

**AGAPITO CABUDIL & #038; JUAN REYES, AS PETITIONERS-VENDORS,
AND ARSENIO RAMIREZ AS PETITIONER-VENDEE, PETITIONERS, VS.
HON. GREGORIO C. PAÑGANIBAN AS ASSOCIATE COMMISSIONER,
PUBLIC SE...**

G.R. No. L-26132. August 27, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court rejects petitioners' appeal and affirms the appealed order of respondent Commissioner, on the ground that the official records of the Public Service Commission must necessarily prevail over petitioners' bare and undocumented claims. Hence, no error can be imputed to the order denying petitioners' petition for approval of a purported sale of a five-unit franchise as against the commission's records showing that such franchise for a non-existent line (never granted to the purported vendors, who besides had already disposed of the line actually held by them to a third party) and hence there was nothing to be sold and no sale that could be approved by respondent.

On November 23, 1965, petitioners filed a petition, by virtue of the refusal of the Public Service Commission to issue to petitioner-vendee Ramirez stickers to operate five jitneys on the Novaliches-Blumentritt line, for which they claimed that petitioners-vendors Cabudil and Reyes held a franchise under Commission Case No. 43277 (allegedly sold on August 25, 1959 by them to Ramirez who was allegedly granted on August 26, 1959 by the commission a provisional authority in Case No. 127065 to operate the five units) praying of the commission that the alleged certificate of public convenience be transferred to Ramirez and that he be issued the necessary stickers for the operation of the line.

Respondent Pañganiban as associate public service commissioner heard the petition on February 23, 1966. At the hearing, it was determined that the commission's records of Case No. 43277 could not be located, but its docket book showed that under said Case No. 43277, petitioners-vendors Cabudil and Reyes did not hold a franchise to operate on the Novaliches-Blumentritt line but had been granted only on April 16, 1963 a franchise to operate eight jitneys on the entirely different lines of Duhat, Bocoue-Quiapo and Frisco-Piers; and that the commission had no record whatsoever of the alleged grant of provisional authority to Ramirez under Case No. 127065. Furthermore, by the very records of the commission, the alleged petitioners-vendors Cabudil and Reyes had actually sold on July 5, 1961 the franchise held by them under Case No. 43277 to a third party Mario Pulongbarit (which was duly approved without any opposition on July 19, 1963 by the commission in Case 61-4664) who in turn disposed of some units thereof under Case No. 62-4360 on July 23, 1962.

Respondent Pañganiban therefore rendered his order of April 20, 1966 denying the petition, since what was allegedly sold to Ramirez on August 25, 1959 and allegedly provisionally approved by the commission on August 26, 1959 was in effect a non-existent line, (and no record thereof could be found in the commission's records), whereas the actual line (Duhat-Quiapo and Frisco-Piers) held by the alleged vendors Cabudil and Reyes had been

sold by them on July 5, 1961 to a third party. Hence, there was nothing to be sold by Cabudil and Reyes to Ramirez and no sale for the commission to approve as prayed for in the petition.

Petitioners claim in this appeal of denial of due process on the ground that the dismissal order gave them no chance to present their evidence is manifestly untenable.

As between the bare and undocumented claims of petitioners and the official records of the commission, the latter must necessarily prevail.

It is aptly pointed out in respondent's brief that "the Public Service Commission, as borne out by its records, has never issued a provisional authority in favor of petitioner-vendee. There is no reason whatsoever for the issuance of the alleged provisional authority in favor of the herein petitioner-vendee for no petition for the issuance of the same has ever been filed by the herein petitioners. The Commission, as also shown by its records, has not rendered any decision approving either finally or provisionally the alleged sale and transfer executed between petitioners-vendors and petitioner-vendee. From the time petitioner-vendee filed his application for approval of sale and transfer before the Public Service Commission on August 26, 1959, he has not taken up the proper steps to have said application acted upon by the Commission. Granting but not conceding that a provisional authority had been granted by the Commission in favor of the herein petitioner-vendee, such provisional authority had long expired. The provisional authority granted by the Commission is only valid for a period of six (6) months from date of the issuance of the same. Therefore, the claim of petitioner-vendee that from August 26, 1959 he has been operating legally his five (5) units on the line Novaliches-Blumentritt under the alleged provisional authority is not valid."[1]

Respondent further significantly pointed out that "the herein petitioner-vendee Arsenio Ramirez had ample opportunity to correct the glaring error committed in the sale of a non-existing line had he taken the necessary steps to verify from the records of the Commission the true and correct line authorized to petitioners-vendors in Case No. 43277. Precisely, it is very obvious, that petitioners negligently failed to exercise their right to ask for the final approval of the sale and transfer, as shown by the fact that it was only in 1965 or after a lapse of six (6) years, that they have taken the initiative to have their application for the approval of sale and transfer acted upon by the Commission."[2]

The following salient factors showing the lack of basis of petitioners' claim have been further noted by the Court:

- Petitioners had every opportunity at the hearing to document their claims both in the commission and before this Court but absolutely failed to do so. Such hearing where petitioners through their attorney were present and the essential question of whether petitioners-vendors held a franchise on the Novaliches-Biumentritt line which they could sell was determined from the commission's records and questions were asked and statements were made relative to the basic question, was adequate and may not be assailed as wanting in due process.[3]
- No copy of the alleged franchise of Cabudil and Reyes which must have been secured prior to the purported sale on August 25, 1959 and which petitioners would have certainly kept as a valuable document was ever presented;
- No copy either of the alleged provisional authority granted allegedly under Case 127065 by the commission on August 26, 1959 to Ramirez, likewise a valuable document, (of which there is no record whatsoever in the commission) was presented; and

- No reasonable or logical explanation whatever as to why petitioners had to wait for six years before seeking approval of the alleged sale made in 1959 has been given.

ACCORDINGLY, the order appealed from is affirmed, with treble costs jointly and severally against petitioners.

Makalintal, Acting C.J., Ruiz Castro, Fernando, Makasiar, Antonio, and Esguerra, JJ., concur.

Barredo, J., took no part.

Zaldivar, J., is on leave.

[1] Respondent's brief, pp. 2-3.

[2] Idem., p. 9.

[3] See *In re Gregorio*, applicant for ice plant service, 77 Phil. 906.

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