

ENCARNACION E. VDA. DE FERNANDO, ET AL., PETITIONERS, VS. MAGDALENA F. GALLARDO, RESPONDENT.*G.R. No. L-4860. September 08, 1953*

Ponente: PARAS, C.J.

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Magdalena F. Gallardo filed a petition with the Public Service Commission praying (1) that her temporary certificate issued in cases Nos. 1326 and 28889, for the operation of bus services, be converted into regular or permanent certificates, and (2) that a new certificate be issued to operate a bus service of six units between Cabanatuan and Manila and of four units between San Jose and Manila. No opposition was registered to the first petition. The second was opposed by Encarnacion E. Vda. de Fernando, Angat-Manila Transportation Co., Inc., and Rural Transit, but the latter's opposition was subsequently withdrawn. The Commission, in its decision dated May 11, 1951, granted not only the conversion of the temporary certificates into permanent certificates, but also the new certificate applied for Encarnacion E. Vda. de Fernando and Angat-Manila Transportation Co., Inc. have appealed by way of the present petition for review.

The herein petitioners are pre-war bus operators between the same lines covered by the new certificates conceded to Magdalena F. Gallardo in the appealed decision, and petitioners' contention is that, even assuming—as the Commission had found—that there is now public need for additional bus service, they are entitled to preference in the granting of any new units. Attention is called to the fact that only about six months before the appealed decision, the petitioners applied for authority to add fourteen trips to their schedule over the same lines, but the Commission granted only three additional trips, alleging that these were sufficient to meet transportations demands at the time. Indeed, the Commission expressly stated that "there will be no further need for some time to permit any additional trip or trips therein."

Being old operators, unquestionably able and ready to increase their units, the petitioners are entitled to protection and priority as against new operators. As held in *Batangas Transportation Co. vs. Orlanes*, (52 Phil., 455, 466), "so long as the first licensee keeps and performs the terms and conditions of its license and complies with the reasonable demands of the public, it should have more or less of a vested and preferential right over a person who seeks to acquire another and a later license over the same route." The herein respondent capitalizes the circumstance that the previous case wherein the Commission granted only three additional trips to the petitioners was in relation to the conversion of petitioners' certain emergency certificates, but this point is immaterial because the fact remains that, as to the new certificate granted in the appealed decision to the respondent, the petitioners are prior operators.

Wherefore, the appealed decision is reversed and set aside insofar as it grants to the respondent Magdalena F. Gallardo a new Certificate of Public Convenience to operate on the lines of Cabanatuan-Manila and San Jose-Manila. So ordered, with costs against the respondent.

Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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