

## THE CITY OF TAGBILARAN AND ITS CITY BOARD, OPPOSITORS-PETITIONERS, VS. SEVERIANO G. LIM, APPLICANT-RESPONDENT.

*G.R. No. L-30323. August 31, 1973*

Ponente: FERNANDO, J.

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### FERNANDO, J.:

The City of Tagbilaran, oppositor before the Public Service Commission and now petitioner, would have us reverse its decision authorizing applicant, and now respondent, Severiano G. Lim, to operate fifty units of motorized tricycles within the city boundaries. This petition for review is primarily based on its contention that the competence to grant such privilege belongs to it and not the Public Service Commission. Such an argument was raised and considered in the proceedings before the Commission. It was rejected as there was no showing that the charter of the City of Tagbilaran[1] did empower it. Undeterred, it would persist in such a claim. Unfortunately for it, there is no statutory basis in support thereof. That is all that needs be said in disposing of this appeal by way of certiorari, as the other points raised are factual in character, the determination of which by the Commission is not for us to disturb. We affirm.

The facts are undisputed. The decision of the Public Service Commission, dated December 20, 1968, started with a statement that what was before it was an application for the certificate of public convenience filed by Severiano G. Lim to operate a motorized tricycle service for the transportation of passengers within the territorial limits of Tagbilaran City with the use of fifty units. It was then noted that an opposition was registered by the City of Tagbilaran, its stand being that such power to grant authority to operate a motorized tricycle service within its territorial jurisdiction is vested in its city board. Then came the hearing on such application, with the applicant submitting affidavits of application and testifying that he is a naturalized Filipino citizen and a businessman with enough funds, income and property to finance the project, included in which are several parcels of land in Tagbilaran. He likewise mentioned the fact of his being a majority stockholder of the Provincial Bus Company, a grantee of a certificate of public convenience, operating forty buses, and that he was operating a gasoline station, the backyard of which he proposed to utilize as a garage for the tricycles. As to the need for the proposed service, it was his testimony that there are 20,000 to 30,000 students living within the suburbs of the City of Tagbilaran who could utilize public convenience, as there were no calesas, taxi-cabs and auto-calesas operating therein. Evidence was likewise offered on behalf of the City of Tagbilaran.[2] Then came this portion of the decision explaining why the application should be approved: "After a careful consideration of the evidence submitted by the parties and an examination of the records of existing service in Tagbilaran City, the Commission finds that public convenience will be promoted by the grant of the present application. Tagbilaran has been converted to a city because of its rapid growth and expansion and therefore is in need of more transportation facilities to cater to the needs of thousands of students who flock to the city to obtain higher learning as well as the barrio folks who commute daily to the city to work, sell their produce and buy their necessities; that the opposition of the city that the grant of this application would aggravate the existing difficulty in the control and supervision of the already

congested motorized tricycles actually operating is not substantiated by evidence for the records of the Commission do not show that any motorized tricycle has been authorized to operate as a public service in the said city. Further, the testimony of the Vice Mayor of the city tends to establish the fact that the real reason for the city's opposition to the grant of this application is that it fears that the city revenue would be depleted if the city is deprived of the authority to grant permits for the operation of this service. The fear of the city is unfounded for in the exercise of its authority to regulate this kind of service it retains the right to impose license fees. The claim of the oppositor that the 50 units proposed to be operated by applicant are actually owned and possessed by several and different individuals is unfounded for applicant has been offered new units by two companies to be paid on installment basis and as to the complaint of Mr. Erdulfo G. Boiser against applicant, the fiscal admitted it has been dismissed." [3] Then came this portion of the decision explaining why the application should be approved: "In view of the foregoing, and it appearing from the evidence that the applicant is a naturalized Filipino citizen and is financially capable of operating and maintaining the proposed service and that the operation of the same will promote public interest in a proper and suitable manner, the Commission believes that the opposition of the city of Tagbilaran is without merit and should be as it is over-ruled, and it is ordered that a certificate of public convenience be issued to applicant authorizing the operation of fifty (50) units motorized tricycle service within Tagbilaran City pursuant to Section 15, Commonwealth Act 146, as amended, subject to the following: \* \* \*." [4]

The City of Tagbilaran would have been well advised not to interpose an appeal. Contrary to its pretension, there is nothing in its charter that would empower it to issue the authorization for the operation of the motorized tricycle service. Nor can it now seriously assert that the finding as to public service and convenience being served with the approval of the application by appellee Lim should not be allowed by this Court to remain undisturbed. Consequently, as set forth in the opening paragraph of this opinion, there is no justification for the reversal sought.

- It is to be admitted that the counsel of the City of Tagbilaran, Fiscal Jovencio S. Orcullo, did file a brief that presented its contention as to the assertion of competence in the most favorable light. The fact that such valiant effort is not to be rewarded with success is solely due to the authoritative principle that there must be a showing of the grant of authority by a municipal corporation to enable it to exercise such competence. In the first case where this question was considered, *Switzer v. Municipality of Cebu*, [5] promulgated in 1911, Justice Mapa for the Court emphasized the grant of "specific and definite power." [6] Then came *United States v. Ten Yu*, [7] where it was held: "Municipal corporations have only such powers as are expressly delegated to them and such other powers as are necessarily implied from such express powers." [8] Such a doctrine was slightly recast, but on a purely verbal level, by Justice, later Chief Justice, Abad Santos, in *People v. Lardizabal* [9] thus: "It is well settled that municipal corporations may exercise such powers as are expressly granted to them, and such other powers as are necessarily implied from those expressly granted." [10] That was merely to emphasize that municipal corporations, as noted by the then Justice, later Chief Justice, Concepcion, "are mere creatures of Congress." [11] As such then, they "have only such powers as the legislative department may have deemed fit to grant them." [12] The very same language found expression anew from the same jurist in *Unson v. Lacson*, [13] decided three years later. So it has continued up to the present. [14] Even with reference to a municipal corporation's taxing attribute, the same principle controls. [15]

Necessarily then, the burden was on the City of Tagbilaran to demonstrate that the competence asserted had been granted, whether expressly or impliedly. That it failed to do. That it could not do, simply because there would be no statutory basis for such a claim. The task from the beginning then was an impossible one. Congress did not deem fit to vest it with such power. Its fiscal did try to locate what is in reality a non-existent attribute. His effort was in vain. His reliance on the particular provision in the city charter which, in his opinion, did lend plausibility to his contention, was misplaced. All that he could manage to bring to the surface was the confusion of a sub-section that authorized the City to impose municipal license taxes or fees on persons operating motorized

tricycles.[16] That is one thing. It is an entirely different matter from what is in issue. It would presuppose that the business of motorized tricycles is there to tax. It does not by any means follow that it is the City that could allow its operation. It is, to repeat, unwarranted to come out with such a conclusion. Thus is the principal error as to the City of Tagbilaran being vested with "the right to grant [a] certificate of public convenience for the operation of motorized tricycles" disposed of.

- The other errors assigned, five in number, hardly deserve any extended discussion. They are factual in character. At the most, they would evince an approach on the part of the City of Tagbilaran different from that followed by the Public Service Commission. Since the power to determine what facts are deemed relevant and controlling belongs to the Commission and not the City, the discretion of the former agency should not be interfered with. So we have decided time and time again. A recent case, *Philippine Rabbit Bus Lines, Inc. v. Gabatin*[17] states the controlling principle as to the findings of fact of the Public Service Commission having well-nigh the impress of finality. Thus: "Where the petition for review disputes merely the sufficiency of the evidence, the finding cannot be disturbed. It is not for this Court to determine credibility and preponderance of proof nor to examine the proof de novo and determine for itself whether or not the preponderance of evidence really justifies the decision. It is not to substitute its discretion for that of the Public Service Commission on questions of fact. The lack of wisdom of the conclusion reached by the Public Service Commission affects neither its authority to decide nor the validity of its decision." [18] The above decision was cited with approval in the later case of *Ledesma v. Public Service Commission*. [19] Even more recently, in *Intestate Estate of Tiongson v. Public Service Commission*, [20] Court, through Acting Chief Justice Makalintal, reiterated such a doctrine in these words: "On the whole, we find no reason to deviate from the rule heretofore consistently applied that findings and conclusions of fact made by the Public Service Commission, when supported by evidence, are binding upon this Court." [21]

WHEREFORE, the decision of the Public Service Commission of December 20, 1968 is affirmed. No costs.

Makalintal, Acting. C.J., Zaldivar, Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur.

Ruiz Castro, J., I concur in the majority opinion penned by Justice Fernando, as modified by the concurring opinion of Justice Barredo.

Barredo, J., concurs in a separate opinion.

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[1] Republic Act No. 4660 (1966).

[2] Decision, Appendix to Brief for Oppositor City of Tagbilaran, 53-58.

[3] Ibid, 58-60.

[4] Ibid, 60.

[5] 20 Phil. 111.

[6] Ibid, 118.

[7] 24 Phil. 1 (1912).

[8] Ibid, 6.

[9] 61 Phil. 360 (1935).

[10] Ibid, 361. Cf. *Austria v. Yatco*, 87 Phil. 624 (1950).

[11] *Vega v. Municipal Board*, 94 Phil. 949, 955 (1954).

[12] Ibid. Cf. *Co. Kiam v. City of Manila*, 96 Phil. 649 (1955).

[13] 100 Phil. 695 (1957).

[14] Cf. *Pampanga Bus Co. v. Municipality of Tarlac*, G.R. No. L-15759, December 30, 1961, 3 SCRA 816; *Lacson v. Bacolod City*, G.R. No. L-15892, April 23, 1962, 4 SCRA 1001; *People v. Felisarta*, G.R. No. L-15346, June 29, 1962, 5 SCRA 389; *Lopera v. Vicente*, G.R. No. L-18102, June 30, 1962, 5 SCRA 549; *People v. Soria*, G.R. No. L-18982, January 31, 1963, 7 SCRA 242; *Santos v. Municipal Government of Caloocan*, G.R. No. L-15807, April 22, 1963, 7 SCRA 646; *Martelino v. Estrella*, G.R. No. L-15927, April 29, 1963, 7 SCRA 827; *Owners of 51 of the Jackpot Slot Machines v. Director of NBI*, G.R. No. L-18899, February 29, 1964, 10 SCRA 395; *Home-owners Asso. v. Municipal Board*, G.R. No. L-23979, August 30, 1968, 24 SCRA 856; *Luque v. Villegas*, G.R. No. L-22545, November 28, 1969, 30 SCRA 408.

[15] Cf. *American Mail Line v. City of Basilan*, G.R. No. L-12647, May 31, 1961, 2 SCRA 309; *Tan v. Municipality of Pagbilao*, G.R. No. L-14264, April 30, 1963, 7 SCRA 887; *Compania General de Tabacos v. City of Manila*, G.R. No. L-16619, June 29, 1963, 8 SCRA 367; *Marinduque Iron Mines Agents v. Municipal Council*, G.R. No. L-18924, June 30, 1964, 11 SCRA 416; *Golden Ribbon Lumber Co. v. City of Butuan*, G.R. No. L-18534, December 24, 1964, 12 SCRA 611; *Francisco v. City of Davao*, G.R. No. L-20654, December 24, 1964, 12 SCRA 628; *Aboitiz Shipping Corporation v. City of Cebu*, G.R. No. L-14526, March 31, 1965, 13 SCRA 449; *Nin Bay Mining Co. v. Municipality of Roxas*, G.R. No. L-40125, July 20, 1965, 14 SCRA 660; *Butuan Sawmill Inc. v. City of Butuan*, G.R. No. L-21516, April 29, 1966, 16 SCRA 755; *Hodges v. Municipal Board*, G.R. No. L-18276, January 12, 1967, 19 SCRA 28; *Ormoc Sugar Co., Inc. v. Municipal Board*, G.R. No. L-24322, July 21, 1967, 20 SCRA 739; *Ormoc Sugarcane Planters Asso. v. Municipal Board of Ormoc City*, G.R. No. L-23793, February 23, 1968, 22 SCRA 736; *City of Naga v. Court of Appeals*, G.R. No. L-24954, August 14, 1968, 24 SCRA 594; *Victorias Milling Co. v. Municipality of Victorias*, G.R. No. L-21183, September 27, 1968, 25 SCRA 192; *Villanueva v. City of Iloilo*, G.R. No. L-26521, December 28, 1968, 26 SCRA 578; *Serafica v. Treasurer of Ormoc City*, G.R. No. L-24813, April 28, 1969, 27 SCRA 1108; *De Leon v. Municipality of Calumpit*, G.R. No. L-26906, November 28, 1969, 30 SCRA 531; *Northern Philippines Tobacco Corp. v. Municipality of Aggo*, G.R. No. L-26447, January 30, 1970, 31 SCRA 304; *Cotabato Light and Power Co. v. City of Cotabato*, G.R. No. L-24942, March 30, 1970, 32 SCRA 231; *Luzon Surety Co. v. City of Bacolod*, G.R. No. L-23618, August 31, 1970, 34 SCRA 509; *Laoag Producers' Cooperative Marketing Asso. v. Municipality of Laoag*, G.R. No. L-27498, February 24, 1971, 37 SCRA 594; *Proctor and Gamble Trading Co. v. Municipality of Medina*, G.R. No. L-29125, January 31, 1972, 43 SCRA 130; *San Miguel Brewery, Inc. v. City of Cebu*, G.R. No. L-20312, February 26, 1972, 43 SCRA 275; *Chamber of Filipino Retailers, Inc. v. Villegas*, G.R. No. L-29819, April 14, 1972, 44 SCRA 405; *Tatel v. Municipality of Virac*, G.R. No. L-29159, November 24, 1972, 48 SCRA 79.

[16] Sec. 28, (b)4 of Republic Act No. 4660 (1966), Brief for Oppositor City of Tagbilaran, 20.

[17] G.R. No. L-24472, July 31, 1968, 24 SCRA 411.

[18] Ibid, 418-419. The above excerpt finds support in at least 42 cases therein cited.

[19] G.R. No. L-26900, February 27, 1970, 31 SCRA 805.

[20] G.R. No. L-24701, December 16, 1970, 36 SCRA 241.

[21] Ibid, 245.

## CONCURRING

### BARREDO, J.:

I agree that it is in the exclusive jurisdiction of the Public Service Commission or its present counterpart to grant certificates of public convenience. Definitely, the City of Tagbilaran possesses no such power.

To be very exact, however, in delineating the prerogatives of the City vis-a-vis the certificates granted by the Commission, I believe it pertinent to refer to the rulings of this Court in *Luque vs. Villegas*, 30 SCRA 408, wherein it was held:

"Commercial law; Public Service Law; Power of Public Service Commission and City of Manila over motor traffic; Ordinance 4986 of the City of Manila approved on July 13, 1964 rerouting traffic on roads and streets in the City of Manila is valid. - Ordinance 4986 of the City of Manila approved on July 13, 1964 rerouting traffic on roads and streets in the City of Manila is valid. First, 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 two, Republic Act No. 409 should prevail as a later act than Commonwealth Acts Nos. 548 and 146. Second, 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 streets subject to their control." (Syllabus)

and in *City of Manila vs. Public Service Commission*, 52 Phil. 515, in which Justice Malcolm ruled as follows:

"Id.; Id.; Id.; Id.; - It was not the legislative intent as disclosed by the Public Service Law to grant power to the Public Service Commission to abrogate the franchise provisions of the Manila Electric Company concerning abandonment and substitution of service. The agency of the Government of the Philippine Islands to which is confided the power to authorize the Manila Electric Company to abandon a trolley bus service and a street car service and to substitute therefor exclusively an auto bus service is the City of Manila and not the Public Service Commission." (Syllabus)

In other words, I just want to make it clear that the City of Tagbilaran is not entirely without any power to regulate the operation of tricycles within the City notwithstanding the certificate issued by the Commission. It can make reasonable regulations in connection therewith and the Certificate of the Public Service Commission would be subject to said regulations. It is up to the people of the City to cause its officials to take the required steps so that the certificate and the city regulations may be reconciled with each other to best serve the interests of the inhabitants of the City.

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