

NATIVIDAD LOPEZ, PETITIONER, VS. BATANGAS TRANSPORTATION CO., AND LAGUNA-TAYABAS BUS CO., RESPONDENTS.

G.R. No. 12029. April 30, 1959

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petition to review the decision of the Public Service Commission denying petitioner's application in PSC Case No. 88055 for an increase of trips and equipment on the Biñan-Manila and Manila-Batangas Lines.

Petitioner, a TPU auto-truck operator on the lines above referred to, filed with the Public Service Commission an application, dated June 2, 1956, for an increase of equipment and additional trips on said lines. Her application was duly opposed by the Biñan Transportation Co., the Batangas Transportation Co. and the Laguna-Tayabas Bus Co., on the ground, inter alia, that service on the lines subject of the application was more than sufficient to take care of the volume of traffic; that oppositors are ready and willing to meet and provide for any emergency service that might arise from time to time; and that the authorization of the additional service applied for by petitioner would only result in useless duplication of service and promote ruinous competition between petitioner and TPU operators already authorized on said lines.

Having presented her evidence, petitioner prayed for the issuance of a provisional permit authorizing her to operate the line applied for with the use of the proposed additional equipment, consisting of four (4) auto-trucks. On the ground that there is "no immediate and urgent public necessity for the operation of the proposed additional services," the Commission denied the same in an order, dated July 10, 1956. (Record, p. 48).

After trial, the Commission, not being satisfied from the evidence presented of the necessity for additional service on the lines in question, rendered a decision, dated October 18, 1956, denying the application. A motion for reconsideration, dated November 2, 1956, having been denied by the Commission in an order dated December 14, 1954, (Record, p. 108) the applicant interposed the present petition to review the decision of the Commission.

Four errors are assigned by appellant, all of which boil down to one single factual issue, i.e., whether or not there is necessity for the additional service applied for by petitioner-appellant.

It is argued for petitioner that the Commission gave undue credit to the reports of its agents assigned to check on the volume of passenger traffic on the lines involved in her application. In considering the evidence, the Commission ruled as follows:

"Although evidence has been presented by the applicant on rebuttal tending to show that the entries regarding the number of trips recorded by agents of the Commission in their checkbooks do not reflect the correct number of passengers, we are not inclined to give credence to the testimony of the conductors of the applicant, considering that they are her own employees and the agents involved have testified on surrebuttal that the conductors of the applicant, including those of other operators like the Laguna Transportation, always make it a point to check the entries made by them to verify whether the agents record the correct number of passengers in their checkers books. Besides, if it is really true that some agents of the Commission do not indicate the

correct number of passengers in their checkers reports, they should have brought the matter immediately to the attention of the Commission, but the applicant or her employees have not taken any steps either during the course of the checking itself or immediately thereafter in order to bring to our attention this alleged discrepancy in the number of passengers recorded by the agents in their checker's reports. Unless clear and positive proof is presented that the agents of the Commission do not enter in their checker's reports the correct number of passengers, we can not simply disregard the entries made by these agents in their checker's reports." (Petitioner's Brief, pp, 44-45.)

In effect, appellant would want us to substitute the agents' reports with the testimony of her passenger witnesses, which we can not do inasmuch as there is a complete absence of any positive evidence that such agents are biased or otherwise prejudiced.

"We have held that the testimony of one or two passenger witnesses, such as those produced for the appellants, is relatively unreliable as against the Commission's checkers, first, because such witnesses are not entirely free from bias, and second, because they do not make their observations of the volume of traffic during a certain fixed period so as to get the average, but at some hours of the day when they actually board a bus and find it to be either crowded or empty, whether or not the day is a week day or a holiday, or the hour is one when the traffic is heavy or light." (Guico vs. Bachrach Motor Co., et al., L-9570, July 29, 1957.)

Even if it were true, as petitioner claims, that certain prospective passengers could be accommodated in her vehicles at certain hours of the day, that circumstance does not militate against the Commission's holding that the additional service applied for is not necessary.

"The fact that a prospective passenger on a transportation line, on a certain day and hour, fails to secure transportation, either because at the moment there was no bus passing, or if there were it was already full, cannot be a valid test of whether additional service on the line is needed. A person desiring transportation cannot expect, and has no right to expect, available transportation every minute of the day for the reason that transportation companies are not required, and are in no position to furnish said transportation. That is the reason why said companies, including railroad and shipping companies, have time schedules. A traveller has to adjust himself to said schedules. It may be that occasionally a bus on which a traveller desires to secure transportation is already filled, thereby requiring him to wait for the next bus; but these may "be ordinary and inevitable incidents in the transportation system over which common carriers have no control. Time schedules and frequency of trips are based and adjusted by said companies and approved by the Commission on the basis of ordinary and usual traffic and not on occasional and unexpected congestion of traffic when, for instance, whole families go visiting relatives in another town, or attend a town fiesta, or parties to a case bring witnesses to court for trial, etc." (Laguna Tayabas Bus Co. vs. Regodon, 100 Phil., 570; 53 Off. Gaz., [4], 1046.)

Petitioner is impugning the findings of fact of the Commission, without alleging or showing that there is an absence of evidence to support them. It is a well settled rule that the Commission's findings as to facts are binding and conclusive upon us as long as they are reasonably supported by substantial evidence, which is the case here (Estate of Buan vs. Pampanga Bus Co., 99 Phil., 373; Medina vs. Saulog Transit, Lr-7244, June 28, 1956; Red Line Trans. Co. vs. Taruc, L-6179, November 29, 1954; Pangasinan Trans. Co. vs. Tambo, 95 Phil., 661; Angat-Manila Trans. Co. vs. Vda. de Tengco, 95 Phil., 58; Interprovincial Autobus vs. Mabanag, 88 Phil., 66; Manila Yellow Taxicab vs. Danon, 58 Phil., 75). As a matter of fact, we are not even required to examine the conflicting evidence to determine whether or not the preponderance of evidence really justifies the Commission's findings. The well settled rule is that we can not substitute our discretion for that of the Commission on factual questions unless it clearly appear that there is no evidence to support the contested finding (Guico vs. Bachrach Motor Co., supra.)

"These findings of fact are conclusive upon this Court, which cannot weigh the conflicting evidence and substitute its own conclusions in lieu of those made by the Commission, and can not modify or set aside the

latter except when it clearly appears that there was no competent evidence before it to support reasonably its decision. In the case at bar, petitioner does not claim that such evidence is lacking. He merely questions the weight or sufficiency thereof." (Espiritu vs. Los Baños, L-7121, July 30, 1955.)

"In the final analysis, the determination of the question as to the sufficiency of the evidence to support the decision of the commission turns on the credibility of the witnesses who testified before it. The jurisdiction of this court to set aside a decision of the commission is limited to cases where it clearly appears that there was no evidence to support reasonably such decision, or that the same is contrary to law, or that it was without the jurisdiction of the commission. We are unable to conclude that any of such grounds exists in the present case." (Cebu Autobus Company vs. Bisaya Land Transportation Co., 66 Phil., 37 Off. Gaz., No. 4, p. 86, 63, 67-68.)

The decision under review is affirmed. Costs against petitioner. So ordered.

Paras, C. J., Bengzon, Padilla Montemayor, Bautista Angelo, Concepcion, and Endencia, JJ., concur.

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