

ALFONSO CAPABA, PETITIONER, VS. BALBINO REMIGIO AND PONCIANO CARILLO, RESPONDENTS.*G.R. Nos. L-17832-33. May 29, 1963*

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

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Petitioner Alfonso Cababa is appealing the joint decision of the Public Service Commission, dated 18 October 1960, granting certificates of public convenience to respondents Balbino Remigio and Ponciano Carillo to operate ferry services across the Cagayan River.

In PSC Case No. 90347, Balbino Remigio applies for authority to operate a ferry service by motorboats across the Cagayan River between Catotoran, Camalaniugan, and Mabangug, Aparri, all in the province of Cagayan. In PSC Case No. 91510, Ponciano Carillo prays for a permit to run a ferry service by motorboat across the Cagayan River, between Alilibu, Camalaniugan, and Mabangug, Aparri, all in the province of Cagayan.

Cababa, a holder of a certificate of public convenience (PSC Case No. 63659) for the operation of a ferry service across the Cagayan River between barrios Catotoran and Caloagan, both in the municipality of Camalaniugan, Cagayan, with an authorized equipment of three units, opposed both applications on the same grounds, to wit: (a) that both respondents are not financially capable of operating the ferry services; (b) that there is no need for the additional ferry services; and (c) that petitioner should be given preference to provide the new ferry services, if there is any need for it.

Both cases were heard jointly as each had the same oppositor and objective, i.e., to serve as a continuation, by water craft, of the Cagayan-Ilocos national highway across the Cagayan River, between the municipality of Aparri, Cagayan, on the west bank of the river, and the municipality of Camalaniugan, Cagayan, on the opposite bank. After hearing, applicants-respondents were each granted certificates to operate one motorboat, subject to the conditions specified in the appealed decision. In his petition for review, Cababa reiterates the same grounds for his objection to the applications of respondents.

With respect to the financial capabilities of respondents, the following are undisputed that Balbino Remigio owns 12 hectares of riceland valued at P14,000, a house worth P8,000.34, nine trucks at P36,000, an annual income of about P24,000, and two outboard motorboats, "Guadalupe" and "Salvador", duly registered in the Bureau of Customs. Ponciano Carillo, in turn, has 15 hectares of riceland valued at P22,000, from which he produces from 500 to 600 cavans of rice a year; a house worth P10,000 in Sanchez Mira, Cagayan, a residential lot of P11,000, a drug store assessed at P5,000, and a repair shop worth about P7,880. He is also an authorized ferry service operator in Pamplona and Lucban, Abulug, both in Cagayan, and a TPU auto-truck operator of 4 units. In addition, he is a registered proprietor in the Bureau of Customs of two outboard motor vessels, "Roger" and "Roger I", which he intends to use if and when his application is finally approved.

Obviously, the mere fact that Remigio had previously sold to third parties his certificate for the operation of a TPU service does not imply that he is not in sound financial condition. The same is true with Carillo, who has

satisfactorily explained that he deliberately allowed the foreclosure of one of his TPU trucks because it was defective and expensive to maintain, aside from the fact that there was no deficiency judgment as the proceeds from the auction sale was sufficient to cover the unpaid installments.

In connection with the claim raised in the second assignment of error, that there is no necessity for the additional services applied for by respondents, pertinent portions of the well-reasoned out decision of the Public Service Commission is reproduced below:

"We note with more than passing interest the existence of certain special circumstances peculiar to the parties in these cases. The records show that each of the applicants as well as the oppositor is a duly authorized operator of TPU services on either side of the river. Of the three, however, oppositor enjoys a decided advantage not only for the fact that he has more trucks than the others but more so because he also owns and operates a ferry service with which his passengers may be assured of a speedy and immediate transportation facility across the river. In the ordinary course of competitive business operations, it would seem that this circumstance lends credence to applicants claim that passengers of their TPU trucks are being discriminated against in the matter of securing accommodation in oppositor's ferry boats, more especially so on occasions when the government ferry is out of order or otherwise not in operation. We subscribe to the view that a common carrier should not, under the law, give any unnecessary or unreasonable preference or advantage to any particular person or group of persons, company, firm, corporation or locality, or to any particular kind of traffic, or to any undue or unreasonable prejudice or discrimination whatsoever.

We also attach much significance to Resolution No. 595 (Exhibit H, dated 21 March 1956) of the Provincial Board of Cagayan which noted the inadequacy of the present ferry service across the Cagayan River at Camalaniugan and the onerous practice of over charging the passengers during stormy weather conditions. Said resolution also expressed the belief that authorization of other operators of ferry services crossing the Cagayan Eiver should improve the service.

"On the other hand, oppositor maintains that the authorization of new ferry services in the area presently served by his ferry service will only result to ruinous competition. We believe, however, that this objection can be overcome by allowing applicants Remigio and Carillo to operate only one motorboat each and authorizing them to charge the same rates as those authorized oppositor Cababa. At any rate, the conclusion as to ruinous competition is one of fact and business forethought rather than one of law. The oppositor also contends that if there is a need for additional ferry service he should be given the preference to put up the additional equipment for which purpose he is ready, willing and financially capable. While we recognize that it is our duty as far as possible to protect an already established public utility operator in his investments, it is nevertheless obvious that public interests and convenience must have the first consideration. In granting or refusing to grant a certificate of public convenience, all things considered, the question that is ultimately determinative of the issue still is: What is for the best interests of the public? Applying this test to the present applications filed in these cases, and considering the special circumstances cited earlier, we believe that it is for the best interest of the public that applicants be authorized to operate ferry services of one unit each on the lines or routes applied for. Accordingly, the opposition to the approval of these application is hereby overruled." (Italics supplied).

It appearing that the evidence supports and warrants the conclusion of the Public Service Commission, we are constrained by law to sustain them.

WHEREFORE, finding no error to justify revocation of the decision appealed from, the same is hereby affirmed in all its parts. With costs against petitioner Alfonso Cababa.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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