

LAGUNA TAYABAS BUS CO., AND BATANGAS TRANSPORTATION CO., PETITIONERS, VS. OCTAVIANO PABALAN, RESPONDENT.

G. R. No. L-7059. April 28, 1956

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

.On October 27, 1952, herein respondent Octaviano Pabalan filed an application with the Public Service Commission to operate an auto-truck service with four jeepneys on the following lines: Calamba-College via Los Banos, Calamba-Tanauan (Batangas) and Calamba-Canlubaiig (Laguna).

The herein petitioners, Laguna Tayabas Bus Co. and Batangas Transportation Co, filed opposition to the application on the ground that they are now. operating more than enough buses on the lines applied for by the applicant; that the Honorable Commission has already granted various operators several certificates of public convenience on the routes sought which are sufficient to serve the people and that any grant in favor of the applicant of a new certificate of public convenience to operate an auto-truck service along the lines mentioned in the application would create ruinous competition to the oppositors and the other operators.

After hearing, the Public Service Commission rendered a decision, the dispositive part of which is as follows:

"In view of the foregoing considerations, the opposition filed by the Laguna Tayabas Bus Company and Batangas Transportation Company is hereby overruled, and it appearing from the evidence that applicant is a Filipino citizen and is financially capable to operate and maintain the proposed service, and that the approval of this application will promote public convenience and interests in a proper and suitable manner, it is ordered that, under the provisions of Section 15 of Commonwealth Act No. 146, as amended, the certificate of public convenience applied for be issued to the applicant * * *."

Not satisfied with this decision, the petitioners have appealed to this Court contending that the Public Service Commission erred: (1) in not holding that the granting of a new certificate on the lines applied for by applicant (respondent) would only create ruinous competition to the herein petitioners and other operators of said lines; (2) in holding that public convenience and necessity will be served by the approval of respondent's application because the evidence in this case does not warrant the finding that there was or there is any need for the service sought for in the application; (3) in not giving the petitioners preference in the granting of new units on the lines in question; "and (4) in not denying the application of the respondent in so far as the lines covered by the application of the respondent are concerned, and in not sustaining petitioner's opposition thereto.

Errors 1, 2 and 3 essentially raise the issue that the evidence in the case does not warrant the finding that there was need for the service sought for in the application and that the grant of a new certificate in favor of the applicant would create ruinous competition to the oppositors. But we find that during the hearing of the case before the Public Service Commission, the parties introduced their respective evidence and, after mature consideration thereof, the Public Service Commission rendered its decision containing the following findings of fact:

(a) "It appears from the evidence presented by the applicant that he proposes to operate one unit on the line Calamba-Collega via Los Banos, two units on the line Calamba-Tanauan, and one unit on the line Calamba-Canlubang; that he has already acquired the four units which he proposed to operate as shown by the certified copies of the certificates of registration marked Exhibits "C", "C-1", "C-2" and "C-8"; that the trucks operating on these lines are usually filled to capacity and there are many passengers "who cannot be accommodated by the present transportation facilities; that there are also many passengers on the line Calamba-Canlubang because of the cadre of the Second Military Area and the families of the soldiers living in the camp often travel to and from this area; that on the Calamba-College line the Laguna Tayabas Bus Company operates only one truck; and that the Batatas Transportation Company operates express trucks which do not pick up passengers in the barrios along the lines in question.

(b) "Staff Sergeant Lorenzo Komabiles, traffic officer of the Philippine Constabulary of the province of Laguna, stationed at Los Banos, furthermore testified that according to his personal observation, there is a heavy volume of passengers riding in the buses and jeepneys operating on the lines Calamba-Canlubang; that he has apprehended many TPTJ jeepneys and buses as well as. auto-calesas for overloading, that there are plenty of passengers between Calamba and Canlubang because there is an army installation, Camp Vicente Lim, 'where there are about one thousand soldiers living with their families; and that there are more than two thousand persons employed in the Canlubang Estate who need additional transportation facilities on the lines herein applied for. .

(c) "On the other hand, the oppositora submitted evidence tending to show that their buses operating on the lines covered by the present application can accommodate all the passerigers; that rthe average passenger load of their buses is less than the authorized maximum passenger capacity of the said buses as shown by the reports of its inspectors marked Exhibits "1", "2", and "3"; that aside from the buses of the oppositors, there are also other TPU auto-trucks and auto-calesas operating along those lines as shown by the census taken by the inspectors of the Laguna Tayabas Bua Company and presented in evidence as Exhibits "4", "4-a" to "4~d", Exhibits "5", "5-a", to "6-e", Exhibits 6, 6-a to 6-d; and that the oppositors have suffered losses in the operation of their: San Pablo-Manila line, Tanauan-Calamba line and Calamba-Canlubang . line as shown, by their monthly operation reports for March and April, 1953, marked as Exhibits "7" and "7-a" respectively.

(d) "After a careful consideration of the evidence submitted by both parties and the records of this Commission on authorized auto-truck services on the lilies herein applied for, we are of the opinion that public convenience and necessity will be served by the approval of this application inasmuch as the service being rendered by the oppositors on the lines in question is inadequate to meet the needs of the inhabitants for a local service which applicant proposes to operate."

As could be seen, the decision appealed from is predicated on the evidence presented at the trial of the case, which the Public Service Commission found to be in favor of the respondent; consequently, the same should not be disturbed, for in several decisions we have already held that "this Court would not unduly interfere with the Commission "or attempt to substitute its judgment for the judgment of the Commission if there be evidence before it reasonably supporting its order.

Under the third assignment of error, petitioners strongly urge that the Public Service Commission should not have granted the application but should have required the oppositors to increase their service on the lines applied for by the new applicant, being old and established operators on the said lines. This contention, however, was not pleaded by the petitioners in their opposition to the application; it was not raised during the hearing of the case, and it is only raised now in this appeal, hence it cannot be properly entertained by this Court.

Wherefore, finding no errors in the decision appealed from, the same is hereby affirmed, with costs against the oppositors, herein petitioners.

Paras, G. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes,

J. B. L., JJ., concur.

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