

INTERPROVINCIAL AUTOBUS COMPANY, INC., OPPOSITOR AND APPELLANT, VS. LUIS CLARETE, APPLICANT AND APPELLEE.*G.R. Nos. L-4100 and L-4102. May 15, 1952*

Ponente: PARAS, C.J.

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The applicant-appellee, Luis Clarete, has been a TPU auto-truck operator of five units in several lines in the provinces of Occidental Misamis and Zamboanga under emergency certificates and temporary authority since September 9, 1946. In cases Nos. 33350 and 42738 of the Public Service Commission, the appellee applied for the issuance of a certificate of public convenience covering not only his actual authorized operations but also increased services over certain lines and the extension of his services to the towns of Baliangao and Labo with the use of a total of ten units, or an additional five auto-trucks. The application was opposed by the appellant, Interprovincial Autobus Company, Inc., a duly authorized auto-truck operator in the Provinces of Occidental Misamis and Zamboanga. The opposition is grounded on the allegations that the proposed service applied for by the appellee is unnecessary, because appellant's actual operations are adequate to meet the present travelling needs; that appellee's proposed service would constitute a ruinous competition; that the appellee is not capable of rendering efficient and satisfactory service. After hearing, the Public Service Commission, in a joint decision, granted the certificate of public convenience applied for by the appellee with the use however of only eight units, from which decision the oppositor, Interprovincial Autobus Company, Inc. has appealed by way of a petition for review.

Appellant's proposition is that the present auto-truck services in the provinces of Zamboanga and Occidental Misamis, especially those of appellant, are sufficient to meet the people's travelling needs. Appellee's evidence tends to show that the travelling public cannot often be accommodated by the present auto-truck operators, whereas the evidence of appellant suggests that most, of the time the auto-trucks operating on the present lines are not filled up to capacity and, as a matter of fact, the appellant suffered a loss of about P100,000 in 1949 due to lack of passengers. The matter obviously involves a question of fact, in which the Public Service Commission has ruled in favor of the appellee. We are not of course authorized to set aside the decision of the Public Service Commission, unless there is no clear evidence before the Commission to support reasonably such decision, (Section 35, Act 146.) We cannot say that there was no evidence, because, in addition to the oral evidence presented by the appellee to support his contention that more auto-truck services are necessary to cope with the increasing travelling needs in Occidental Misamis and Zamboanga, there are exhibits to the effect that the municipal councils and municipal mayors of several municipalities of Occidental Misamis, and the provincial board of said province had endorsed favorably all applications for increase of equipment of pre-war and post-war public service operators.

The Public Service Commission has attributed appellants losses allegedly suffered by it to other causes than lack of passengers. This may not be entirely without foundation, since the evidence submitted by the appellee and given credit by the Commission, tends to show that many passengers cannot be accommodated by the present

truck services.

It is immaterial that the great bulk of passengers show up on Sundays, holidays and market days, because the needs of the public travelling on said occasions cannot be ignored in determining the extent to which the present operators may increase their services. To adopt the theory of the appellant, namely, that the criterion should be the number of passengers that travel during ordinary days, would be, in effect, to curtail the privilege of those who want to travel on Sundays, holidays and market days. This Court has already held that "while it is the duty of the government as far as possible to protect public utility operators against unfair and unjustified competition, it is nevertheless obvious that public convenience must have the first consideration." (Raymundo Transportation Co. vs. Perez, 56 Phil., 274.)

The appellant attempted to show that the appellee is inefficient or rendering inefficient service, in view of the fact that the latter is the manager, mechanic, carpenter and painter of his business. As correctly observed by the appellee, he cannot be expected to employ the services of the same size of personnel employed by the appellant in its business comprising around 86 units. The fact that the appellee can afford to put up additional units, is an indication enough to show that he can handle his business profitably and efficiently. Of course, there is evidence on both sides to the effect that trucks owned as well by the appellee as by the appellant at times run out of commission, but this is a contingency naturally to arise in a normal transportation business.

The appellant also claims that at present the drivers of competing operators try to overtake each other in the desire to pick up passengers. This complaint is likely to be made even without the additional services to be put up by the appellee. At any rate, the certificate of public convenience to be issued in favor of the appellee is subject to the express condition that "it is absolutely forbidden for the applicant's auto-trucks to race with other TPU trucks on the road or to pass or try to pass them for the purpose of picking passengers ahead."

The appellant insists that, as an older operator, it should enjoy preference in the matter of adding new auto-trucks required on the old and new lines. The appellant, however, had not volunteered to apply for additional units and had thought of claiming said right only after the appellee, aware of the increasing travelling needs of the people, filed an application for the issuance of the certificate in question. Appellant's attitude is unfair both to the public and to other operators.

Wherefore, the decision of the Public Service Commission is hereby affirmed, and it is so ordered with costs against the appellant.

Pablo, Bengzon, Tuason, Bautista Angelo, and Labrador, JJ., concur.

DISSENTING

MONTEMAYOR, J.:

I regret to dissent from my brethren. After a careful study of the case, I am constrained to disagree with the Public Service Commission and with the majority in this Court as to the need for additional services, including the extension of applicant's services as well as applicant's ability to maintain the services applied for. From the records of this case as well as our own (the case of Interprovincial Autobus Co., Inc. vs. Roman Mabanag, 88 Phil., 66 recently decided by this Court), of which we may take judicial notice, I find that the transportation lines involved in the present case are already covered by services maintained not only by the present oppositor, Interprovincial Autobus Co., Inc., but also by Roman Mabanag. And there is ample reason to believe that services now being rendered by applicant and the other two TPU operators are sufficient to accommodate the Passengers

and freights in the place.

The applicant has submitted in evidence photographs of Passengers supposedly scrambling for seats in buses being operated on this line, photographs calculated to show that the service at present rendered are insufficient. However, applicant according to his own admission was not present when these photographs were taken; nor was there any evidence as to when, where, and under what circumstances the pictures were taken, and what is worse, the photographer who took them was not presented to identify the same. Said photographs are therefore of no probative value.

Occasional scrambling for seats in public vehicles happens in every transportation line however well served. One reason is that passengers sometimes are in a hurry, or happen to be at the same bus stop and do not want to wait for the next bus or trip. Sometimes rain or threat of rain creates a sudden desire and rush for shelter and transportation. On such occasions the public could and would use public vehicles without limit. After a sudden rain fall, witness city streets lined with prospective passengers frantically but vainly hailing taxis, buses, jeepneys and auto-cabs already engaged or filled to capacity. But surely this does not authorize doubling or trebling the number of such vehicles. As to the crowds of passengers on Sundays, holidays and market days, a simple change or adjustment of schedules of the present operators, including that of the applicant-appellee might solve the congestion on those days. Or, special buses operated by the present operators could easily handle the holiday crowds, without the need of authorizing the increased services and equipment now applied for.

In considering the evidence on the necessity of additional services on the transportation lines solicited by applicant, this Court and possibly the Public Service Commission would seem to have been greatly impressed and influenced by the resolutions of some municipal councils and the Provincial Board of Occidental Misamis favorably endorsing the application of Mr. Clarete. In evaluating said indorsements, we should bear in mind the point of view of those political entities and the reason that undoubtedly prompted their recommendations. They were merely trying to promote the convenience of the traveling public within their territory, but without regard to the effects or consequences to the transportation operators affected. For the traveling public, the more transportation companies there are in the field, the better. The competing lines, from the traveler's limited point of view, because of the competition, would try to outdo each other in service, even in the rate or amount of fare. If there can be a trip every hour or every half hour, or even every fifteen minutes, where before there was but one every three or four hours, the traveling public and the municipal councils or provincial board representing them would of course gladly welcome the change and increase, this regardless of whether the buses making said frequent trips are half or even one third empty. The traveling public sometimes blissfully ignores such things as cut-throat competition and unnecessary duplication of service, which in the long run would eventually spell ruin to the competing lines and their going out of business. And if any of the competing operators is fortunate enough to survive the competition and disaster, it will have suffered so much loss in fighting its rivals, that it would not be in a position, at least for a long time to render the adequate, efficient and safe service required by the public. As a result, the traveling public would be the loser. Moreover, during these critical times when in order not to disrupt our national economy, we have to conserve our dollars, we can least afford to permit waste in the unnecessary consumption of gasoline and oil and the use of tires, and the wear and tear of the motor vehicles themselves, all of which would inevitably follow the duplication of service when new operators are indiscriminately allowed to invade fields and lines already covered and served by old operators. Besides, where there are too many operators on one line and there is not enough traffic in passengers and freight for all of them, there is the tendency and the common practice of drivers of competing units to race each other on the highway so as to reach, ahead of the others, the points where passengers may be picked up. Said practice results not only in bad blood between the competing companies and their drivers and conductors, but also in real menace to the safety of the passengers riding in such buses that race each other, where no rules or speed limit are observed. We have altogether had too

many motor vehicle accidents resulting in deaths and serious physical injuries, due to this racing for passengers on the highways. The majority proceeds to solve this grave difficulty with the ingenious declaration that "at any rate, the certificate of public convenience to be issued in favor of the appellee is subject to the express condition that 'it is absolutely forbidden for the applicants auto-trucks to race with other TPU trucks on the road or to pass or try to pass them for the purpose of picking passengers ahead.' " But the cold fact is, and it is known to all passengers and bus drivers that despite all the prohibitions and warnings issued by the Public Service Commission, racing on the highways is notoriously prevalent. The only way to minimize or eradicate the evil is to remove the root cause, by not granting additional services to competing lines where the amount of traffic does not authorize it.

Further elaborating on the rule of giving preference to old established operators, there is a long line of decision of this Court on this point, where it has been held that it is the duty of the Public Service Commission to protect rather than to destroy the investments of the established operators by the granting of a subsequent license to another for the same thing over the same route or travel. (*Batangas Transportation Co. vs. Orlanes*, 52 Phil., 455). This doctrine was followed by this Court in the case of *Batangas Transportation Co. vs. Ochoa*, G. R. No. 29154.

In the case of *Silang Traffic Co. vs. Karunkong*, 56 Phil., 826, it was held, following the case of *Mangubat and Leveriza vs. Silang Traffic Co.*, G. R. No. 31556, that rights are to be protected before permitting ruinous competition.

In *Bohol Land Transportation Co. vs. Jureidini*, 56 Phil., 560, we said that "Before granting a certificate of public necessity and convenience to a transportation company or common carrier on land, there being another with a proper certificate, the latter should be given an opportunity to improve its service, if deficient or inadequate."

Again, in the case of *Tan sima vs. Hacbang*, 58 Phil., 16, where the Public Service Commission over the objection, of Hacbang, granted the application of Tan Sima to operate two trucks over the line already operated by the oppositor, this Court reversing the decision of the Commission said:

"Taking into consideration the number of passengers and the volume of freight involved, we find that Hacbang rendered satisfactory service on said lines. There was no necessity of granting a certificate to a new operator on said lines because public interests would not be benefited nor served thereby. In view of the traffic conditions and the volume of business handled by the lines in question, it may be said that an additional carrier would give rise to unjust and ruinous competition.

"On the other hand, it appears that, as a prior operator Hacbang was not given the opportunity either to improve her service or to increase her equipment in the event that such action would have been justified. Later, another carrier was permitted to operate over the same route which, naturally, prejudiced the former's certificates which should be protected in conformity with the law."

Lastly, in the case of *Pangasinan Transportation Co. vs. Manila Railroad Co.*, 60 Phil., 617, this Tribunal in reversing the decision of the Public Service Commission, said:

"In one class of cases it has oft been emphasized, and properly, that the convenience of the public must be taken into account and is a prime criterion. In another class of cases it has as appropriately been emphasized that the investments made by public service operators must be protected rather than destroyed. Here we have the two principles meeting in collision. It is our desire at once to afford all reasonable facilities to the public and to afford all reasonable safeguards for capital invested in the transportation business.

"On the one hand it is shown that there are a few passengers whose convenience would be better served if the Manila Railroad Company was permitted to extend its bus service from Sison to Binalonan. However, their convenience is more fancied than real, for the busses of the Pangasinan Transportation Company and the Manila Railroad Company meet at Sison and if there is any difference in the hour of meeting this could readily

be arranged. On the other side, it is disclosed that while busses of the Pangasinan Transportation Company have a capacity for thirty-two pair passengers, they are only carrying an average load of six passengers on these trips. It has further been established that from June, 1932, to May, 1933, the Pangasinan Transportation Company lost P2,733.29 on this line alone. Under these conditions, can it be said that public necessity is more compelling than what amounts to ruinous competition?

"* * *. With all due respect to the Public Service Commission which we are the first to uphold when its decisions can be justified, we are unable to put the stamp of our approval on the principle it has invoked and sanctioned in this case."

In the above cited cases, as well as in others, this Court did not hesitate to reverse the Public Service Commission not only when the Commission violated the policy of protecting investments of old operators by preventing ruinous competition, but also on questions of fact as to the necessity of increased services, a thing which the majority declines to do. These cases cited enunciate a wholesome policy which for many years the Government thru this Tribunal has fostered and carried out. But I am afraid that the action of the majority in the present case constitutes a wide departure from said sound policy, sanctioning as it does the invasion of territory already served by prior and old operators, resulting in ruinous competition. We should not lose sight of the fact 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 corps of skilled mechanics, drivers, conductors and a fleet of units not only-buses and auto-trucks but also of emergency units to tow and to take care of units stalled or broken down on the highway. The units must, each day, before starting, be thoroughly inspected so as to minimize as much as possible break downs delays, and accidents due to defective tires, brakes, steering wheels, etc. Experts in the purchase of units and their parts are necessary to reduce to the minimum the cost of operation so as to be able to give to the public the lowest rate possible. Does the applicant stand up to these requirements or standard?

The evidence shows that the applicant is a one-man enterprise. At present he is operating five (5) units of auto-trucks and already covers quite an extensive line, and yet he has no garage for his units. He is the manager, the mechanic, the carpenter, the washing, the painter, and the dispatcher of his units. He employs no inspectors to check on the fares paid by the passengers. He professes more or less complete Ignorance of the accounts of his business; he does not know whether he is losing or making any profit, saying that he knows that he is making profits when he has cash on hand. He has no adequate idea as to depreciation of his units, the length of life or service of his buses and their accessory, like tires, etc. He says that he is confused and made dizzy by the schedules prescribed by the Public Service Commission and as a result, on two occasions he was fined P25 for not following said schedules. But sad to say, this is the person whom the Commission and the Court, over the vigorous objection of the appellant, is authorizing to increase his units, not only to increase his services and hours of trips over the lines already covered by himself and other operators, but also to extend his services to new lines already covered by the appellant prewar operator.

To correctly determine whether or not additional services are really necessary in a certain line, the Public Service

Commission should send its own inspectors and men to the place to make their own observations and notes and report to the Commission. Such evidence or information is impartial and is more reliable than the testimony of witnesses presented by the parties, witnesses who sometimes are not only biased because identified with the party presenting them, but also not in a position to give adequate information because said information is based on only one or two trips made by them when there might have occurred a slack in passenger traffic or, the reverse—a congestion therein. And if there is really need of such increased services, the oppositor, a prewar and established operator offers to give them, and it should first be given that opportunity.

In view of the foregoing, my vote is to affirm the decision appealed from in so far as it grants a certificate of public convenience for the operations actually maintained under temporary or emergency permits so as to continue the services at present being rendered by him, but to reverse said decision in so far as it overrules the opposition and grants the application not only for additional services but for extension of said services to two new lines, and the increase of applicant's units from five (5) to eight (8).

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