

**RAYMUNDO TRANSPORTATION CO., INC., PETITIONER, VS.
VICTORINO CERVO, RESPONDENT.***G.R. No. L-3899. May 21, 1952*

Ponente: BAUTISTA ANGELO, J.

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Immediately after the liberation of the Philippines, Victorino Cervo secured an emergency certificate of public convenience to operate one auto-truck from Pililla to Manila from the Public Service Commission. This emergency certificate having expired on December 31, 1948, it was extended for an indefinite period in line with the policy of the Commission. In the meantime, he filed a petition for the conversion of his emergency certificate into a permanent one. The application was first heard on March 24, 1949, before chief attorney Antonio H. Aspillera who was authorized by the Commission to receive the evidence. Of the several operators affected on the line applied for by Cervo, only petitioner herein has filed its opposition to the application.

Among the grounds stated by petitioner in its opposition, are: that in the line applied for by Victorino Cervo, now respondent, there is no need for any additional service or operator; that if there is need for additional service, petitioner is willing to put up such additional service; and that the proposed service will be but a duplicate of the service being rendered by petitioner and will only lead to a ruinous competition.

After attorney Aspillera has submitted his report to the Public Service Commission, the latter rendered its decision granting the permanent certificate applied for by respondent. Its motion for reconsideration having been denied, petitioner filed the present petition for review. The first error assigned by petitioner-appellant refers to the delegation made by the Public Service Commission to chief attorney Antonio H. Aspillera of its authority to receive the evidence in connection with the application of respondent which, it is claimed, cannot be legally done because this is a contested case.

This claim is well taken, as it is in line with a recent decision of this Court (G. R. No. L-2639). However, we find that petitioner is raising this question for the first time in this instance for it has never made any objection to the designation of attorney Aspillera as a commissioner to receive the evidence in this case either before him or before the Public Service Commission. Instead it submitted itself to trial and presented its evidence before him. As provided for in Rule 43, section 2 of the Rules of Court, an appellant can only raise in a petition for review questions that had been raised by him before the Public Service Commission, and as petitioner has never raised this question before the Commission, the same cannot now be raised in this petition for review.

The other errors assigned by petitioner-appellant may be boiled down as follows: (1) that appellee should not have been allowed to invade the Pililla-Manila line because appellant has been operating on it even before the war; (2) to allow appellee to operate on the same line would result in a ruinous competition with appellant; (3) that public necessity does not require the service proposed by appellee; and if it so requires, appellant should have been given the preference to put up such additional service; and (4) it is unwise to grant a permanent certificate of public convenience to appellee after appellant had completed its pre-war equipment of 51 units pursuant to the

requirements of the Commission.

The first issue has no merit. The fact that appellant has been operating on the Pililla-Manila line for a long time does not preclude the Public Service Commission from granting an additional permit to operate on the same line if public necessity so demands. This is a matter for the Commission to determine. In it many factors are involved, and as long as they are met by the applicant the granting of a new permit is justified. Public necessity and convenience are of paramount importance.

The claim that to allow the appellee to operate on same line would only result in a ruinous competition is a question which depends upon the requirements of the travelling public. When public necessity requires that a new operator be allowed to put up an additional service, that cannot be considered a ruinous competition, for it is to be presumed that the demand of the passengers in that line is such as to justify the requirements of all those tiio are in the service. Competition if wholesome and constructive should be allowed because it tends to promote satisfaction and efficiency in the management and operation of the public service. This is what the Public Service Commission did: to allow a wholesome competition. There is no showing that the competition is ruinous or prejudicial to the appellant.

Whether public necessity and convenience warrant the putting up of additional service on the part of the appellee, is a question of fact which the Public Service Commission has found in the affirmative. This finding, being supported by sufficient evidence, should not be disturbed (*Manila Yellow Taxicab Co. Inc. & Acro Taxicab Co. Inc. vs. Danon*, 58 Phil. 75). The plea that if public necessity requires the putting up of additional service such privilege should be given to appellant which is old in the service is tenable, but there are cases where this cannot be done without causing injustice to emergency operators who were forced to enter the field due to the inability of old operators to rehabilitate and resume their former service in keeping with the demand of the travelling public. And one of these operators is the appellant which only recently acquired the needed equipment to put its service on a pre-war level. To deprive the appellee now of the privilege already enjoyed by him after investing money and effort for the sole purpose of giving preference to the appellant would be most unfair and unjust and cannot in equity be sanctioned by this Court. Such a ruling would lead to a monopoly and this should be avoided.

In view of the foregoing, we find no error in the decision of the Public Service Commission.

Wherefore, the decision appealed from is hereby affirmed, with costs against the appellant.

Paras, C.J., Feria, Pablo, Bengzon, and Tuason, JJ., concur.

CONCURRING AND DISSENTING

MONTEMAYOR, J.:

I concur in the majority opinion in so far as it affirms the decision of the Public Service Commission converting the emergency certificate previously issued to respondent Victorino Cervo into a permanent certificate. Said emergency certificate was given to Cervo during the emergency following the termination of the war when the petitioner Raymundo Transportation Co., Inc., because of the destruction of its units and equipment and its inability to immediately replace them, was not in a position to render the transportation service required by the public, while respondent Cervo as an emergency operator filled the breach and by his ingenuity and resourcefulness, gave the service badly needed. In a decision by this Court in the case of *Interprovincial Autobus Co., Inc. vs. Roman Mabanag*, 88 Phil. 66, we said that as a reward to these postwar, emergency operators, their emergency certificates should be converted into permanent ones. I also agree that the legality of the delegation

made by the Commission to its Chief Attorney, Antonio H. Asplllera, of its authority to receive evidence in this contested case, may not be raised in this appeal for the first time.

However, I disagree to the other considerations made in the majority opinion, particularly, that the fact that an old operator who has been operating on a certain line for a long time does not preclude the Commission from granting an additional permit to operate on the same line if public necessity so demands. The majority opinion also states that any ruling that leads to monopoly should be avoided.

I maintain that as long as an old, established land transportation operator is giving good, adequate, safe and efficient service, no other (new) operator should be allowed on the same line, unless the Commission and this Court desire to allow and encourage ruinous, cut-throat competition, with all its attendant evils, among them, the common practice of racing on the highways by rival buses, endangering the lives and limbs of passengers, just to be ahead in picking up passengers, and discourage established companies which were first on the field and endanger, even destroy their capital. If additional services on a line are needed by the public, the old operator should be required and be given an opportunity to render such service, and increase its units and equipment if necessary. Only when such old operator fails or refuses, should a new operator be given the certificate to operate and give said needed service.

In a long line of decisions of this Tribunal which I had occasion to cite in the case of Interprovincial Autobus Co. vs. Clarete, (supra p. 275)[1] the Supreme Court has repeatedly held that it is the duty of the Public Service Commission to protect rather than to destroy the investments of established operators, and that it should not grant a subsequent license or certificate to another for the same thing over the same route or line; that rights are to be protected before permitting ruinous competition; and that before granting a certificate to a transportation company, there being another with a proper certificate, the latter should be given an opportunity to Improve Its service if deficient or inadequate. This is a wholesome policy which for many years the Government thru this Tribunal, has fostered and carried out, and I greatly deplore seeing this policy disturbed or abandoned by means of the considerations in the majority opinion which I had occasion to refer to.

I do not mean to advocate monopoly in transportation, which the majority wants to avoid. It is the principle and rule of giving preference to old operators who were first on the field, that I am trying to defend. Speaking of old transportation operators in the case of Interprovincial Autobus Co., vs. Clarete, supra, I had occasion to say:

"* * * that these old operators were pioneers in the field of transportation. They in a way blazed the trail In this field of activity, educated the public to travel and created a demand for transportation. They ventured into the new enterprise and into an uncharted region and took chances of losing; they put their capital, oftentimes subscribed by trusting stockholders, in the undertaking, in the belief and assurance that with the protection and supervision of the Government they would receive adequate returns for their investment; and that the same Government would not allow or tolerate, much less encourage unnecessary and ruinous competition which would result in the loss, not only of reasonable profits but even of the capital itself.

"Furthermore, the transportation business over long distances as distinguished from cab services in the cities, is no small time undertaking. To give efficient, adequate, and safe service requires big capital, a corpus of skilled mechanics, drivers, conductors and a fleet of units not only busses and autotrucks but also of emergency units to tow and to take care of units stalled or broken down on the highway."

An old, established operator can easily give the additional service needed by merely assigning extra units or equipment, all under the same management. On the other hand, a new operator would find it more difficult and expensive to cover the same line with new equipment, garages and stations, and install officials, resulting in the unnecessary duplication of expense and effort on the same line.

If I have dwelt perhaps a little too extensively on this point of ruinous competition, duplication of services, and the preference to be given to old transportation operators, it is because of the importance that I attach to it, and the far-reaching effect which a change in the policy would entail.

[1] Batangas Transportation Co. vs. Orlanes, 52 Phil., 455; Batangas Transportation Co., vs. Ochoa, G. R. No. 29154; Silang Traffic Co., vs. Karungkong. 56 Phil., 826; Mangubat & Leveriza vs. Silang Traffic Co., G. R. No. 31556; Bohol Land Transportation Co., vs. Jureidini, 56 Phil., 560; Tan Sima vs. Hacbong, 58 Phil., 16; and Pangasinan Transportation Co., vs. Manila Railroad Co., 60 Phil., 617.

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