

ALFREDO REYES, PLAINTIFF AND APPELLANT, VS. JOSE PASCUAL, DEFENDANT AND APPELLEE.*G.R. No. L-16659. April 26, 1961*

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

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This case started with a complaint filed by Alfredo Reyes on October 3, 1958 in the Court of First Instance of Camarines Norte to enjoin the defendant Jose Pascual from operating a ferry business along the Mercedes-Manguisoc Ferry, Mercedes, Camarines Norte, and for damages.

From the stipulation of facts submitted by the parties in the court below, it appears that both plaintiff and defendant are simultaneously operating the business of ferrying passengers and cargo on the ferry line in question; that plaintiff started operating his service on September 25, 1958, under authority (1) of an award and contract from the municipal council of Mercedes (duly approved by the provincial board of Camarines Norte), granting him the exclusive lease and operation of the Mercedes-Manguisoc Ferry for one year, after having been declared the highest and winning bidder in a public bidding conducted by said municipality for that purpose on August 27, 1958, and (2) of a "bay and river license" issued by the Bureau of Customs on September 25, 1958; that defendant, on his part, started his ferry business sometime on May 15, 1958, on the strength of a "bay and river license" granted by the Bureau of Customs on May 15, 1958; that defendant had personal knowledge of the public bidding conducted by the Municipality of Mercedes on August 27, 1958 offering for lease the operation of the Mercedes-Manguisoc Ferry, but did not participate in said bidding; that the Mercedes-Manguisoc Ferry line has been in existence since time immemorial, and since the creation of the municipality of Mercedes as an independent juridical entity in 1948, the operation of said ferry line has always been under the administration of said municipality; that there is an application pending with the Public Service Commission filed by defendant and opposed by plaintiff, for a motorboat service covering the ferry line in question; that plaintiff nets an average income of P4.00 from his ferry business, which income could have been doubled were it not for defendant's competing business; and that as a result of the filing of this case, each of the parties has suffered and will suffer liquidated damages of P500.00, attorney's fees and P600.00) other expenses.

The theory upon which plaintiff brought his complaint for injunction is that he has an exclusive right to operate said ferry business by virtue of his award and contract from the Municipality of Mercedes, and that defendant's operation of the same service is illegal; while the theory of defendant is that the municipality of Mercedes does not have the power to grant plaintiff the exclusive privilege of operating said ferry line, and that as holder of a bay and river license from the Bureau of Customs authorizing him to engage in the same ferry service, ahead of the license issued to plaintiff, he should be considered the one with the exclusive right to operate said ferry line. Sustaining defendant's line of defense, but without holding that he has an exclusive right to operate the ferry service in question, the lower court, on September 7, 1959, rendered judgment dismissing the complaint and ordering plaintiff to pay defendant costs and liquidated damages in the sum of P1,100.00. Whereupon, plaintiff appealed to this Court.

In deciding this appeal, three different sets of legal provisions should be considered:

- (1) Secs. 2318-2320 of the Revised Administrative Code providing that a municipal council shall have authority to acquire or establish municipal ferries and to either conduct said public utility on account of the municipality or let it to the private party who is the highest and best bidder, for a period of one year, or for a longer period not exceeding five years upon the previous approval of the provincial board;
- (2) Secs. 602, paragraph (3), and 910-912 of Republic Act No. 1937, formerly sections 1139, paragraph (b), and 1217-1219 of the Revised Administrative Code, providing for the issuance by the Bureau of Customs of annual "bay and river license" to vessels engaged in the business of towing or carrying merchandise or passengers in the bays, harbors, rivers and inland waters navigable from the sea, and prescribing the conditions under which a vessel should be so licensed, as well as the classes of vessels that are exempt from such license; and
- (3) Sec. 13, C.A. 146, conferring upon the Public Service Commission jurisdiction, supervision and control over ferries as part of its general jurisdiction over public utilities.

In *Municipality of Gattaran vs. Elizaga*, 91 Phil., 440 this Court held that while section 13 of Commonwealth Act No. 146 confers general jurisdiction upon the Public Service Commission over ferries, said jurisdiction does not include the issuance of a certificate of public convenience to an applicant for a ferry service in a municipality who has not been previously granted the privilege to operate said ferry by the municipality in which the ferry is located, under sections 2318 and 2320 of the Revised Administrative Code. In that case, we also reconciled the two seemingly conflicting jurisdictions of the municipality, on the one hand, and the Public Service Commission, on the other, over municipal ferries, in that the first is specific and aimed at "providing an additional source of revenue to municipal corporations for their maintenance and operation"; so that a private party must first be awarded the right to operate the municipal ferry before he can file an application for a certificate or permit with the Commission, and the latter, upon granting it, will fix the rates to be charged as well as specify the kind of equipment to be used by him for the comfort, convenience, and safety of the public using the ferry. Only when the ferry is not a municipal one (that is, does not lie entirely within the territorial jurisdiction of a municipality) and is impressed with the character of a national highway in that it connects portions of a national highway on opposite sides of the river, is the municipal approval dispensed with as a prerequisite for the Public Service Commission's grant of a permit to operate (*Cababa vs. Public Service Commission*, 102 Phil., 1013; 54 Off. Gaz., 6868).

By the same pattern of reasoning, we should also hold that where a municipal ferry is concerned, the specific jurisdiction and authority given by sections 2318-2320 of the Revised Administrative Code to the municipality wherein the ferry is situated should prevail over the general jurisdiction given by the Tariff and Customs Code to the Bureau of Customs over the carriage of passengers and freight in Philippine bays and rivers, so that without first obtaining municipal approval and grant, a private party can not legally operate a municipal ferry even if he should hold a bay and river license from the Bureau of Customs. Besides, a careful reading of sections 910-912, in relation to section 602 (3), of the Tariff and Customs Code of 1957 (which was already the applicable law when the facts of this case arose)[1], superseding sections 1217-1219 and section 1139, paragraph (b) of the Revised Administrative Code, would indicate that the jurisdiction of the Bureau of Customs is primarily over the "vessels" engaged in the carrying of passengers and freight in Philippine rivers, i.e., their seaworthiness, adequacy and safety, rather than over the granting of the exclusive right or privilege to operate such carrying business between specific termini. In other words, although a private party already has municipal approval to engage in, a municipal ferry service, he must likewise obtain a bay and river license from the Bureau of Customs for the vessel or craft he would utilize for such service, under the conditions prescribed by the customs law for that purpose, as another condition precedent to his operation. But the authority to grant exclusive right or privilege to operate the municipal ferry service lies with the municipality concerned and not with the Bureau of Customs, so that although

a vessel has already been duly licensed by said Bureau to engage in a municipal ferry service, still the owner of said vessel can not legally operate unless he is duly authorized to do so by the municipality in whose territory the ferry lies.

For the above reasons, we hold that as the party duly authorized by the municipality of Mercedes to operate the Mercedes-Manguisoc Ferry, plaintiff-appellant has the legal right and privilege to conduct such ferry service, to the exclusion of defendant-appellee, who holds no municipal authority for that purpose. Considering, however, that defendant was not guilty of any bad faith but fell into an honest mistake when he thought he could lawfully operate another ferry service along the same line with a license duly issued by the Bureau of Customs, he should not be adjudged liable in attorney's fees and litigation expenses to plaintiff-appellant.

Wherefore, the judgment appealed from is reversed, and another one entered permanently enjoining defendant-appellee Jose Pascual from operating a ferry service along the Mercedes-Manguisoc Ferry for the duration of the award and contract given by the Municipality of Mercedes to plaintiff-appellant Alfredo Reyes to operate said ferry service. Costs against defendant-appellee in both instances.

Bengzon, Acting C.J., Padilla, Bautista Angelo, Labrador, Concepcion, and Dizon, JJ., concur.

[1] The text of these provisions are:

"Sec. 602. Functions of the Bureau.

The general duties, powers and jurisdiction of the bureau shall include:

* * * * *

d. The general supervision, control and regulation of vessels engaged in the carrying of passengers and freight or in towage in coastwise trade and in the bays and rivers of the Philippines.

* * * * *

"SEC. 910. Bay and river license.

Annual license authorizing vessels of any tonnage to engage in the business of towing or carrying of articles or passengers in the bays, harbors, rivers and inland waters navigable from the sea shall be issued by the Collector of the various ports of entry under the conditions herein below prescribed; and except so otherwise expressly provided, no vessel shall be permitted to engage in this character of business until the proper license therefor has been procured.

A bay and river license shall specify the particular port or other body of water in which the vessel in question may engage in business as aforesaid."

"SEC. 911. Vessels eligible for bay and river license.

To be eligible for the bay and river license, a vessel must be built in the Philippines, and the ownership of such vessel must be vested in: (a) citizens of the Philippines; (b) domestic corporations or companies seventy-five per centum of whose corporate capital belongs to citizens of the Philippines: Provided, That the present owners of vessels with bay and river license under existing law who do not possess any of the requirements herein prescribed may nevertheless continue operating such vessels as eligible for said bay and river license." (All italics supplied)

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