

**ALATCO TRANSPORTATION, INC., BICOL TRANSPORTATION CO.,
AND CONSOLIDATED AUTO LINES, INC., PETITIONERS, VS. ROSALIO
S. BONETE, JR., RESPONDENT.**

G.R. No. L-25078. December 24, 1968

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition for review of the decision of the Public Service Commission, in its Case No. 64-6040, awarding a certificate of public convenience to the applicant, the herein respondent Rosalio S. Bonete, Jr., and authorizing to operate a PUB auto-truck service of four (4) units (instead of six [6] units applied for) on the route Naga City-legaspi, via Libon.

For lack of opposition despite due publication and notice to all affected operators along the line, the application for the said certificate, filed on 9 November 1964, was heard *ex parte* by the Commission on 3 March 1965. However, before decision could be rendered, the herein petitioners, Alatco Transportation, Inc., Bicol Transportation Co., Inc., and Consolidated Auto Lines, filed a motion to set aside the proceedings, alleging that they are affected operators but that due to lack of communications caused by a strike of their employees they could not contact their lawyer in Manila for him to file on time their opposition to the application. The Commission denied the motion to set aside the proceedings but allowed the movants to file their formal opposition and to adduce their evidence thereafter.

The trial having been completed, the Commission, on 8 September 1965, rendered judgment for the applicant.

In due time, the oppositors filed the present petition for review with this Court, on the grounds that the Public Service Commission gravely abused its discretion: (1) by holding that there is a public necessity and demand for the approval of the application; and (2) by holding that the applicant is legally and financially qualified to operate the service applied for.

The evidence upon which the Commission found a public necessity for the proposed service and the financial capacity of the applicant rests on the testimonies of said applicant and of one Celso Bombase, plus certain documentary evidence. The witnesses testified that they travel quite regularly from Naga to Legaspi, a distance of 105 kilometers; Bonete, in order to collect from clients who purchased trucks or spare parts from him or from Yang's Auto Supply, where he is employed as a salesman; Bombase, who is a government employee, to audit some governmental finances. They had observed that there are several operators in and along the route but that they could not cope with the needs of the riding public.

As to his financial capacity, Bonete, Jr. testified in his own behalf, stating that he receives a salary of P120 a month as salesman, aside from commission; that in 1964 he had a gross income of P4,149.71 and a net income of P3,734.74, as shown in his income tax return, Exhibit "H"; that he owns real properties, unregistered but declared in his name (Exhibits "K", "K-1", "K-2" and "K-3"), with an assessed value of P11,000.00 and a market value of P61,000.00; this real property was given to him by his father in 1964 to meet the financial requirements of his

application and for his own security, he being the only son but with a sister who is already married; that he has a deposit of P2,030.00, on a current account, with the Bank of the Philippine Islands (Exhibit "L"); and that he has bought two (2) trucks, one of which is invoiced by Exhibit "M", and has another one which is a second hand bus type.

The testimony of the oppositors' lone witness, Jose Arroyo, was to the effect that the passenger load of the buses of the three (3) oppositor transportation companies during rush hours was only 70% on weekends, 50% on mid weeks, and 40% during lean hours. The Commission disbelieved this witness because he is employed by the oppositors as their common supervisor.

No evidence was presented to rebut the financial capacity of applicant Bonete, Jr.

The argument of the petitioners, oppositors below, on their first assigned error is principally aimed at the credibility of applicant's witness Bombase. Thus, they claim that he was evasive when asked about his position in the government; that he should be a degree-holder to qualify for auditing government accounts, and that his work, even if true, is limited to only one province; and that his testimony about the need for more buses in the Naga-Legaspi line could not be true because there are 100 buses already plying between the two points, at only seven (7)-minute intervals, both ways.

The credibility of witnesses in public service cases is not a proper subject for review by the Supreme Court, otherwise, this review would be converted into a trial de novo (*Cebu Autobus Co. vs. Bisaya Land Transportation*, 66 Phil. 63; *Santiago Ice Plant Co. vs. Lahoz*, 87 Phil. 221). The number of buses covering the contested line and the frequency of their trips alone do not suffice to show that no additional trips are required. Despite the number and frequency of trips, the possibility remains that the public needs more, and the Commission has so found. No abuse of discretion has been shown in reaching such a conclusion.

On the other assigned error, petitioners attack the financial qualification of the applicant by mathematical computations, based on assumed facts, as follows: that besides the initial payment of P10,530.00 on the chassis of four (4) auto-trucks, the applicant must bear the cost of construction of their bodies and seats, estimated at P16,000.00, and the registration fees for one semester, which would be P1,200; so that before the respondent could put in operation the four authorized units, he must, apart from cost of fuel, oil and wages, raise and disburse the total sum of P27,730.00, an amount which respondent does not have.

Since the foregoing argument is mostly based on assumed probabilities, which were not proven as facts, the same is untenable. Thus, the argument takes for granted that respondent (applicant below) had yet to buy four trucks, which is not even true, as he already has three (Decision, page 2); it assumes also that the four units have yet to be provided with bodies and seats and at a cost of P4,000.00 each, which was not proved. It is not likely that respondent would fall short in ready cash to start operation, despite his small deposit in the bank and his lack of liquid assets that could readily be converted into cash, for he already had three trucks; and on the other hand, oppositors fail to allow for the earnings of these vehicles of applicant. While the Commission was probably somewhat lenient in this regard, it is not for this Court to substitute its own judgment and experience for that of the Commission. The finding of financial capacity of the applicant is essentially one of fact, and upon the record, we are not prepared to declare it patently unjustified (*Panay Autobus Co. vs. Iloilo Transportation Co.*, 60 Phil. 135; *Del Pilar Transit vs. Silva*, 15 July 1966, 17 SCRA 647; *Sorita vs. PSC*, L-20965, 29 October 1966, 18 SCRA 516; *Phil. Rabbit Bus Lines, Inc. vs. Gabatin, et al.*, L-24472, 31 July 1968; *Red Line Transportation vs. Santo Tomas*, L-18584, 30 January 1967, 19 SCRA 148, and cases cited therein).

The case of *A.L. Ammen Transportation Co., et al. vs. Del Rosario*, L-17992, 30 August 1963, wherein this Court reversed the Commission's finding on the financial means of the applicant, and upon which the herein petitioners

rely, differs in factual background from the case at bar. There, the applicant's resources were disputed, so that "the evidence submitted reasonably satisfies us that the financial condition of the applicant renders it impossible for him to run the public service he has been authorized to establish and operate and thereafter maintain it efficiently and successfully".

FOR THE FOREGOING REASONS, the decision on review is hereby affirmed, with costs against the petitioner.

Concepcion, C.J., Dizon, Makalintal, Sanchez, Castro, Fernando, and Capistrano, JJ., concur.

Zaldivar, J., did not take part.

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