SATURNINO AGUILAR AND MANILA RAILROAD COMPANY, APPLICANTS AND APPELLEES, VS. PASAY TRANSPORTATION CO., INC., OPPOSITOR AND APPELLANT.

G. R .No. 41205. August 29, 1934

Ponente: GODDARD, J.

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GODDARD, J.:

The Public Service Commissioner, on November 29, 1922, granted Tomas Mata a certificate of public convenience whereby he was authorized to operate one passenger truck between the City of Manila and the municipality of Salinas, Cavite Province. On or about January 25, 1924, Tomas Mata sold this truck and his certificate of public convenience to Saturnino Aguilar subject to the approval of the Public Service Commission. Upon due application this sale was approved and the corresponding certificate of public convenience was issued in favor of Saturnino Aguilar, the second paragraph of which reads as follows:

> "2. ª Que el auto-truck del aqui cesionario al pasar por los sitios donde hay estaciones del ferrocarril de la Manila Railroad Company, no hara paradas cerca de dichas estaciones para recoger pasajeros o carga y permitira que los agentes de tales estaciones o los inspectores de trafico de dicha compania puedan hacerle parar para averiguar de una manera adecuada y conveniente la hora de salida del punto de origen de su viaje, la cual hora de salida se hara constar en los recibos de pasaje o carga que se expidan, asi como tambien la hora de llegada al punto terminal del mismo viaje."

While Aguilar was the owner of this certificate it was modified in only one respect and that modification consisted in a change of the hours of departure from and arrival at Manila and Salinas.

On June 14, 1933, Aguilar sold the above-mentioned transportation business and his certificate of public convenience to the Manila Railroad Company. An application for the approval of this sale was filed on that same day. By an order of the commission dated June 30, 1933, this application was set for hearing on July 13, 1933, and the applicants were directed to have that order published once, ten days prior to the date of hearing, either in The Tribune or La Vanguardia.

The Toledo Transportation Company filed an opposition which was later withdrawn. An attorney appeared for the Pasay Transportation Company, but after examining the application he did not file an opposition to the approval of the sale.

Paragraph 4 of this application for approval of the sale reads:

> "That the sale and transfer of said business will not be detrimental to the public interests, in as much as the purchaser and transferee will continue the operation of same in the same manner and over the same route as heretofore."

In the decision of the Public Service Commission, approving the sale in favor of the Manila Railroad Company, paragraph 2 of Aguilar's certificate, copied above, was eliminated.

When the Pasay Transportation Company noticed that the Manila Railroad Company was not operating the Aguilar truck in "the same manner" as the former owner had been operating it and, after an examination of the record in the office of the commission, it discovered that paragraph 2 of Aguilar's certificate had been eliminated, its attorney immediately filed a motion praying that a new hearing be granted; that the decision of the commission be reconsidered and amended by including therein the restriction imposed upon Aguilar by virtue of that paragraph.

This motion alleges in part:

> "1. Que la compareciente es una corporacion debidamente constituida de acuerdo con las leyes de las Islas Filipinas, y es una operadora regular de servicio de autobuses, entre otras, entre Cavite y Manila y puntos intermedios y viceversa ; y entre Cavite e Imus y puntos intermedios y viceversa ;
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> "3. Que dicho certificado de Saturnino Aguilar contenia prohibition desde y entre Noveleta y Manila y puntos intermedios y viceversa;
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> "7. Que existiendo como existe actualmente desde mucho antes del traspaso a la Manila Railroad Company del referido certificado de Saturnino Aguilar, un servicio local entre Cavite y Manila y puntos intermedios y viceversa, que es el que se presta por la aqui peticionaria, cuyo servicio es mas que suficiente para acomodar el trafico, no solamente no procede autorizar ninguna nueva solicitud a lo largo de la linea de esta compania sino, que no procede el levantamiento de ninguna prohibicion de certificados, pues uno y otro caso, afectaran seriamente los intereses de la compareciente y no tendra otro efecto inmediato que el de entablar una competencia ruinosa en perjuicio de esta y del publico;
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> "8. Que Saturnino Aguilar nunca ha solicitado ni el levantamiento de su restriccion ni ninguna otra solicitud para que pudiera tomar y dejar pasajeros en los puntos intermedios, particularmente en la ruta o parte de la ruta servida por la aqui compareciente;
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> "9. Que en la decisidn recaida en el expediente arriba titulado no aparece inserta la prohibicion que anteriormente existia, que f ue mas expresamente definida en el Expediente No. 8039 que arriba copiamos, y la no insertion de dicha restriccion o prohibicion se habia debido segtin entendemos a un error involuntario, pero, que la misma (la no insercion de la restriccion o prohibicion) en la decision de autos, pudiera dar lugar a que la Manila Railroad Company tomara y dejara pasajeros, como en efecto, de hecho ha estado y esta actualmente tomando y dejando pasajeros y carga en y entre Noveleta y Manila y puntos intermedios y viceversa en las horas prescritas en el certificado a ella traspasado por Saturnino Aguilar.
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> "10. Que la compareciente no habiendo recibido copia de la decision de la Honorable Comision recaida en este expediente hasta la fecha, y habiendo tan solo tenido la oportunidad de enterarse de las condiciones prescritas en dicha decision ultimamente y por haberse enterado de que dicho operador esta recogiendo pasajeros en los puntos intermedios, no obstante que dicho operador en su certificado tiene las mismas restricciones que tenia en el certificado adquirido del vendedor Saturnino Aguilar, la aqui opositora no pudo presentar la presente motion de reconsideration a su debido tiempo para la enmienda de la decision recaida en este expediente."

The Public Service Commission denied this motion in an order, dated January 12, 1934, without giving the Pasay Transportation Company an opportunity to present proofs in support of the above allegations. An exception was noted and a petition for a review of the above order was filed in this court on January 30, 1934.

The Manila Railroad Company appeared and filed a written motion in which it prayed that the petition for review be dismissed on the sole ground that it was filed out of time. Section 35 of Act No. 3108, which is cited in support

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of this motion, reads:

> "Any order made by the Commission may be reviewed on the application of any person or public utility affected thereby, by certiorari in appropriate cases, or by petition, to the Supreme Court, within thirty days from the date upon which such order becomes effective, as herein provided; * * *"

The attention of this court is directed to the fact that the questioned decision is dated July 28, 1933, and that the motion of reconsideration was not filed until December 12, 1933.

This motion was denied by this court in a minute order, dated March 6, 1934. However, the same question is again raised in the brief of the Manila Railroad Company. This contention is not well founded. Section 28 of Act No. 3108 provides that the commission may at any time order a rehearing to extend, revoke or modify any order made by it. Section 35, quoted above, and the decisions of this court, cited in the motion for dismissal, are not applicable to the facts in this case. That section and the decisions cited apply to the immediate parties in a case before the Public Service Commission.

The Pasay Transportation Company was not a party to the case now under consideration and as soon as it learned that the Public Service Commission had not only approved the Aguilar-Manila Railroad Company sale, but that it had also amended, motu proprio, the certificate of public convenience, one of the objects of that sale, in a way that it considered prejudicial to its interests, as an operator over the same line, it rightly appeared and filed a motion for reconsideration.

Section 29 of the Public Service Commission Act provides that,

> "Every order made by the Commission shall be served upon the person or public service, as herein defined, affected thereby, within ten days from the time said order is filed, by personal delivery or by mailing a certified copy thereof to any one of the principal officers or agents of the public service at his usual place of business, and, in case such certified copy is sent by registered mail, the registry mail receipt shall be prima facie evidence of the receipt of such order by the public service in due course of mail. All orders of the Commission to continue service or rates in effect at the time said order is made shall be immediately operative; all other orders shall become effective upon the date specified therein." (As amended by sec. 1, Act No. 3316.)

Parties affected by an order amending a certificate of public convenience are entitled to notice. Anyone who believes that such an order affects him has a right to intervene in the case in which that order is issued, within a reasonable time and without unnecessary delay, after he receives notice thereof, or, as in this case, after learning that such an order has been issued by the commission. The right to be heard and present evidence in support of the allegations, contained in his motion of intervention, naturally follows, provided the motion of intervention or reconsideration states facts sufficient to justify a reconsideration of the questioned order and the granting of a new hearing. The facts alleged in the motion of the Pasay Transportation Company are sufficient for that purpose.

In the case of Soriano and Santos vs. Del Rosario and Rural Transit Co. (55 Phil., 934), a motion to amend a certificate of public convenience was submitted to one of the associate public service commissioners, who announced his conclusion with respect thereto. Instead, however, of entering the corresponding order, said commissioner, after the lapse of nearly a year, indorsed the matter for action to another commissioner, who, thereupon, without setting the cause for hearing, entered an order in which he announced a conclusion entirely different from that reached by the associate commissioner who heard the motion. This court said:

> "* * * After this stage of the proceedings had been reached, we are of the opinion that it was improper for Commissioner Del Rosario to decide the motion differently without at least conceding to the parties interested an opportunity to be heard. And if there cannot properly be said to have been an absolute want of jurisdiction on the part of the respondent commissioner to enter the order which is the subject of this application, there was

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> at least an irregular exercise of judicial power by him, in excess of his lawful jurisdiction, such as supplies a basis for the writ of certiorari."

In view of all the foregoing this court holds that the Public Service Commission erred in denying the motion of reconsideration filed by the Pasay Transportation Company without giving it an opportunity to present evidence in support of the allegations set forth therein and that, by reason of its failure to grant the said motion for reconsideration and new trial, there "was at least an irregular exercise of judicial power, in excess of its lawful jurisdiction." The order denying the motion for reconsideration and new trial is hereby set aside and the record in this case is remanded to the Public Service Commission for further proceedings in conformity with this decision, without costs.

Malcolm, Villa-Real, Imperial, and Butte, JJ., concur.

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