

BRIGIDO JUGUETA, ET AL., PETITIONERS, VS. THE PUBLIC SERVICE COMMISSION, ET AL., RESPONDENTS.*G.R. No. 12044. May 20, 1959*

Ponente: LABRADOR, J.

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When on December 15, 1956, Silvestre Caparros & Co., a partnership operating the motorboat "Lola Victorina" between Atimonan and Alabat Island, Quezon Province, applied to the Public Service Commission for authority to charge specified passenger and freight rates on its sea route, Brigido Jugueta, Jose Angulo and Jose Olaivar opposed the application. They alleged that they were the grantees of certificates of public convenience to operate a ferry service, with motor launches, in the Atimonan-Alabat line; that they were rendering adequate service; that Silvestre Caparros & Co. had no such certificate and was illegally operating in their given area of activity; and that no need had arisen for another boat to carry passengers and cargo between the two points, etc.

By order of January 29, 1957, the Commission provisionally approved the rates thus proposed, and then set the case for hearing on February 28, 1957. On February 23, 1957, this petition for certiorari with preliminary injunction was filed here, alleging grave abuse of discretion and/or excess of jurisdiction.

It is the petitioners' theory that the Public Service Commission erred in not previously requiring Caparros & Co., to obtain a certificate of public convenience, and in allowing said partnership to make use of its motorboat in disregard of their previously acquired certificates of public convenience.

After stating that the "Lola Victorina" was duly licensed and permitted by the Bureau of Customs to engage in the bay and river business in the waters of Alabat, Perez and Atimonan, Quezon Province, the Commission went on to say in the appealed order,

* * * applicant does not seek a certificate for a ferry service but merely approval of rates under Section 13 (b) of the Public Service Act; in other words, for inter-island service. Is a boat service from Atimonan to Alabat a ferry or inter-island? In *Javellana vs. Commission* (G. R. L-9088) the Supreme Court held "that it will be more in consonance with the spirit of the law to consider steamboat or motorboat service between different islands, involving more or less great distances and over more or less turbulent and dangerous waters of the open sea, to be coastwise or inter-island service", and the fact that a definite route is applied for does not make the service a ferry service. We do not see really that a boat service from Atimonan to Alabat, considering the body of water traversed and the distance, can be considered a ferry service for which a certificate should be required. The body of water between Atimonan and Alabat cannot be considered as a small body of water connecting an interrupted highway, we cannot say either that Atimonan and Alabat are two points on opposite shores of a body of water which does not involve too great of distance or too long a time to navigate. It is actually a crossing from one island to another with a distance of approximately 15 kilometers, and cannot be considered a ferry service but inter-island in accordance with the ruling of the Supreme Court in *Javellana vs. Commission*, so that applicant's petition for approval of rates under Section 13(6) of the Public Service Act may be entertained."

The Commission erred, argue the petitioners, in applying and following the Javellana decision, because water transportation between Alabat and Atimonan constitutes ferry service, and not inter-island shipping. They make distinctions between the circumstances of this case and those mentioned in the Javellana decision,—particularly the distance between the terminal points, and the condition of the seas— to reach the conclusion that the Alabat-Atimonan route is not inter-island, but a ferry service for which a certificate of public convenience must first be secured from the Public Service Commission.

We think the matter depends mostly on the surrounding conditions of the trips, and the Commission's judgment must be accorded preponderant weight. It is true, the distance between the two towns is only 14 kilometers whereas the distance in the Javellana decision (Batangas-Calapan) was 44 kilometers. But as respondent's counsel explain, the latter decision did not intend to make the circumstances existing in the said route as the absolute minimum necessary to classify a particular water transportation service as inter-island.

At any rate, in the said Javellana decision we said the Commission had no authority to require steamboats, motorboats or motor vessels plying between the different islands to obtain certificates of public convenience, whether such means of conveyance are used in ferry service or in the inter-island or coastwise trade.[1] Sec. 13 (a) first paragraph of the Public Service Law expressly provides that the Commission "shall have no authority to require steamboats, motorships and steamships lines * * * to obtain certificates of public convenience or to prescribe their definite routes or lines of service".

To be specific, we hold that in the circumstances, Caparros & Co. needed no previous certificate of public convenience, its "motorboat" being a "motorship".

Indeed, being of that opinion, we dismissed as without merit, the previous petition of Jugueta (G. R. L-11772) to set aside the order of Judge Vicente del Rosario of Quezon Province, dissolving the preliminary injunction previously issued to prevent Caparros & Co. from operating this motorboat along the Alabat-Atimonan route. The injunction had been issued on the basis of lack of certificate from the Commission. Said Judge adhering to our Javellana decision, thought such certificate unnecessary, and therefore dissolved the injunction. Our dismissal resolution sustained him: certificate not needed.

The appealed order is hereby affirmed, with costs against petitioners.

Paras, C. J., Padilla, Montemayor, Reyes, A., Bautista Angela, Labrador, and Concepcion, JJ., concur.

[1] In *Brown vs. Sueso*, 104 Phil., 388, we held, a motor launch ferrying between coastal towns needed no certificate of public convenience.

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