Lobo, and Batangas and the Mayors League of Oriental Mindoro have recommended and endorsed the approval of the ferry service applied for by applicant; and that the members of the Provincial Board of Oriental Mindoro and the Municipal Mayors of Calapan, Panamalayan, Roxas, Baco, San Teodoro, Naujan, Victoria, Pto. Galera, Pola, and Bongabong have requested this Commission to give immediate approval to this application in order to serve the best interest of the people.

"The records and the evidence also show that applicant and oppoaitors are authorized by this Commission to charge the same rates for the operation of their motor boats between Calapan and Batangas; that in spite of their uniform 'rates there have been trouble and keen competition among them in vying with one another in getting passengers, said troubled and keen competition arising chiefly from the fact that, they are not authorized definite time schedules by any government agency; that to avoid said trouble and keen competition they entered into agreement fixing their schedules of trips but said agreement was made only to be broken and violated; and that effective regulation of water pransportation services between Calapan and Batangas can be had and maintained if the.Commission will assume control and supervision over their operations." (Italics supplied)

* * * * *

"A certificate of the Assistant Director of the Bureau of Coast and Geodetic Survey dated February 4, 1955 shows that the distance between Calapan and Batangas Port is 2A nautical mfes; between Calapan and Lobo Port, 12.4 nautical miles; and between Batangas and Lobo Fort, 17,9 nautical miles. The evidence presented also shows that the distance between Calapan and Batangas over the intervening waters—Mindoro Bay, Verde Island Passage and Batangas Bay—may be negotiated or travelled within two to three hours." (Italic supplied)

In this connection, for a better understanding of the distances involved, we have reduced the 24 nautical miles between Calapan and Batangas to kilometers, namely, 44.47 kilometers.

The reasons and considerations which induced and prompted the Commission to consider the service between Calapan, Oriental Mindoro and Batangas, Batangas as a ferry service and to grant the provisional permit already mentioned, may be found in the following paragraph contained in its order of February 9, 1955, granting said provisional permit.

"Oppositors seem to believe that a ferry service is carried by means of small boat, barge or raft. While this may be true in the past or even at' present in certain places, it must be admitted that the progress of science and technology lias brought about a tremendous improvement in the means of modern transportation' so that our concept of a ferry service must not be confined to the f use of small boat, barge or raft. And this is especially true in the instant case for oppositors themselves claim that the intervening waters between CaJapan and

Batangas arewide and dangerous with big waves where small boat, barge or raft are not adapted to the service. Evidently, the size, of a boat or vessel is not the decisive or qualifying factor to determine what a ferry service is. What is important is that the boat or vessel to be used for a ferry service must be well-adapted to the conditions obtaining between the places to be served and to the intervening waters over which it passes so as to afford maximum safety, convenience and comfort to the traveling public."

The question raised and emphasized before us is, whether or not, the operation of the line in Question, considering the distance involved, the nature of the waters to be traversed, and the vessels used, is ferry service, or constitutes interisland or coastwise trade.

The following definitions of "ferry" are pertinent and illustrative.

The term "ferry implied the continuation, by means of boats, barges, or rafts, of a highway or the connection of highways located on the opposite banks of a stream or other body of water. The term necessarily implies transportation for a, short distance, almost invariably between two points, which is unrelated to other transportation. (Oppositors' Italic.)

The term "ferry" is often employed to denote the right or franchise granted by the state or its authorized mandatories to continue by means of boats, an interrupted land highway over the interrupting waters and to charge toll for the use thereof by the public. In this sense it has also been defined as a privilege, a liberty, to take tolls for transporting passengers and goods across a lake or stream, or some other body of water, with no essential difference from a bridge franchise except as to the mode of transportation, 22 Am. Jur. 553.

A "ferry" has been defined by many courts as "a public highway or thoroughfare across a stream of water or river by boat instead of a bridge." (St. Clare County v. Interstate Car and Sand Transfer Co., 192 U.S. 454, 48 L. ed. 518; etc.)

"The term ferry is often employed to denote the right or franchise granted by the state or its authorized mandatories to continue by means of boats, an interrupted land highway over the interrupting waters and to charge toll for the use thereof by the public." (Yallejo Ferry Co. vs. Solano Aquatic Club, 165 Cal. 255, 131 P. 864, Ann. Cas. 1914C, 1179; etc.) (Oppositors' Italics.)

"'Perry' is service necessity for common good to reach point across a stream, lagoon, lake, or bay. (U.S. vs. Canadian Pac. Ry. Co. D.C. Was., 4 Supp. 851, 853)"

"'Ferry' properly means a place of transit across a river or arm of the sea, but in law it is treated as a franchise, and defined as the exclusive right to carry passengers across a river, or arm of the sea, from one vill to another, or to connect a continuous line of road leading from township or vill to another. (Canadian Pac. Ey. Co. vs. CCA. Wash., 73 F. 2d. 831, 832)"

"Includes various waters: (1) But an arm of the sea may include various subordinate descriptions of waters, where the tide ebbs and flows.. It may be a river, harbor, creek, basin, or bay; and it is sometimes used to designate very extensive Teaches of waters within the projecting capes or points of a country. (See Rex. vs. Bruce, Deach, C.C 1093). (2) In an early case the court said: 'The distinction between rivers navigable and not navigable, that is, where the sea does, or does not, ebb and flow, is very ancient. Rex. vs. Smith, 2 Dougl. 441, 99 Reprint 283. The former arc called arms of the sea, while the latter pass under the denomination of private or inland rivers.' Adams vs. Pease, 2 Conn. 481, 484.

We are not unmindful of the reasons adduced by the Commission in considering the motorboat service between Calapan and Batangas as ferry; but from our consideration of the law as it stands, particularly Commonwealth, Act No. 146, known as the Public Service Act and the provisions of the Revised Administrative Code regarding municipal ferries and those regarding the jurisdiction of the. Bureau of Customs over documentation, registration, licensing, inspection, etc. of steamboat's, motorboats or motor vessels, and the definitions of ferry as above

quoted, we have the impression and we are inclined to believe that the Legislature intended ferry to mean the service either by barges or rafts, even by motor or steam vessels, between the banks of a river or stream to continue the 'highway which is interrupted by the body of water, or in some cases, to connect two points on opposite shores of an arm of the sea such as bay or lake which does not involve too great a distance or too long a time to navigate. But where the line or service involves crossing the open sea like the body of water between the province of Batangas and the island of Mindoro which the oppositors describe thus "the intervening waters between Calapan and Batangas are wide and dangerous with big waves where small boat, barge or raft are not adapted to the service," then it is more reasonable to regard said line or service as more properly belonging to interisland or coastwise trade. According to the finding of the Commission itself the distance / between Calapan and Batangas is about 24 nautical miles or about 44.5 kilometers. We do not believe that this is, the short distance contemplated by the Legislature in referring to ferries whether within the jurisdiction of a single municipality or ferries between two municipalities or provinces. If we are to grant that water transportation between Calapan and Batangas is ferry service, then there would be no reason for not considering the same service between the different islands of the Philippines, such as Boac, Marinduque and Batangas; Roxas City of Capiz and Romblon; Cebu City, Cebu and Ormoc, Leyte; Guiuan, Samar and Surigao, Surigao; and Dumaguete, Negros Oriental and Oroquieta or Cagayan de Oro.

The Commission makes the distinction between ferry service and motorship in the coastwise trade, thus:

"A ferry service is distinguished from a motorship or motorboat service engaged in the coastwise trade in that the latter is intended for the transportation of passengers and/or freight for hire or compensation between ports or places in the Philippines without definite routes or lines of service."

We cannot agree. The definiteness of the route of a boat is not the deciding factor. A boat of say the William Lines, Inc. goes from Manila to Davao via Cebu, Tagbilaran, Dumaguete, Zamboanga, every week. It has a definite route, and yet it may not for that reason be regarded as engaged in ferry service. Again, a vessel of the Compañia Maritima makes the trip from Manila to Tacloban, and back, twice a week. Certainly, it has a definite route. But that service is not ferry service, but rather interisland or coastwise trade.

We believe that it will be more in consonance with the spirit of the law to consider steamboat or motorboat service between the different islands, involving more or less great distances and over more or less turbulent and dangerous waters of the open sea, to be coastwise or inter island service. Anyway, whether said service between the different islands is regarded as ferry service or coastwise trade service, as long as the water craft used as steamboats, motorboats or motor vessels, the result will be the same as far as the Commission is concerned. This is evident from the provisions of section 13 (a) and (6) of the Public Service Act, as amended by Commonwealth Act 454 which reproduce below:

"Sec. 13. (a) The Commission shall have jurisdiction, supervision, and control over all public, services and their franchises, equipment, and other properties, and in the exercise of its authority, it shall have the necessary powers and the aid of the public force: Provided, That it shall have authority to require steamboats, motorships and steamship lines, whether privately owned, or owned or operated by any Government controlled corporation or instrumentality, to obtain certificates of public convenience or to prescribe their definite routes or lines of service;

(b) The term 'public service' includes every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes any common carrier, railroad, street railway, traction railway, subway, motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines,

ferries, and small water craft, engaged, in the transportation of passengers and freight, shipyard, marine railway, marine repair shop, warehouse, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, sewerage, gas, electric light, heat and power, water supply and power, petroleum, sewerage system, telephone, wire or wireless telegraph system and broadcasting radio stations." (Italics supplied).

It is true that steamboats, motorboat and motor vessels are included in the public service over which the Commission has jurisdiction. It is equally true, however, that as regards those means of transportation, whether used in a ferry or in the coastwise trade, the Commission has no authority to require them to obtain certificates of public convenience or prescribe their definite route or line. So, inasmuch as the water craft used by the respondent in the service between Calapan and Batangas, namely "R. O. Barron I", "R. O. Barron II" and "Batangas Liner" are motorboats and of considerable tonnage at that, the Commission had no authority to require the said boats or the respondent to obtain a certificate of public convenience or to prescribe their route such as the trip from Calapan to Batangas via Lobo. But we hold that the Commission had authority to prescribe the schedule of their trips and the rates to be charged.

There might possibly be some doubt as to the authority of the Commission to prescribe the schedule of trips of steamboats, motorboats and motor vessels when engaged in the coastwise or interisland trade. Before the amendment of the Public Service Law, Commonwealth Act No. 146, section 13 thereof provided that the control and jurisdiction of the Commission over ships shall be limited to the fixing of freight and passenger rates thereof. (Soichi Furugen Transportation vs. Public Service Commission, 66 Phil., 91.) In other words, the Commission's general supervision and regulation of, jurisdiction and control over, public services such as the schedule of trips of transportation service, did not extend to ships. However, as may be gathered from section 13-(6) the Public Service Act as amended by Commonwealth Act 454, the public services over which the Commission has jurisdiction, supervision and control now includes steamboat or, steamship line, except that as regards steamboat, motorship and steamship line, the Commission cannot require them to obtain certificates of public convenience or to, prescribe their respective routes or lines, or service. The logical inference is that in all other respects the Commission has jurisdiction, supervision and control over steamboats, motor vessels and steamship lines, including prescribing the schedule of their departures, and arrivals.

We see no reason why the petitioners and respondent, herein could not continue their motorboat service between Calapan and Batangas whether direct or via Lobo as they have done in the past without any certificate of public convenience. The evils resulting from the competition I could well be remedied by the Commission by fixing a definite schedule for them as well as their rates.

In view of the foregoing, we hold that the motorboat service between Calapan, Oriental Mindoro and Batangas, Batangas, constitutes interisland and coast wise trade; that the Commission has no authority to require petitioners and respondents, operators of said service to obtain a certificate of public convenience, or permit to operate, but that it may prescribe the schedule of trips and passenger and freight rates. The parties herein are reverted to their status as operators before the commencement of these proceedings before the Commission, and such proceedings, including the orders involved are held null and void. No costs.

Paras, C.J., Bautista Angelo, Conception, Reyes, J.B.L., and Jugo, JJ., concur.

CONCURRING:

REYES, A. J.,

I concur in so far as the decision holds that the Public Service Commission is without authority to require operators of steam or motor boats engaged in transportation for the public to have a certificate of public convenience; but i reserve my vote on the question of whether the Commission is authorized to fix the schedule of trips for those boats.

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