

BENEDICTO C. LAGMAN, DOING BUSINESS UNDER THE FIRM NAME AND STYLE "MARCO TRANSIT", PETITIONER, VS. CITY OF MANILA, ITS OFFICERS AND/OR AGENTS, RESPONDENTS.*G. R. No. L-23305. June 30, 1966*

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

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Petitioner Benedicto C. Lagman originally filed, on 6 August 1964, with this Court a petition for declaratory relief, seeking a declaration of his rights under the so-called "provincial bus ban" ordinance (No. 4986, approved on 13 July 1964 by the City Mayor) of respondent City of Manila, with prayer for writs of preliminary and permanent injunctions to restrain and enjoin said respondent, Its officers and/or agents, from enforcing and implementing said ordinance. At first, this Court, in its resolution dated 11 August 1964, dismissed said petition without prejudice to action, if any, in the lower court; but, upon herein petitioner's motion for reconsideration and supplemental petition to convert said petition into one for prohibition, on the ground, among others, that respondents have been actually enforcing said ordinance effective 17 August 1964, this Court reconsidered its first resolution, gave due course to the petition, and required respondents to answer. This Court did not, however, issue the writ of preliminary injunction prayed for.

As disclosed by the record, the facts are:

Petitioner was granted a certificate of public convenience by the Public Service Commission (by a decision, dated 20 March 1963, in FSC Case No. 61-7383) to operate for public service fifteen (15) auto trucks with fixed routes and regular termini for the transportation of passengers and freight, on the line Bocaue (Bulacan)-Parañaque (Rizal) via Meycauayan, Harilao, Obando, Polo, Malabon, Rizal, Grace Park, Rizal Avenue, Recto Avenue, Sta. Cruz Bridge, Taft Avenue, Libertad, Pasay City and Baclaran, and vice versa. Within Manila, the line passes thru Rizal Avenue, Plaza Goiti, McArthur Bridge, Plaza Lawton, P. Burgos, Taft Avenue and Taft Avenue Extension. Pursuant to said certificate, petitioner, who is doing business under the firm name and style of "Marco Transit", began operating twelve (12) passenger buses along his authorized line.

On 17 June 1964, the Municipal Board of respondent City of Manila, in pursuance to Section 18, paragraph hh, of Republic Act No. 409, as amended (otherwise known as the Revised Charter of the City of Manila), that reads:

"The Municipal Board shall have the following legislative powers:

* * * * * (hh) To establish and regulate the size, speed, and operation of motor and other public vehicles within the city; to establish bus stops and terminals; and prohibit and regulate the entrance of provincial utility vehicles into the city, except those passing thru the city."

* * * * *

enacted Ordinance No. 4986, entitled "An Ordinance Rerouting Traffic On Roads and Streets Within The city of Manila, and For Other Purposes", which the City Mayor approved, on 13 July 1964, effective upon approval

thereof. The pertinent provisions of said ordinance, insofar as it affects the certificate of public convenience of petitioner, are quoted below, to wit:

"SECTION 1. As a position measure to relieve the critical traffic congestion in the City of Manila, which has grown to alarming and emergency proportions, and in the best Interest of public welfare and convenience, the following traffic rules and regulations are hereby promulgated:

RULE I. DEFINITIONS

A. Definition of Terns. - When used in this ordinance and in subsequent ordinance having reference thereto, unless the context indicates otherwise:

(a) The terns 'provincial passenger buses' and 'provincial passenger jeepneys' shall be understood to mean those whose route (or origin-destination) lines cons from or going to points beyond Pasay City, Makati, Mandaluyong, San Juan, Quezon City, Caloocan City and Navotas.

* * * * * RULE II. ENTRY POINTS AND ROUTES OF PROVINCIAL PASSENGER BUSES AND JEEPNEYS

- Provincial passenger buses and jeepneys (PUB and PUJ) shall be allowed to enter Manila, but only through Che following entry points and routes, from 6:30 A.M. to 8:30 P.M. every day except Sundays and Holidays:

(a) Those coming from the north shall enter the city through Rizal Avenue; turn right to Mt. Samat; right to Dinalupihan; right to J. Abad Santos; left to Rizal Avenue towards Caloocan City;

* * * * *

(n) Those coning from the south through Taft Avenue shall turn left at Vito Cruz; turn right to Dakota; turn right to Harrison Boulevard; turn right to Taft Avenue; thence proceed towards Pasay City;

* * * * * RULE III. FLEXIBLE SHUTTLE BUS SERVICE

- In order that provincial commuters shall not be unduly inconvenienced as a result of Che implementation of these essential traffic control regulations, operators of provincial passenger buses shall be allowed to provide buses to shuttle their passengers from their respective entry control points, under the following conditions;

(a) Each provincial bus company or firm shall be allowed such number of shuttle buses proportionate to the number of units authorized It, the ratio to be determined by the Chief, Traffic Control Bureau, based on his observations as to the actual needs of commuters and traffic volumes; in no case shall the allocation be more than one shuttle bus for every 10 authorized units, or fraction thereof.

(b) No shuttle bus shall enter Manila unless the same shall have been provided with identification stickers as required under Rule IV hereof, which shall be furnished and allocated by the Chief, Traffic Control Bureau to each provincial bus company or firm.

(c) All such shuttle buses are not permitted to load or unload or to pick and/or drop passengers along the way, but must do so only in the following places:

(1) North

(a) J. Abad Santos corner Rizal Avenue, or vicinities

* * * * * (2) South

(a) Harrison Boulevard, between Dakota & Taft Avenue

GENERAL PROVISIONS

* * * * *

SEC. 4. Any violation of the provisions of this ordinance and of any other ordinance regulating traffic in the city, shall be punished by a fine of not less than P20.00 nor more than P20 .00, or by imprisonment for not less than five (5) days nor more than six (6) months, or both such fine or imprisonment In the discretion of the court."

On 17 August 1964, the Mayor of respondent City of Manila, through Its police agencies, began actual enforcement of said ordinance and prevented petitioner from operating his buses, except two (2) "shuttle" buses, along the line specified In his certificate of public convenience.

Petitioner Lagman claims in his original and supplemental petitions that the enactment and enforcement of Ordinance No. 4986 is unconstitutional, illegal, ultra vires, and null and void. Thus, he contends that the routes within Manila through which he has been authorized to operate his buses are national roads or streets, and the regulation and control relating to the use of and traffic of which (roads) are vested, under Commonwealth Act No. 548, in the Director of Public Works, subject to the approval of the Secretary of Public Works and communications; but, since said ordinance was not proposed nor approved by the executive officials mentioned in said Act, its enactment and enforcement is a usurpation of the latter officials¹ functions, and said ordinance is, therefore, unauthorized and illegal.

He also contends that the power conferred upon respondent City of Manila, under said Section 18 (hh) of Republic Act No. 409, the as amended, does not Include the right to enact an ordinance such as the one in question, which has the effect of amending or modifying a certificate of public convenience granted by the Public Service Commission, because any amendment or modification of said certificate is solely vested by law in the latter governmental agency and only after notice and hearing (Sec. 16 (m). Public Service Act); but since this procedure was not adopted or followed by respondents in enacting the disputed ordinance, the same is likewise illegal and null and void.

He further contends that the enforcement of said ordinance is arbitrary, oppressive and unreasonable because the city streets from which he had been prevented to operate his buses are the cream of his business.

He finally contends that; even assuming that ordinance No. 4986 is valid, it is only the Public Service Commission which can require compliance with its provisions (Sec. 17 (j), Public Service Act), but since its implementation is without the sanction or approval of the Commission, its enforcement is also unauthorized and Illegal.

In his memorandum, petitioner adds as contention therefor that although his buses fall within the definition of the term "provincial passenger buses" under the disputed ordinance - his route line having termini outside the City of Manila and its immediate suburbs - they merely "pass thru the city"; hence, its operation is covered within the saving clause of the above-quoted Section 18 (hh) of Republic Act No. 409, as amended, and he should not have been prevented from operating his buses within the city streets specified in his certificate of public convenience.

On the other hand, respondent City of Manila, in its answer to the original and supplemental petitions, maintains that its power to "prohibit and regulate the entrance of provincial public utility vehicles into the City, except those passing thru the city", as provided in its charter, is an explicit delegation of police power which is paramount and superior both with respect to the administrative power of the Director of Public Works, under Commonwealth Act No. 548, to regulate and control the use of, and traffic on, national roads or streets and, to the administrative authority of the Public Service Commission, under Section 16 (m), of the Public Service Act, to amend, modify or revoke certificates of public convenience.

It also maintains that the provisions of Commonwealth Act No. 548 have been repealed by Section 27 of Republic Act No. 917; and, even assuming that the former has not been so repealed by the latter, Ordinance No. 4986 does not contravene commonwealth Act No. 548 because, even assuming that a repugnancy or conflict exists between this Act and Section 18 (hh) of Republic Act No. 409, as amended, the latter provision prevails over the former, Republic Act No. 409 being a special law and of later enactment. Neither does Republic Act No. 409 contravene Section 16 (m) of the Public Service Act, Section 17 (j) of the latter Act having imposed a duty in the Public Service Commission to require any public service to comply with any ordinance relating thereto.

Lastly, respondent, in its reply-memorandum, maintains that since petitioner admittedly engages in business within the city limits by picking up passengers therein, his buses do not merely pass thru the city; and they are not, therefore, covered within the saving clause of Section 18 (hh) of Republic Act No. 409, as amended.

In our opinion, the present petition for prohibition should be denied.

First, as correctly maintained by respondents, Republic Act No. 409, as amended, otherwise known as the Revised Charter of the City of Manila, is a special law and of later enactment than Commonwealth Act No. 548 and the Public Service Law (Commonwealth Act No. 146, as amended), so that even if conflict exists between the provisions of the former act and the latter acts, Republic Act No. 409 should prevail over both Commonwealth Acts Nos. 548 and 146. In *Cassion vs. Banco Nacional Filipino*, 89 Phil. 560, 561, this Court said:

"for with or without an express enactment it is a familiar rule of statutory construction that to the extent of any necessary repugnancy between a general and a special law or provision, the latter will control the former without regard to the respective dates of passage."

It is to be noted that Commonwealth Act No. 548 does not confer an exclusive power or authority upon the Director of Public Works, subject to the approval of the Secretary of Public Works and Communications, to promulgate rules and regulations relating to the use of and traffic on national roads or streets. This being the case, section 18 (hh) of the Manila charter is deemed enacted as an exception to the provisions of Commonwealth Act No. 548.

"It is a well settled principle that, because repeals by implication are not favored, a special law must be taken as intended to constitute an exception to the general law, in the absence of special circumstances forcing a contrary conclusion." (*Baga vs. Philippine National Bank*, 52 o. G. 6140).

"Where a special act is repugnant to or inconsistent with a prior general act, a partial repeal of the latter act will be implied or exception grafted upon the general act." (*City of Geneseo vs. Illinois Northern Utility Co.*, 39 NE 2d, p. 26)

Second, the same situation holds true with respect to the provisions of the Public Service Act. Although the Public Service Commission is empowered, under its Section 16 (m), to amend, modify or revoke certificates of public convenience after notice and hearing, yet there is no provision, specific or otherwise, which can be found in this statute (Commonwealth Act No. 146) vesting power in the Public Service Commission to superintend, regulate, or control the streets of respondent City or suspend its power to license or prohibit the occupancy thereof. On the other hand, this right or authority, as hereinabove concluded, is conferred upon respondent city of Manila. The power vested in the Public Service Commission under Section 16 (m) is, therefore, subordinate to the authority granted to respondent City, under said section 18 (hh). As held in an American case:

"Ordinances designating the streets within a municipality upon which buses may operate, or prohibiting their operation in certain streets do not encroach upon the jurisdiction of the Public Service Commission over motor bus common carriers, so long as the ordinances do not prevent or unreasonably interfere with the utility's operation under the certificate or franchise granted by that Commission." (*Stuck vs. Town of Beech Grove*,

163 N. E. 483; 166 N. E. 153).

That the powers conferred by law upon the Public Service Commission were not designed to deny or supersede the regulatory power of local governments over motor traffic, in the streets subject to their control, is made evident by section 17 (J) of the Public Service Act (Commonwealth Act No. 146) that provides as follows:

"SEC. 17. Proceedings of Commission without previous hearing. - The Commission shall have power, without previous hearing, subject to established limitations and exceptions, and saving provisions to the contrary:

* * * * *

(j) To require any public service to comply with the laws of the Philippines, and with any provincial resolution or municipal ordinance relating thereto, and to conform to the duties imposed upon it thereby, or by the provisions of its own charter, whether obtained under any general or special law of the Philippines." (Italics supplied)

The petitioner's contention that, under this section, the respective ordinances of the City can only be enforced by the Commission alone is obviously unsound. Subsection (j) refers not only to ordinances but also to "the laws of the Philippines," and it is plainly absurd to assume that even laws relating to public services are to remain a dead letter without the placet of the Commission; and the section makes no distinction whatever between enforcement of laws and that of municipal ordinances.

The very fact, furthermore, that the Commission is empowered, but not required, to demand compliance with apposite laws and ordinances proves that the Commission's powers are merely supplementary to those of state organs, such as the police, upon which the enforcement of laws primarily rests.

Third, the implementation of the ordinance in question cannot be validly assailed as arbitrary, oppressive and unreasonable. Aside from the fact that there is no evidence to substantiate this charge, it is not disputed that petitioner has not been totally banned or prohibited from operating all his buses, he having been allowed to operate two (2) "shuttle" buses within the city limits.

And finally, respondents correctly maintain that petitioner cannot avail of the saving clause of said section 18 (hh), he having admitted that his buses engaged in business within the city limits by picking up passengers therein; hence, they do not merely "pass thru the city".

WHEREFORE, the instant petition for prohibition should be, as it is hereby, dismissed. With cost against petitioner Benedicto C. Lagman.

Concepcion, C. J., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

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