

RAYMUNDO TRANSPORTATION CO., INC., PETITIONER, VS. A. GERGARAY TANCHINGCO, RESPONDENT.*G.R. No. L-7224. May 27, 1955*

Ponente: REYES, A., J.

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This is a petition to review a decision of the Public Service Commission.

It appears that on January 12, 1946, A. Gergaray Tanchingco was granted a temporary certificate of public convenience to operate an auto-truck service of ten round trips a day between Binangonan, Rizal, and Manila and authorized to use four units for that purpose. On December 10, 1947, he applied to have the said certificate made permanent, though pending determination of his application, (and on the plea that there was scarcity of trucks and spare parts in the market at the time) he was, on February 23, 1948, permitted by the Commission to withdraw or lay off two of the units without prejudice to their being reinstated in the future.

The application for the conversion of the temporary certificate into a permanent one was opposed by other operators in the territory, but only Raymundo Transportation Co., Inc., the herein petitioner, prosecuted its opposition. Having found after hearing that public convenience would be prompted in a proper and suitable manner by the granting of the application, the Commission decided in favor of the conversion and gave the applicant a certificate of the public convenience good for 25 years to operate the trips and units previously authorized under the temporary certificate. This is the decision now before us for review.

Petitioner's contention is that the Commission, in making respondent's certificate permanent, should have restricted it to the operation of only two units, alleging that the reinstatement of the other two units previously withdrawn would only lead to ruinous competition, resulting in decreased earnings and ultimate destruction of pre-war operators whose business the Commission is in duty bound to protect from newcomers.

After going over the record we see no reason for disturbing the decision below.

The claim ruinous competition has not been proved. On the other hand the Commission has found that there is need for operating the two units previously withdrawn, specially because eleven of petitioner's authorized units are in storage and not in actual operation, so that the operation of respondent's two laid-off units would in fact merely replace part of the service that petitioner is not giving the public because of the storage of its own eleven units. Petitioner speaks of losses; but while its evidence discloses some monthly losses in 1952 and 1953, that same evidence also shows actual yearly gains. And even supposing that it has really suffered losses, there is no showing that these were attributable either to ruinous competition or decreased volume of business due to increase in number of competing units. And while it is conceivable that the operation of respondent's two laid-off units may to a certain extent affect petitioner's business, there is no showing either that petitioner would on that account be deprived of a fair return on its investment. "The mere possibility of reduction in the earnings of a business is not sufficient to prove ruinous competition. It must be shown that the business would not have sufficient gains to pay a fair rate of interest on its capital investments." (Almario, Public Service Act, p. 58. citing Manila Electric

Co. vs. Pasay Transportation Co., Inc., 66 Phil. 36; Halili et al., vs. Isip, G. R. Nos. L-2458 and 2476, promulgated on January 28, 1950.)

Petitioner pleads that the Commission should concern itself with the protection of the established operators against unfair and ruinous competition from newcomers. But protection should be consistent with public need and should not be invoked where, as in the present case, it would merely favor an old operator who is admittedly not operating its entire fleet of authorized units—it has not registered 11 of them and prevent a newcomer from supplying at least a part of the service thus abandoned.

The decision below is, therefore, affirmed, with costs against the petitioner.

Pablo, Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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