

AGUSTIN O. CASENAS, PETITIONER, VS. DIONISIO CABIGUEN, RESPONDENT.*G.R. No. L-19807. August 10, 1965*

Ponente: PAREDES, J.

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On December 14, 1956 respondent Dionisio Cabiguen filed an application for a certificate of public convenience, to operate TPU service on the Puerto Princesa-Babuyan and the Puerto Princesa-Panacan runs, for three (3) units on each line. Petitioner Agustin O. Casenas, who had been operating on said lines opposed, claiming that he had been servicing the lines applied for, pursuant to a duly issued certificate of public convenience; that his service had been efficient, adequate and satisfactory, without any complaint from the riding public; that should there be a need of additional service, he (respondent) should be given preference, being an old operator; and that the grant to a new applicant, would only entail ruinous competition.

The Public Service Commission delegated the Justice of the Peace of Puerto Princesa to take the deposition of witnesses, for both parties. The JP was given until February 15, 1957, to complete the taking of depositions, which was later extended to April 30, the same year. After, several postponements asked by petitioner, the JP set the taking of the depositions for the last time on April 26, 27 and 29. On March 12, 1957, counsel for the petitioner presented with the JP Court, a motion to set the taking of said depositions for April 22, since on April 26, 27 and 29, 1957, he would be attending to cases previously calendared. An opposition to said motion was interposed by respondent, alleging that on such date (April 22), counsel for respondent would be in Manila. Petitioner's motion was denied in an Order dated April 10, and received on April 15, 1957. On the latter date, counsel for petitioner filed a Motion with PSC, praying for extension of the authority of the JP to take depositions to June 30, 1957. On the same date, a petition for the taking of depositions on May 20, 1957, was presented with the JP Court. Notwithstanding the fact that these motions had not been resolved, petitioner and/or counsel failed to appear on April 26, the date set for taking the depositions. Instead, counsel sent a telegram, reiterating his motion for postponement, which telegram did not reach the court. The taking of the depositions proceeded, and respondent presented testimonial and documentary evidence, tending to show the need of the service applied for, and his financial capacity to undertake the service. On May 9, 1957, counsel for petitioner asked the PSC to set aside the depositions of the witnesses for the respondent taken by the JP, claiming that they were given without the presence of petitioner and/or counsel. Said motion was denied by the Commission, together with the motion for reconsideration thereof. The Commission, however, allowed petitioner to submit his evidence in opposition to the application, before the JP, which consisted in testimonies to the effect that his service in the lines applied for by respondent is sufficient and adequate, and that there was no need for additional service. Predicated upon the depositions of the witnesses for the respondent and the evidence adduced by petitioner, the Commission, rendered judgment on June 10, 1958, the pertinent portions of which recite:

"Considering carefully, the evidence submitted by the parties pro and con, the Commission is well convinced that the grant of the certificate of public convenience to the applicant is not only responsive to the needs and conveniences of the travelling public, but will even enhance and promote public interests. The reason is

obvious. In a progressive province like Palawan which has land settlements, mining companies, ports and other industries, a lone transportation company with ten (10) old trucks to supply the needs of the travelling public is not only inadequate but miserable, if public necessity and convenience were to be given paramount importance. While it may be assumed that the grant of the certificate will entail competition, but the competition if any will be more than compensated by the fact that the clamor of the people for new facilities and better service which have not been heeded by the oppositor will be realized. It may also be stated in passing that under the present circumstances, the guiding factor is not the competition but the necessity and convenience of the travelling public rather than the affected operator. It is in cases like the present one where man's initiative to go into business should not be discouraged especially so, when the primordial objective is for better service.

"IN VIEW OF THE FOREGOING, the present application be, as it is hereby Approved x x x.

x x x x x x x x x

"This decision takes effect immediately and shall become final thirty (30) days from date of its notice to the parties."

On July 8, 1958, petitioner moved for the reconsideration of the above judgment, on the following grounds:

- (1) That the applicant is not financially capable of maintaining the service applied for;
- (2) That public convenience and necessity does not warrant the granting of the application;
- (3) That the decision of the Commission is not supported by the evidence on record; that the same is contrary to the policy of giving protection to prior operators; and that if there is need for additional service, he being the old operator should be given preference in putting said additional service;
- (4) That respondent is not a responsible operator, for aside from lacking financial capacity, he has been charged before the Anti-Dummy Board, and several times convicted of violations of the Motor Vehicles Law.

The Motion for Reconsideration was denied on January 18, 1960. A second motion for reconsideration was presented on January 29, 1960, repeating most of the grounds stated in the first, and adding another—the alleged nullity of the depositions, as they were taken in the absence of petitioner and/or counsel. This motion, however, was deemed withdrawn, after the PSC had failed to act, due to lack of quorum, and the instant petition was presented in spite of the pendency of its resolution.

An examination of the record of the case reveals that the instant petition for review, has been presented outside of the reglementary period. The petitioner received copy of the decision of the Commission on June 25, 1968. On July 10, 1958, exactly fifteen (15) days from receipt, a Motion for Reconsideration was presented, which was denied on January 18, 1960, copy of said denial having been received by petitioner and/or counsel on January 26, same year. On January 29, 1960, a Second Motion for Reconsideration was filed, repeating the grounds earlier stated in the first motion, but adding one new ground, the nullity of the proceedings before the JP, which, as heretofore stated, was deemed withdrawn. Before the Commission could act on this motion, but for almost one year and six months, from January 29, 1960, that is, on June 1, 1962, petitioner presented the instant petition. The Second Motion for Reconsideration, therefore, did not suspend the period within which to appeal to this Court. First, because no leave to file a second motion had been asked and/or granted by the Commission. Second, because the said second motion is pro forma. On this score alone, the instant petition should be dismissed.

Withal, for the benefit of petitioner, We will disquisition on his 12 assigned errors, allegedly committed by the PSC. In the main, said errors delved merely on whether or not there was need for the granting of the service applied for; and whether respondent is financially capable for the undertaking. These matters are factual, and We

have consistently held that findings and conclusions of the PSC on such matters are conclusive and binding to this Court. The PSC findings that there was need for such service; that public necessity and convenience warrant the granting of the additional service; and that respondent is financially able to maintain the service applied for, were based on documentary and substantial testimonial evidence presented, which should not be disturbed by Us.

Another facet of the case, is the alleged procedural irregularity, which consisted in the taking of depositions in the absence of petitioner and/or counsel, thereby depriving them of their day in court. This claim does not reflect the truth; for factually, they were advised of the hearings, and had ample time to prepare. They were, furthermore, allowed to present their evidence, which the PSC took into consideration, in deciding the case.

In view of all the foregoing, the decision sought to be reviewed should be, as it is hereby affirmed, with costs against petitioner, in both instances.

Bengzon, C. J., Bautista Angela, Concepcion, Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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