

ANTONIO HERAS AND VICENTE HERAS, PETITIONERS, VS. PEDRO DE GUIA, RESPONDENT.

G.R. No. L-7581. October 24, 1955

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

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This is an appeal from a decision of the Public Service Commission. The issues are set forth in said decision, from which we quote:

"Pedro de Guia, an authorized TPU operator between San Juan and Manila, applies in this case for a change of route and termini of his present authorized operation under Case No. 38387, as amended by Case No. 62705, from the intersection of N. Domingo and Blumentritt Streets via Mandaluyong, up to Quiapo. The proposed change is a line starting from the corner of Lt. Artiaga and N. Domingo about one (1) kilometer distant from applicant's present starting point of operation at the corner of N. Domingo and Blumentritt up to Divisoria. For the operation on the new line, applicant will use the same five (5) units now operated by him on the old line.

"Antonio Heras and Vicente Heras, operators in the same region, are opposed to this application, chiefly on the ground that the proposed service is unnecessary and that approval of the same would only cause wasteful or ruinous competition. It will be noted that of the twenty (20), or more operators who may be affected by this application and who are notified of the contents thereof and of the date of hearing, only Antonio Heras and Vicente Heras prosecuted their opposition against the application.

"For convenience of reference, a sketch, prepared in the Commission, showing the lines operated by contending parties, is attached to the records. The solid blue line on the sketch shows the present authorized service of applicant de Guia. The proposed line of de Guia. is represented by a broken blue line. The solid and broken red lines represent the authorized lines of operation of the oppositor Antonio Haras, while the broken line in ink represents the line of operation of oppositor Vicente Heras." (Record on Appeal pp. 26-27.)

After due hearing, the Public Service Commission rendered a decision granting the authority sought by Pedro de Guia and ordering that the certificate of public convenience prayed for by him be issued. The aforementioned oppositors, Antonio Heras and Vicente Heras, have appealed from said decision and, in their brief, they maintain that;

1. "The Commission erred and exceeded its powers in allowing the respondent-appellee to establish an unnecessary new service in another territory and operate on a new route which is already adequately served by the present operators without clear and convincing evidence to support reasonably the decision of the Commission submitted for review.

2. "The Commission erred and acted in abuse of discretion in permitting the respondent-appellee to discontinue and abandon the operation on his old line and to use in the operation of the new service the remaining five units authorized in case No. 38387 in competition with regular operators without first securing the cancellation of the certificate of public convenience issued in said case No, 38387.

3. Commission erred and committed an abuse of discretion in allowing wasteful and ruinous competition which will result from the operation of the new service by the respondent-appellee on his new route notwithstanding the evidence presented in the course of the hearing that jeepneys and big buses operating in this territory follow one after the other and that traffic along this route direct to Divisoria is adequately provided by the present established operators." (Petitioners-Appellants Brief, pp. 5-6)(Underscoring supplied.)

The first assignment of error involves questions of fact, in connection with which the decision appealed from has the following to say:

"The evidence of the applicant is to the effect that there is no direct service along his proposed line from the intersection of Lt. Artiaga and N. Domingo to Divisoria; that the volume of traffic in the region justifies the change proposed by him, and that the abandonment of his present line of operation represented by the solid blue line will not be prejudicial to the public because there is sufficient service left. This statement is confirmed by the records of the Commission, which show that without the service of Pedro de Guia along his old route, there will still remain nineteen (19) units operated by other operators. That there is no direct service between Lt. Artiaga and Divisoria is also confirmed by the records of the Commission.

"On the other hand, oppositors Antonio Heras and Vicente Haras, operating about seventeen (17) units between Boston and City Hall and between N. Domingo and Quiapo as shown in the sketch (15 units for the former and 2 units for the latter), contend, by their evidence, that the present service by them and other operators in the region is sufficient and that the approval of this application will only cause wasteful or ruinous competition. There is, however, no concrete evidence on this point of wasteful or ruinous competition.

"By referring to the sketch of the territory involved in this controversy, it will readily be noted that while the proposed operation of Mr. de Guia is concurrent with that of the oppositors along a major portion of the line, the service of the oppositors is entirely different and distinct from that of the applicant. Whereas the line of Antonio Heras where he operates ten (10) units starts from a point called Boston, that of the applicant starts from Lt. Artiaga, which is 2.5 kilometers distant from Boston,. Also the terminal of Antonio Heras is at City Hall, while that of the applicant is Divisoria. It is therefore not unusual that upon reaching Lt. Artiaga or any other point down the line; that the busses of Antonio Heras are already filled to capacity and can not admit more passengers and that passengers bound for Divisoria have to transfer to other busses for Divisoria, generally at the intersection of Legarda and Azcarraga Streets. The interval of trips of oppositor Antonio Heras along the line as per his authorized time schedule is ten (10) minutes and not five (5) as stated by one of his witnesses. Likewise, the starting point of the other oppositors Vicente Heras is from the corner of N. Domingo and Blumentritt, about one (1) kilometer distant from the starting point of the proposed operation of applicant at Lt. Artiaga, and Vicente Heras' terminal is Quiapo whereas the terminal of the applicant is Divisoria. By their evidence, oppositors lay emphasis on the fact that there are already many operators operating along the N. Domingo Street in San Juan but it appears that illegal operation is prevalent along this line. That is why an agent of the Commission had to be stationed at the intersection of N. Domingo and Blumentritt Streets to apprehend the illegal operators, and while some witnesses have testified that they can avail of direct service from N. Domingo in San Juan up to Divisoria, this operation appears to be illegal because the records of the Commission show that there is no authorized direct transportation service from Lt. Artiaga up to Divisoria, the proposed line of the applicant. The prevalence of these illegal operations indicate that there is need for the proposed service of the applicant. The Commission assumes that, unlike other operators who conduct illegal operations along N. Domingo Street from San Juan up to Divisoria, applicant desires to be within the law seeking authority for conducting such operation, and in this he should be welcomed.

"Considering that oppositors' operation is entirely different and distinct from that of the applicant; that there is no authorized/direct operation from Lt. Artiaga to Divisoria and that abandonment of applicant's old line from the intersection of N. Domingo and Blumentritt Streets up to Quiapo via Mandaluyong will not prejudice the public as there is already a sufficient service therein, and convinced from the evidence of record on volume of traffic and there is need for the direct service proposed by the applicant between the intersection of Lt. Artiaga and N. Domingo up to Divisoria and that no wasteful competition will result therefrom, the Commission believes that the application filed in this case should be; as it is hereby, APPROVED" (Petitioners-Appellants' Brief, pp. 27-30.)

Apart from being borne out by the records, the foregoing findings of fact are conclusive upon this Court. Hence, the first assignment of error is devoid of merit.

Under their second assignment of error, appellants raise a question of fact and one of law, namely; whether or not the original route of respondent de Guia may be abandoned without detriment to public service; and whether said abandonment may be effected "without first securing the cancellation of the certificate of public convenience issued" for said original route. As regards the last question, suffice it to say that appellee's application for a change of route amounts to a petition for cancellation of the authority to operate in his original route, simultaneously with the grant of authority to operate in the new route. Similarly, when the latter route was approved in the decision appealed from, the Public Service Commission, in effect, withdrew appellee's authority to operate in the original route. No legal provision or authority has been cited in support of the theory that the former certificate of public convenience must be cancelled before a new one, for a modified route, could be applied for.

Referring to the aforementioned question of fact, it appears that the appellee had introduced evidence to the effect "that the abandonment of his present line x x x will not be prejudicial to the public because there is sufficient service left," and the Public Service Commission found that "this statement is confirmed by the records of the Commission which shows that without the service of Pedro de Guia alone, there will remain nineteen (19) units operated by other operators". Said Commission further held that "abandonment of applicant's old line from the intersection of N. Domingo and Blumentritt Streets up to Quiapo via Mandaluyong will not prejudice the public as there are already sufficient service therein x x x."

It is, likewise, urged that, before granting appellee's petition for authority to change route and termini, the Public Service Commission should have given appellants an opportunity to improve their service if deficient or inadequate. There is absolutely no merit in this contention, for, although parts of their respective routes are identical, "the service of the oppositors is" - in the language of the Public Service Commission - "entirely different and distinct from that of the applicant." Indeed, the termini of the line applied for by herein appellee are the intersection of N. Domingo and Lt. Artiaga, in San Juan Del Monte, Rizal, and the Divisoria market, in Manila, whereas Antonio Heras operates two (2) lines, one starting at the intersection of N. Domingo and Boston Streets, and another at the intersection of N. Domingo and Blumentritt Streets, in San Juan Del Monte, Rizal, and the termini of both lines is the City Hall of Manila, and the termini of the line of Vicente Heras are the intersection of N. Domingo and Blumentritt, in San Juan Del Monte, Rizal, and the intersection of Arlegui and Barbosa Streets, Quiapo, Manila.

The last assignment of error is a mere corollary of those already disposed of, and, consequently, it needs no further discussion.

In view of the foregoing, the decision appealed from is hereby affirmed in toto, with costs against appellants Antonio Heras and Vicente Heras.

IT IS SO ORDERED.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, and Reyes, J.B.L., JJ., concur.

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