

## MANILA YELLOW TAXICAB ET AL., PETITIONER VS. THE PUBLIC SERVICE COMMISSION ET AL., RESPONDENTS.

*G. R. No. L-2875 and L-3114 to L-3203. October 31, 1951*

Ponente: REYES, J.

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### REYES, J.:

These 96 cases have been elevated to this Court through a petition for review as authorized by the Public Service Act. Sought to be reviewed is a decision of the Public Service Commission, common to all of the cases, granting regular certificates of public convenience to post-war taxicab operators and authorizing some of them as well as some of the pre-war operators to increase their equipment, or taxicab units. Petitioners are pre-war taxicab operators who object both to the issuance of new certificates and to the increase of equipment.

For a better understanding of the issues involved, it should be stated that at the outbreak of the war in 1941 there were in the City of Manila 10 taxicab operators, each with an authorized quota of taxicab units. Total number of units authorized for all was 1,365; but of these only 1,200 were registered and actually operated. Four years of war left these operators with their equipment practically all gone so that when they resumed operation after liberation in 1945 they were able to put in commission only a few units. These were, of course, insufficient to meet the great need for taxicab service. As was proper, the Public Service Commission gave them a reasonable time within which to complete and register their pre-war authorized equipment. The time was extended several times so that in all the operators were given about three years. But despite these various extensions, the last of which expired on September 30, 1948, only six of the operators were able to complete their authorized equipment. They were Jose F. Zamora, Amador O. Santos, Malate Taxicab and Garage Company, Francisco Benitez, Jr., Mateo Boquiren, and Pedro Reyes, the last three being holders of certificates purchased after liberation from the pre-war operators Bachrach Motor Company.

While the old operators were trying to acquire more vehicles to bring their equipment to pre-war level—a process which at best could only be gradual—the Commission, in order to meet the urgent need for more taxicabs, resorted to the expedient of issuing, to post-war applicants, temporary certificates, good only until December 31, 1948, for the operation of taxicab service in the city of Manila and neighboring cities and municipalities. This practice was, however, discontinued in May, 1947, and thereafter aspirants to such certificates had to content themselves with having their applications docketed.

This was the state of affairs when the Commission commenced to take action on the numerous applications which gave rise to the present proceedings. First of all, there were the applications of the pre-war operators (with the exception of Pedro Reyes) who were able to complete their equipment for authority to increase their units, the total number asked by all being 565 additional taxicabs. Then there were the applications of the post-war operators who, as their temporary certificates were about to expire, asked for the conversion of those certificates into regular or permanent ones. Along with their applications for conversion, they also asked for increase of equipment by proposing an addition of 1,728 units to the 676 they were already operating. And lastly, there were the applications of the late comers or prospective operators, who were overtaken by the ban on the further

issuance of temporary certificates. Only 8 of these late comers, however, cared to prosecute their applications, the others having apparently abandoned theirs by not appearing at the hearing. These & new applicants proposed to operate a total of 165 units.

All of the applications were opposed by the pre-war operators who were not able to complete their pre-war authorized equipment and did not ask for an increase of their authorized units. They were the Aero Taxicab Company, Antipolo Taxicab and Garage Company, Bachrach Motor Company, Nicolas F. Concepcion, Fortunato F. Halili, Manila Yellow Taxicab and Garage Company, Inc., and the Rex Taxicab Company.

By agreement of the parties and at their instance all of the applications were heard together, after which the Commission rendered a decision covering all of them. Overruling the opposition, the decision (1) granted four prewar operators, namely, Malate Taxicab & Garage Company, Jose F. Zamora, Amador D. Santos and Francisco Benitez, Jr., a total of 125 additional units, (2) granted 78 of the postwar operators regular certificates and a total of 399 additional units, and (3) granted three of the new applicants— Emiliano Acuña, Alejandro Fernandez, and Hennogenes Jacinto— regular certificates with an authorized equipment of five units each. But the decision also expressly states that the certificates of public convenience therein granted "shall be valid and subsisting only for a period of fifteen (15) years counted from January 1, 1949." This is the decision that is now before us for review.

The petition for review assails the decision below on four grounds, namely, (1) insufficiency of the evidence to justify the conversion of the post-war operators' temporary certificates into regular or permanent ones, (2) lack of authority to decree such conversion, (3) insufficiency of the evidence to justify the increase of equipment granted to both pre-war and post-war operators, and (4) ruinous competition.

As to the first ground, it should be noted that the Commission has made the following findings of fact:

"(a) That the population of the City of Manila and the adjoining cities and municipalities before the war has considerably increased. This is borne out by the following official data of the Bureau of Census and Statistics:

1939

1948

Manila.....

623,492

963,906

Quezon City .....

39,013

107,977

Rizal City.....

55,161

88,728

Caloocan .....

38,820

55,208

Makati .....

33,530

41,335

Mandaluyong .....

18,200

26,309

San Juan del Monte.....

18,870

31,493

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Total.....

827,086

1,337,956

"(b) That the volume of business has also increased in great portion, 'con la probabilidad de que Manila se convierta en emporio comereial en el Extremo Oriente' (Halili vs. Ice & Cold Storage Industries of the Philippines, R. G. Nos. 336-343).

"(c) That the University of the Philippines has already transferred to its present site in Quezon City, which may be followed by other institutions of learning now in Manila; that Quezon City will also be the seat of the National Government in the near future, and this will necessarily mean the expansion of the taxicab service and other means of transportation to said City;

"(d) That the taxicabs render a service different from that rendered by the autobuses, the former being for individual transportation, while the latter is for mass transportation in general.

"(e) That the lack of taxicabs is keenly felt in the City of Manila, especially on certain hours of the day, in spite of the fact that at present there are 1,759 taxicabs actually operating. This fact has been testified to also by the Chief, Motor Vehicles Office, Mr. Primo Villar, and by the Chief of the Traffic Division of the Manila Police Department, Major Frank C. Young,"

And on the basis of these findings the Commission made the following conclusion:

"Considering the above established facts and the investments made by the post-war operators who furnished the taxicab service which pre-war operators failed to render, the granting of regular or permanent certificates to

the present holders of the so-called temporary certificates and to some of the new applicants or prospective operators is justified." Section 35 of the Public Service Act provides that the Supreme Court may modify or set aside any order, ruling or decision." Following this legislative mandate this Court in reviewing an order or decision of the Commission has consistently declared that it will not substitute its judgment for that of the Commission unless it clearly appears that there is no evidence reasonably to support such order or decision. In the present case, respondents' evidence tends to show that there is real need for more taxicabs if public convenience in the city of Manila and suburbs is properly to be served. To a certain extent this is contradicted by petitioners' proof. But in our opinion the evidence preponderates in respondents' favor, and in any event we cannot say that there was no proof before the Commission reasonably to support the appealed decision.

Starting with the assumption that the appealed decision grants permanent certificates to post-war operators, the petitioners question the jurisdiction or authority of the Commission to issue such certificates on the basis of what they call "emergency conditions. "But the assumption is erroneous, for the decision expressly states that those certificates "shall be valid and subsisting only for a period of fifteen (15) years counted from January 1, 1949. " In other words, though the operators have asked that their temporary certificate be converted into permanent ones, the Commission has merely extended the life of those certificates for a period of 15 years from the date of their expiration. Being for a limited period only, the certificates cannot be considered permanent. And as to the expediency and justice of prolonging the life of these certificates, there can hardly be any dispute, for aside from the fact that the Commission has found, on the basis of evidence presented, there is further necessity for their continuance if public convenience is to be adequately served, there is the equal need of doing equity to these who have risked capital to render the service which those who were called upon to do so were not disposed or were not in a position to supply. As was said by this Court in the case of *Malate Taxicab and Garage Company vs. Public Service Commission*, G. R. No. L-2877 (decided April 26, 1951), where this very question came up for determination:

"It would seem a matter of simple justice, in the light of their past performance, of the enormous increase of population of Manila and neighboring cities and municipalities, and of the encouragement given them by the Commission, thank to the failure or inability of pre-war operators to supply normal needs, that the post-war operators should not now be left in the lurch. They had answered the call of service for the convenience of the public, at a time when, in the words of the appellant, 'the supply (of cars and taxi meters) was very meager and limited when everything was priced at a premium, when new cars could be obtained only in the so-called Black Market.' Whatever the reasons for the pre-war operators' refusal or inability to resume full operation during the acute shortage of transportation facilities, the investments of the post-war, small operators deserve protection, at least as much as those who claim to have lost heavily as a result of the war. At the most, the Commission does not appear to have acted arbitrarily in issuing regular certificates of public convenience to these operators."

Anent the third ground of attack, which refers to the increase of equipment for both pre-war and post-war operators, the Commission has also found from the evidence "that the number of taxicabs presently being operated in Manila is not sufficient to meet the needs of the traveling public," so that the increase of equipment is in order, the only point to be determined being the number of units that should be authorized in addition to those actually operated. There can of course be no fixed formula for determining with mathematical precision the number of additional taxicabs needed so that in the determination of that point a great deal must necessarily be left to the judgment and experience of the Commission. Making use of that discretion the Commission has estimated the additional units needed as follows:

"The population of Manila and the adjoining cities and municipalities before the war was 627,036 while the number of taxicabs then in operation was approximately 1200 out of the 1,356 units authorized the then existing ten operators. After the war, the population has increased to 1,337,956 with approximately 1,759

taxicabs in actual operation. In view of the great increase in population of Manila and the adjoining cities and municipalities, the established need for additional taxicabs and so as to provide for future expansion, the Commission is of the opinion that the number of taxicabs now operated may be raised to two thousand two hundred ninety-eight (2,298) or an increase of five hundred thirty-nine (539) over the present 1,750 units.

"We believe that this increase is a conservative estimate after having taken into consideration the financial capacity of each and every applicant, and the fact that the Commission is in duty bound to preserve and to protect the taxicab business against unnecessary and wasteful competition. If the increase in the number of units herein authorized proves to be insufficient, then applications for further increase may be entertained by the Commission.<sup>11</sup>

We find nothing in this estimate that would justify us in substituting our judgment for that of the Commission.

The claim of ruinous competition is not justified by the proof. There is no clear-cut evidence that these petitioners are losing because of the increase of equipment granted to other operators. And the mere fear that ruinous competition will follow such increase deserves scant notice when it is not justified by the evidence.

There is indeed a rule, and a sound one too, that old operators must be protected in their investment so long as they are willing and able to serve the public need in a proper and adequate manner. But this rule is not absolute, for this Court has time and again held that the grant of a certificate or preference to a new operator is in order where the old operators were given a chance to improve or complete their service but have failed to do so, (*Jose de la Rosa vs. Pedro V. Corpus*, 66 Phil. &; *Interprovincial Autobus Company, Inc. vs. Lubaton*, 6. R. No. L-3622, decided July 26, 1951.)

The record shows and it is not disputed that present petitioners have all been given ample opportunity to complete the equipment which they were authorized to operate. The original period of six months given to them for that purpose was extended several times, the last extension being until September 30, 1945. In all, the total period granted was about three years. They would make it appear that their failure to complete their equipment was due either to the difficulty of acquiring taxicabs or to the fact that they have not yet collected their war damage claims. The first excuse is not convincing, considering that the other pre-war operators as well as the post-war one have been able to acquire plenty of taxicabs, and the second excuse is no valid ground for depriving the public of a necessary service. Public convenience is the paramount consideration in these matters, and public not be served if petitioners herein were allowed to play the role of dog in the manger and prevent others from rendering a service which they themselves cannot give.

In view of the foregoing, the decision appealed from is affirmed, with costs against the petitioners.

Paras, C.J., Feria, Bengzon, Padilla, Tuason, Jugo and Bautista Angelo JJ., concur.

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### CONCURRENTE

#### PABLO, M.,

Los nuevos operadores a quienes la Comision de Servicio Publico concedio 15 años de certificado de conveniencia publica para operar sus coches—ampliando su certificado temporal que termina en 31 de diciembre de 1948—estan en la misma condicion en que lo estaba Ramon L. Corpus en el asunto G. R. No. L-325.[\*] Corpus solicito que su certificado provisional de conveniencia publica que terminaba el 31 de diciembre de 1947, se le dio el plazo irrisorio de dos años se extendiese a un plazo razonable para que pueda recuperar su inversion, y la Comision de Servicio Publico denego su peticion.

Yo disenti de la decision de la mayoria confirmando la decision de la Comision de Servicio Publico. Entonces dije:

"Si estos antiguos operadores no estaban en condicion de prestar el servicio que necesitaba el publico, cuando todo era confusion, ruina y desolacion, ¿por que se limita a dos años (en vez de un plazo razonable dentro del cual se pueda recuperar una legitima inversion) la validez del certificado de conveniencia publica que se concedio al solicitante? ¿Por que razon no ha de tener igual proteccion el recurrente que invirtio su capital, acaso hasta el ultimo centimo de sus ahorros, para contribuir con sus esfuerzos para afrontar la crisis de medios de transportacion? Si a los antiguos operadores se les concedio 25 años de plazo para operar, por que a los nuevos operadores, entre los cuales esta el recurrente, que gustosamente aportaron su pequeño capital para acelerar la solucion del grave problema de transportacion, no se les ha de dar igual derecho? ¿Por que ahogar a los pequeños y nuevos operadores para dar vida a los grandes intereses? ¿Es para fomentar el monopolio opresivo y odioso de las grandes empresas?

"El punto cardinal que debe tener en cuenta la Comision es la solucion pronta de la necesidad del publico de un servicio de transportacion seguro, barato y eficiente. Hasta la fecha no hay exceso de vehiculos de pasaje y carga. Los pasajeros viajan en trucks colmados de sardinas en banasta. El coche de uso privado esta solamente al alcance de los pocos mimados por la fortuna. La crisis de transportacion persiste. Los precios, debido en parte a esta crisis, estan por las nubes. La poblacion de Manila y pueblos limítrofes ha triplicado. La afluencia migratoria hacia Manila desde las provincias, especialmente de las del centro de Luzon, continua. No hay peligro de que por unos cuantos auto-trucks más, pues todos en el servicio de transportacion no vayan a tener pasajeros los antiguos operadores cuando esten en condicion de poner en circulacion sus nuevos coches.

"La tendencia actual de los gobiernos es evitar la acumulacion de la riqueza en pocas manos.

\* \* \* \* \*

"Esos pequeños operadores que estan condenados a muerte y cuya ejecucion tendra lugar el 31 de Diciembre de este año, tienen derecho a sobrevivir como los grandes intereses, en justicia y equidad. Al recurrente se le debe conceder un plazo de quince años para operar su negocio de transportacion, si queremos administrar justicia por igual a todos."

Al conceder la Comision de Servicio Publico a estos nuevos operadores 15 años de plazo para operar sus coches, ha hecho un acto de justicia. Los nuevos operadores han puesto su capital en el negocio y es justo que se les de oportunidad para recuperar el capital invertido, aun con la oposicion de los antiguos operadores. El aumento de la poblacion de Manila, las nuevas actividades en todo, como consecuencia necesaria del desarrollo rapido del comercio e industria aconsejan la concesion a los nuevos operadores de un plazo de 15 años.

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[[\*]] Corpus contra Comision de Servicio Publico (79 Phil., 444)

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