

ALFONSO CABABA, PETITIONER, VS. PUBLIC SERVICE COMMISSION, PONCIANO CARILLO, AND BALBINO REMIGIO, RESPONDENTS.

G. R. No. 11186. January 31, 1958

Ponente: REYES, A., J.

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REYES, A., J.:

This case concerns the operation of a ferry service by means of motor boats across the Cagayan river, in the province of that name, between the municipality of Aparri on the west bank of that river and the municipality of Calamaniugan on the opposite bank.

For the operation of such ferry service two applications were filed with the Public Service Commission: one by Ponciano P. Carillo who proposed to operate between the barrio of Mabangug, in the municipality of Aparri, and the barrio of Alinunu, in the municipality of Camalaniugan, and the other by Balbino Remigio, who proposed to operate between the same barrio of Mabangug, Aparri, and the barrio of Catotoran, in the municipality of Camalaniugan. The purpose of both ferries is to bridge a gap in a national land highway where it is interrupted by a body of water.

Both applications were opposed by Alfonso Cababa, an operator of a ferry service across the same river but between two barrios of the same municipality, namely, the barrios of Catotoran and Calaoagan, both in the municipality of Camalaniugan. The oppositor had a certificate of public convenience from the Public Service Commission and a contract with the said municipality for the operation of that ferry.

Alleging that the applications of Carrilo and Remigio had already been disapproved by the municipal council of Camalaniugan, the oppositor also moved for the dismissal of those applications on the theory that the Public Service Commission had no jurisdiction to grant them without the previous approval of the municipalities concerned.

The Commission denied the motion after hearing applicant's evidence on the merits. But the proceedings were interrupted because, upon a new date being set for the continuation of the hearing, the oppositor came to this Court with the present petition for certiorari and prohibition to have us annul the order denying his motion to dismiss and also to have the Commission desist from further hearing the applications for lack of jurisdiction.

We find the petition to be without merit.

In contending that the Commission has no jurisdiction to entertain applications for the operation of a ferry without the said applications being first approved by the municipalities concerned, petitioner relies upon our decision in the cases of Municipality of Gattaran vs. Doroteo Elizaga, 91 Phil. 440, and Municipality of Gattaran vs. Fruto Elizaga, 91 Phil. 440, where we said that when a private party obtains a permit from the municipal council for the operation of a municipal ferry, he must, before he can operate, "first obtain a certificate or permit from the Public Service Commission", but that the Commission had no power to consider and grant the applications in those two cases without previous municipal approval, "for the reason that the ferries in question were within the territorial

jurisdiction of the municipality." The cases cited are authority for holding that where a ferry lies entirely within the territorial jurisdiction of a municipality, previous approval of that municipality is necessary before the Public Service Commission can grant a private operator a certificate of public convenience for its operation; but they cannot be invoked as a precedent for the case now before us where the ferry service proposed is between two municipalities and serves as a continuation, by watercraft, of a national highway. If local authorization were needed for the operation of such a ferry service, that authorization should more properly come from the provincial board since there are two municipalities involved. And we note that the provincial board of Cagayan has, as a matter of fact, already declared itself in favor of allowing the proposed ferry service, since it has, by resolution, taken note of the inadequacy of the existing service and expressed the belief that service would be improved with the allowance of new operators, and it has also ordered a copy of the resolution sent to the Public Service Commission "for its consideration in determining cases now pending before said Commission for the authority to operate said service."

Not being a municipal ferry and impressed as it is with the character of a national highway on one side of the river and its continuation on the opposite side, the ferry proposed by each of the respondent applicants, or rather the authority for its operation as a public service does not need municipal approval before it can be granted by the Public Service Commission.

In view of the foregoing, the petition for certiorari and prohibition is dismissed, with costs against the petitioner.

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

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