

TOMAS LITIMCO, PETITIONER, VS. LA MALLORCA, RESPONDENT.*G.R. Nos. L-17041-17042. May 18, 1962*

Ponente: BAUTISTA ANGELO, J.

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Tomas Litimco filed a petition before the Public Service Commission praying for authority to operate a TPU service on the line Manila-Malolos via Sta. Isabel with the use of 10 units. To the petition several operators filed written oppositions. On the date set for hearing, petitioner adduced evidence in support of his petition, but none of the oppositors submitted evidence in support of their oppositions. Thereafter, the petition was submitted for decision.

On November 7, 1958, before the Public Service Commission could render its decision, La Mallorca, another operator, moved to reopen the case stating that if the petition to operate the line proposed be granted it would work to its prejudice and so it requested a reopening in order that it may file its opposition and present evidence in support thereof. The motion was granted and, accordingly, the case was set for hearing on January 12, 1959. However, instead of presenting evidence in support of its opposition, La Mallorca moved for postponement, only to announce days later that, instead of merely objecting to the petition, it decided to file an application under a separate number (Case No. 63120) requesting for authority to operate the same line applied for by petitioner by rerouting 4 of its 10 round trip units on the line Malolos-Manila via Guiguinto. To this application several oppositions were presented, including petitioner himself, although only the latter presented evidence in support of his opposition. Because of the identity of the issues involved, the two applications were heard jointly.

After a protracted hearing, the Public Service Commission rendered decision denying petitioner's application but granting that of respondent on the ground that the latter has a better right to render the service applied for. Petitioner interposed the present petition for review.

Petitioner contends that the Public Service Commission erred in giving preference to the application of respondent in disregard of his own because (a) his application was filed much ahead than that of respondent and as such it is entitled to preference under the well-settled doctrines of this Court; (b) in awarding the line to respondent it in effect gave recognition to the unfair attitude of respondent which only awoke out of its slumber when petitioner applied for the service on the line in question; and (c) to grant the service in favor of respondent will work to the prejudice of the riding public for it would be allowing respondent to abandon a portion of its service on its original line Manila-Malolos via Guiguinto, a service which was previously found to promote the need and convenience of the people in said territory.

Respondent, meeting these arguments, advance the following reasons: (a) respondent's application for rerouting will not involve any increase of trips or units nor will involve the purchase of new trucks, while that of petitioner would call for the use of 10 new trucks, which means a further depletion of the already depleted dollar reserve of our government; (b) respondent's application for rerouting will not involve the acquisition of an operating right over the national highway from Malolos railroad crossing up to Guiguinto, while on the other hand, petitioner's application will involve the acquisition of a new operating right; and (c) in view of the fact that the line in

question covers only 7 kilometers of new territory which traverses three sparsely populated barrios, the Public Service Commission was justified in granting to respondent the authority to re-route its already authorized trips to serve a few available passengers in the new route.

There is no doubt that petitioner was the first to apply for the service in the territory in question. Through his amended application, petitioner has applied for the new service as early as October 24, 1958, while respondent only was awakened and followed suit when it filed its application on January 21, 1959, after petitioner's application was already submitted for decision. Since it is admitted that petitioner is financially competent and able to operate the line proposed, for it is a matter of record that he is also an operator of a bus line from Manila to Malolos via Bula-can, we see no plausible reason why he should not be given preference to operate the service applied for considering that he is the first one to apply for such line. This is in accord with the policy constantly adopted by this Court in analogous cases, which we find to be sound, to stave off any act of discrimination or partiality against any applicant for operation of a new line.[1] While there may be cases where an applicant, even if ahead in time, was not given the service, it is because it was proven that he was financially incompetent, or otherwise disqualified, to render the service. If an applicant is qualified financially, and is able to undertake the service, he should be given the preference as a matter of fairness and justice. Indeed, this Court has postulated that "priority in the filing of the application for a certificate of public convenience is, other conditions being equal, an important factor in determining the rights of the public service companies." [2] Considering that petitioner has filed his application much ahead in point of time than respondent, and is financially competent, the action of the Public Service Commission in giving preference to respondent is not justified.

The argument that the application of petitioner for the operation of the new line calls for the purchase of 10 new trucks which would result in further depletion of the dollar reserve of our government, while the application for rerouting of respondent will not entail any further expenditure, is of no consequence, if the operation will redound to the benefit of the riding public. The operation of a new line as a general proposition always involves a new investment which may happen even with old operators. In the course of operation, and with the passing of time, new equipment and facilities may be found necessary to maintain an efficient service, which additional expenditure cannot certainly be considered as a cause for disruption of the service. This is a matter of finance which concerns exclusively the one who desires to operate the new line. At any rate, the new line merely covers 7 kilometers of new territory which traverses three sparsely populated barrios and considering that respondent did not deem it necessary to cover said territory except after the passing of many years, and only thought of giving the service when petitioner filed his application, fairness requires that preference be given to petitioner.

Wherefore, the decision appealed from is reversed. It is ordered that petitioner be extended the certificate of convenience applied for by him in his petition. Costs against respondent.

Padilla, Labrador, Conepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

[1] Benitez vs. Santos, 107 Phil., 167; Lopez vs. Santos, 107 Phil., 167.

[2] Batangas Transportation Company, et al. vs. Orlanes and Banaag Transportation Company, 55 Phil., 175.

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