

BATANGAS TRANSPORTATION CO., PETITIONER, VS. GRACIANO REYES, RESPONDENT.*G. R. No. 10629. October 31, 1958*

Ponente: LABRADOR, J.

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Review of the decision of the Public Service Commission, granting Graciano Reyes, applicant, of certificates of public convenience for the transportation of passengers and freight between Batangas and Balayan, with 5 units, and between Lemery and Lipa, with 3 units. The decision is signed by two members of the commission, with one dissent by Commissioner A. H. Aspillera. The favorable decision is based on the finding that the applicant has established the need for the proposed lines, as against evidence submitted by oppositor Batangas Transportation Company.

The evidence submitted by the applicant consists of the testimonies of the applicant himself and two other witnesses.

Graciano Reyes, the applicant, who is a businessman by occupation and a resident of Lemery, Batangas, testified that the oppositor does not operate directly between Balayan and Batangas, but operates from Batangas to Nasugbu via Balayan and vice versa, at intervals of 1 hour, sometimes 30 minutes; that aside from the oppositor's buses, there are jitneys running at 30 minutes interval, pickups and freight trucks; that he commutes between Batangas and Balayan on Thursday, but sometimes he cannot ride right away because he does not want to cling to the sides of the trucks due to many passengers and so he is forced to wait for the second and third trips, if he cannot ride earlier in cargo trucks; that it is very seldom that he can ride in jitneys because they are always full; that there is a Caltex Refinery at Bauan and there are many workers and laborers there; that most of the passengers between Batangas and Balayan are students, Caltex Refinery workers businessmen and merchants; that there is no direct service of the oppositor and of the United Bus Line owned by Mr. Silva from Lemery to Lipa, but the trucks of these companies operate between Lemery and Candelaria and Lipa, at 30 minutes interval; that he had traveled between Lipa and Lemery via Cuenca on Sundays and Wednesdays in connection with his dry goods business; that there are times that he could not ride in the oppositor's buses because they are filled to capacity; that most of the buses of the company are of the express type, bound for Manila, and they do not pick up passengers on the way; that if he cannot ride in these buses he takes ride in jitneys although they are also full and it is seldom that he ever gets a ride in them; that he noticed about 10 trips of the jitneys from Lemery to Lipa via Cuenca; that the trips of pickups are very rare; that the buses of the oppositor company sometimes arrive late at their destination because of late schedule.

Macario Reyes, who is a Caltex dealer and resident of Alitagtag, Batangas, testified that he has been in the gasoline business since 1953 up to the present; that in connection with his business he travels twice a week between Lemery and Lipa and he has observed that there is no direct line of the oppositor company and the United Bus Line between these two towns, but that these are served by buses going to Manila from Lemery via Lipa and Candelaria at 30 minutes interval; that the passengers consist of students, farmers and fruit vendors

coming from the barrios of intermediate towns between Lipa and Lemery; that although there are high schools in these towns, students go to Lipa and Taal for better education; that it is hard to ride in the Batangas Transportation Company buses bound for Manila or Candelaria because they are always full; that he had observed that there are additional buses of the United Bus Line and their trip interval is from 30 to 45 minutes; that there are few jitneys operating along this line; that sometimes 2 or 3 buses pass by before he can take a ride because they are always filled to capacity; that he also noticed that there are many fruit vendors in Alitagtag who could not ride in the oppositor's buses; that he is a cousin of the applicant; but that he is testifying because he believes the traveling public will be benefited by the approval of the application.

Antonio Comia, a farmer and businessman and a resident of Calaca, Batangas declared that he is engaged in buying and selling farm products and travels from Calaca to Lemery and Balayan three times a week; that he rides in the oppositor's buses, which he had learned from its employees run at 30 minutes intervals; that the oppositor's buses operate continuously from 5:00 or 5:30 o'clock in the morning to 6:00 o'clock in the afternoon; that he had not seen United Bus Line buses and jitneys operating from Lemery to Balayan; that the oppositors buses operate from Batangas direct to Nasugbu via Lemery, and it has no local service between Batangas and Lemery, except on holidays and fiestas; that the buses are always full and passengers frequently occupy the back seat reserved for cargoes; that there are times he cannot be accommodated in the first trip so he waits for the second trip, and during the milling season he usually rides in jitneys and freight trucks; that the passengers from Lemery to Balayan are mostly students, merchants and farmers; that the students go to school in the mornings and return in the afternoons; that most of the buses are of the express type bound for Manila and do not pick up passengers; that he had occasion to bring his products to market in the oppositor's buses but due to lack of accommodations he just sells them in his hometown; that he lives in a barrio of Calaca, which is four kilometers away from the poblacion, and in going to town he takes the oppositor's buses which are not of the express type and sometimes jitneys.

Delfin Punsalan, a councilor of Lemery, was not presented as witness anymore because his testimony is merely corroborative.

As against the above evidence, the oppositor submitted the following evidence:

The testimony of Gabriel Gomez, Chief Traffic Supervisor of the oppositor company and the Laguna Tayabas Company for the last eight years, to the effect that as traffic supervisor he checks on the lines, the volume of traffic, the schedule of trucks and anything in connection with their operation; that the oppositor continuously maintains trips from Batangas to Nasugbu via Balayan and vice versa, from 5:30 o'clock in the morning to 4:30 o'clock in the afternoon, at 30 minutes interval; that between the two terminals there are plenty of jeeps and other buses operating, thus: between Bauan and Batangas, 53 jeeps (12 operators); Batangas and Taal, 40; Batangas and Lemery, 40; Balayan and Lemery, 40; that although the full load of each bus is 47-2/2 rarely are the buses of the oppositor filled to capacity, the usual number of passengers being from eight to twelve, while that of the jeeps from three to four; that the company is losing P84,000 a year along the Batangas-Balayan line alone and the losses would increase if the application is granted; that inspite of these losses the company is still rendering service and has never applied for abandonment of some of its trips; that between Lipa and Lemery, the oppositor operates buses from Lemery to Manila via Lipa and vice versa, at 30 minutes interval, continuously from 5:30 o'clock in the morning to 6:30 o'clock in the afternoon; that there are also other operators along this line, namely, the United Bus Line operating from Lemery to Manila, with 22 round trips, or at an interval of barely 10 minutes, jitneys numbering 20, the Ray Bus Line, with 4 units; that the interval between each trip of all these transportation facilities is 6 minutes; that although the authorized capacity of the oppositor's buses is 47-2/2 the usual number of passengers along this line is 15 to 17, that of the United Bus Line whose authorized capacity ranges from 55 to 75 is also 15 to 17 on heavy days; that the Biñan Transportation Company which operated between Lemery and

Manila quit and was sold to the United Bus Line, while the Taal-Lemery Line, which was operating along this line also, was sold to the oppositor, but the latter does not run this line anymore; that the operation of the proposed line would increase the losses of the oppositor company along this line.

Testimony of Juan Manlapaz, employee of the Public Service Commission, to the effect that he was assigned to check the traffic from October 20 to 27, 1955, at Muzon, Alitagtag, Batangas. He made a report of his findings, Exhibit 6. According to this report bues of the oppositor company and the United Bus Line have very few passengers, most of the time less than 10, although there was an instance when there were 32 and another, 28. He more specifically declared that the number of passengers is only 5 to 10% of the authorized load of the buses; that passengers coming from Lemery number only 20 in the morning and about 15 at noon; that there are also jeepneys operating along the line, and some of them pass via Kutang-Cauayan to Lipa (this is a barrio road) ; and that he prepared the report Exhibit 6 at the checkpoint at Muzon and the same was signed by the conductors.

Testimony of Paulino Mañebo, who was assigned as oppositor's inspector at the Batangas-Bauan sector who testified that he personally prepared a report, Exhibit 7, on the volume of passengers on buses coming from Batangas, Nasugbu, Mabini and Anilao; that he prepared the report on the way; that the authorized load of the oppositor's buses is 47-2/2; that seldom are the buses filled to capacity; that there are only two instances when the buses are full, one at 8:30 o'clock in the morning on October 17, 1955, with 47 passengers and another with 48 passengers on October 28, 1955, at 5:00 o'clock in the afternoon; that there are many jeepneys and buses operating in that section. (Note that Bauan is between Batangas and Balayan).

Testimony of Lauro Holgado, another inspector of the oppositor company assigned on the Pinagtungulan, San Jose to Cuenca sector in September, 1955, who testified that the authorized load of the oppositor's buses is 47-2/2 that seldom are they filled to capacity and there is only one instance on September 26, 1956, at 5:20 o'clock in the morning when the bus had 50 passengers; that he personally prepared Exhibit 8, which he identified, and entered every entry therein while waiting for the next bus on the way; that after counting the number of passengers and the number of the tickets used, he jots them down in a regular inspector's notebook and then enters the same figures in Exhibit 8; that there is no occasion when he prepared in Exhibit 8 at home; that he sends Exhibit 8 first to the main office, and afterwards the record notebook when it is already filled up.

Baldomero Holgado, also an inspector of the oppositor company since 1947, assigned between Muzon and Lemery, testified that in no instance have the buses of the oppositor been in full capacity. He identified Exhibit 9, as his report on inspection, and declared that he himself prepared the entries in the report; that he makes entries immediately after he goes down from the bus; that the report contains his signature; that he has a notebook on which he makes entries as he inspect the buses, and that he copies the figures he jotted down in his notebook in making entries in his report; that the oppositor's buses do not pass the Kutang-Cauayan route, although said route can accommodate two buses at a time and it is a short cut from Lemery to Lipa.

Testimony of Manuel Gonzales, acting traffic manager of the oppositor and the Laguna Tayabas Bus Company, who declared that he takes charge of all Commission cases, keeps copies of certificates of public convenience of all operators and goes out to observe the lines; that the oppositors maintains continuously a half-hour service, that between Lemery and Muzon, every 10 minutes, from Lemery to Lipa, every 15 minutes; that on the Lemery-Lipa line the United Bus Line operated by Mr. Silva makes 24 round trips from Lemery to Manila via Alitagtag, Cuenca and Lipa; that there are pickups and jeepneys operating between Lipa and Lemery, all specified in Exhibit 10, thus: Honorato Bathan, 1 unit; Vicente Marasigan, 4 units; Gaudencio Reyes, 1 unit; Alberto M. Orlanes, 3 units; Manuel Olave, 1 unit; Jose Landicho, 7 units; Deogracias Herrera, 4 units; Maximino Harina, 4 units; Emiliano Lontoc, 5 units; Gabriel Castor, 3 units; Martin Gardula, 1 unit; Faustino Gahol, 3 units; Teresa Ilagan, 1 unit; and Francisco Roxas, 11 unit; He also testified that between Balayan and Batangas, the jeepneys and trucks

operated are: By Ireneo Aquino, 4 units; Gavino Banta, 3 units; Teofilo Gahol, 1 unit; Miguel C. Barairo, 1 unit; Claro Reyes, 2 units (Exhibit 12); He declared likewise that the oppositor has been losing more than P50,000 a year for the last three years on the Batangas-Nasugbu line via Balayan, and, that in spite of losses the company has been maintaining hourly or half-hourly services on the lines; that the United Bus Line has 22 round trips from Lemery to Manila via Lipa; that three years ago the company was maintaining an hourly service, but when it was found that the service was not sufficient to cope with the number of passengers it increased the number of buses running and made the interval of trips to 30 minutes; that the oppositor's buses are authorized to pass Muzon only in going to Alitagtag.

The decision of the majority of the members of the Commission held that the reports of the inspectors, Exhibits 7, 8 and 9 are not admissible because they are not the originals and that even if they are admissible the same are self-serving. The majority erred in this respect. The reports of the inspectors were prepared by them from notebooks just after the inspection and in the ordinary course of business. They should be considered originals because the notes were actually written by the inspectors themselves on their record notebooks immediately after making the inspection and immediately thereafter, after coming down from the buses, they copy the notes taken down and write them in their reports (Section 47, Rule 123, Rules of Court).

Neither may they be considered self-serving because they have been taken by employees of the oppositor company in the course of business and in ordinary routine duty on their part, and they are presumed to have been correct.

No argument is needed to show that the testimonies of the inspectors of the oppositor, supported by their daily report of passengers, have greater weight than those of applicant and his witnesses. The inspectors of the oppositor have the duty to check on the passengers actually riding in the buses, day in and day out. They were in a better position, therefore, to tell the passenger loads of the buses, as against the applicant and his witnesses who only see the buses when they occasionally ride or try to ride in them. That in some instances they may have failed to ride immediately, does not mean that the service is insufficient. At times perhaps, some buses may be filled but it is hard to believe that they are so full as to afford no room for one more passenger, as applicant's witnesses claim. These declarations of applicant's witnesses are much less reliable than the actual report of the inspectors of the oppositor company on the passenger load of their buses.

We also find that the majority members of the Commission incorrectly discarded the findings of its employee, Agent Juan Manlapaz, who was stationed to check the volume of passengers riding between Lemery and Lipa. In view of the conflicting testimonies of witnesses for both parties, it is very necessary to consider the report of the agent of the Commission as a part of the observations and investigations of the Commission itself, and such report should be given more credence than the oral testimonies of witnesses for the applicant (*Estate of Florencio P. Buan, applicant vs. Pambusco and La Mallorca*, 99 Phil., 373).

Another reason for the grant of the application is that there is no direct service between the towns of Lemery and Lipa, and Batangas and Balayan. This reason is unfounded. The evidence shows that although there is no direct line between these towns, yet they are served by the buses of the oppositor and the United Bus Line going to Manila from Lemery and going to Nasugbu from Batangas.

For the above reasons, it is difficult for this Court to agree with the conclusion arrived at by the majority of the members of the Commission, that the preponderance of the evidence demonstrates the lack or necessity of additional buses in the lines for which certificates were issued.

Before closing this decision, and at the instance of a member of the Court, we have thought it advisable to state our reasons why we have reviewed the evidence, taking into account the Rules of Court and the other legal

provision defining the jurisdiction of this Court in appeals from the decisions of the Public Service Commission, thus;

"Sec. 2. The petition shall contain a summary statement of the issues involved and the reasons relied upon for allowance of a review. No question may be raised therein which has not been raised before the Commission. Only questions of law, which must be distinctly set forth, may be raised in a petition for review of an order or decision rendered by the Securities and Exchange Commission." (Rule 43, Rules of Court)

"Sec. 35 The Supreme Court is hereby given jurisdiction to review any order, ruling, or decision of the Commission and to modify or set aside such order, ruling or decision when it clearly appears that there was no evidence before the Commission to support reasonably such order, ruling or decision, or that the same is contrary to law, or that it was without the jurisdiction of the Commission. The evidence presented to the Commission, together with the record of the proceedings before the Commission, shall be certified by the secretary of the Commission to the Supreme Court. * * *." (Commonwealth Act No. 146)

It will be seen that our Rule does not prohibit us from reviewing question of fact. The review of questions of fact is denied only in cases of appeals from decisions of the Securities and Exchange Commission, and under the rule of *inclusio unius est exclusio alterius* the privilege or right to review the evidence cannot be considered denied to us in cases appealed from the Public Service Commission. As a matter of fact, we have reviewed the evidence in various cases, such as *B.T. Co. and L.T.B. Co. vs. Binan Trans. Co. and Jose Silva*, 99 Phil., 918; *Padua vs. Ocampo, et al.*, G. R. No. L-7579, prom. Sept. 17, 1955; *Espiritu vs. Los Baños*, G. R. No. L-7121, prom. July 30, 1955; *The Bachrach Motor Co. etc. vs. Hipolito*, G. R. No. L-9278, prom. April 26, 1957.

Neither does Section 35 of Commonwealth Act No. 146 prohibit us from making the review in the case at bar. The refusal of the court *a quo* to consider the reports of the inspectors of the oppositor company, on the ground that the same are not the originals and at the same time are self-serving, is an error of law. This authorizes us to review the effect of the error. The error has eliminated from the mass of evidence considered by the Commission very important and conclusive evidence. The elimination has resulted in the Commission's giving credence to the testimonies of the applicant and his witnesses.

But if the reports are taken into consideration, said testimonies (of the applicant and his witnesses) would be completely discredited, because the reports are more reliable, because they are documentary, and because the facts stated therein have been taken by persons performing their ordinary functions in the ordinary course of business.

For the foregoing considerations, the decision should be, as it is hereby, reversed, and the application of Graciano Reyes for the lines from Batangas to Balayan and from Lemery to Lipa, are hereby denied. With costs against respondent.

Bengzon, Padilla, Montemayor, Reyes, J.B. L., and Endencia, JJ., concur.

Paras, C. J., concurs in the result.

CONCURRING

BAUTISTA ANGELO, J.:

I concur in the result only on the ground that the P.S.C. erred in disregarding as evidence the reports of oppositor's inspectors.

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