

VICENTE CAMBARE, PLAINTIFF AND APPELLANT, VS. UNION OBRERA DE TABACO LINES, INCORPORATED, DEFENDANT AND APPELLEE.

G.R. No. 15940, March 29, 1961

Ponente: BARRERA, J.

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BARRERA, J.:

Plaintiff Vicente Cambare appeals from the order dated January 5, 1959 of the Court of First Instance of Albay (in Civil Case No. 1992) dismissing his complaint against defendant Union Obrera de Tabaco Lines, Incorporated, for lack of cause of action, and denying his motion for writ of preliminary attachment on certain property owned by said defendant.

The facts of the case are succinctly stated in the decision of the lower court, thus:

"Plaintiff Vicente Cambare is the owner and operator of several motor launches for public freight between the port of Tabaco, Albay and various points in the province of Catanduanes, especially Virac and Calolbon, with rates duly authorized and fixed by the Public Service Commission. On July 18, 1958, the Public Service Commission granted a provisional authority to the defendant to operate passenger and freight service along the lines applied for, including the ports of Tabaco, Albay and Virac, Catanduanes. On October 2, 1958, the provisional authority was revoked by the Public Service Commission. However, on July 11, 1958 defendant Union Obrera de Tabaco Lines, Inc. obtained a coastwise license from the Bureau of Customs to engage in the coastwise trade of the Philippines. In offering its services to the public, the defendant utilizes two launches, namely the motor launch 'Glory', the license is for a period from January 17, 1958 to January 16, 1959. As regards the motor launch 'U.O.T.', the license is from March 26, 1958 to March 25, 1959. The operation of the defendant is the same business of carrying or towing passengers or freight along the same route covered by the plaintiff's motor launches.

"The plaintiff's complaint further alleges that posterior to the issuance of the provisional authority, the defendant has charged rates lower than those of the plaintiff, or those allowed and fixed by the Public Service Commission, by reason of which the plaintiff has suffered damages at the rate of P400.00 daily, which amounts to P30,000.00; that the defendant will continue to operate in utter disregard of the revocation of its provisional authority, thus causing the plaintiff to suffer damages from such illegal operation at the rate of P500.00 daily; and that the plaintiff has likewise suffered moral damages in the sum P20,000.00. The plaintiff then prays that a writ of attachment be granted on the motor launches of the defendant; that the defendant be ordered to pay damages at the rate of P400.00 daily from July 18, 1958 to October 7, 1958, for damages at the rate of P500.00 daily from October 8, 1958 until it stops operation, for moral damages of P20,000.00 and attorney's fees; and that the defendant be prohibited from operating as a public service in ferrying passengers and freight by reason of the revocation of the provisional authority granted to him on July 18, 1958."

Relying on our decision in the case of *Brown vs. Suez* 104 Phil., 388, the trial court dismissed plaintiff's complaint and denied his motion for writ of preliminary attachment, stating in part as follows:

"The defendant, through counsel, in its motion to dismiss and opposition to the issuance of the writ of

preliminary attachment, cites the very recent case of *Charlie Brown vs. Constancio S. Suez*, 104 Phil., 388 promulgated by the Supreme Court on August 25, 1958. It was held there that the Public Service Commission has no authority to require an operator to obtain a certificate of public convenience for the operation of steam boats, motor boats and motor vessels, whether these means of transportation are used in the ferry or coastwise trade and that a person, who is granted a permit by the Bureau of Customs to engage in ferrying passenger or towing freight, does so legally * * *.

"The aforementioned case is in point to the instant suit in controversy. There is, therefore, no other course for the Court except to adopt and follow the doctrine enunciated therein, which carries with it the directive to have plaintiff's complaint dismissed.

"It is contended by the plaintiff that the defendant, even if it holds a coastwise license, cannot automatically engage in the traffic of passengers and freight as a public service, like the plaintiff, and charge its own rates, the Public Service Commission notwithstanding. This argument inevitably leads to the conclusion that the defendant is offering the plaintiff a ruinous and illegal competition. Ruinous and illegal competition was also alleged in the complaint filed by *Charlie Brown* in the aforesaid case. And the Supreme Court ruled that the operation of defendant *Constancio S. Suez*, who was duly granted a permit by the Bureau of Customs to engage in ferrying passengers and freight or towing freight, could not be declared unauthorized or illegal. On the same basis, the operation of the defendant herein cannot be declared unauthorized or illegal.

"Wherefore, the defendant's motion to dismiss is hereby granted, and the complaint dismissed. Necessarily, the motion for a writ of preliminary attachment filed by the plaintiff is denied. There is no pronouncement as to costs.

"SO ORDERED."

Plaintiff-appellant claims that the lower court erred in dismissing the complaint and holding that he has no cause of action.

The contention is meritorious. The principal question presented here is not whether respondent company can operate at all without a permit from the Public Service Commission but whether it can charge during its operation, rates for freight and passenger fares without authority from and regulation by the Public Service Commission. This distinguishes this case from that of *Brown vs. Suez* relied upon by the trial court in dismissing the instant complaint. In the *Suez* case, the issue was itself the legality of the operation of the ferry services of *Suez* under a license issued by the Bureau of Customs. We there held that "*Appellee Constancio Suez* was duly granted permit by the Bureau of Customs to engage in ferrying passengers or towing freight in said areas (crossing the Panguil Bay, from Ozamis City to Baroy, Lanao, by way of Tubod, Lanao) ; hence, said operation cannot be declared to be unauthorized or illegal" as prayed for by *Brown*. Consequently, the ruling in the *Suez* case is inapplicable to the case now before us.

Upon the other hand, the case in point is that of *Javellana, et al. vs. Public Service Commission, et al.*, 98 Phil., 964, where we declared that the Public Service Commission has the authority to prescribe the schedule of the trips of motor launches licensed by the Bureau of Customs to ferry or carry passengers and freights, and the rates to be charged by them. In the cited case, we held:

"We believe that it will be more in consonance with the spirit of the law to consider steamboat or motorboat service between the different islands, involving more or less turbulent and dangerous waters of the open sea, to be coastwise or interisland service. Any way whether said service between the different islands is regarded as ferry service or coastwise trade service, as long as the water craft used are steamboats, motorboats or motor vessels, the result will be the same as far as the (Public Service) Commission is concerned. This is evident from the provisions of Section 13 (a) & (b) of the Public Service Act, as amended by Commonwealth Act 454 * * *. It is true that steamboats, motorboats and motor vessels are included in the public service over which the

Commission has jurisdiction. It is equally true, however, that as regards those means of transportation, whether used in a ferry or in the coastwise trade, the Commission has no authority to require them to obtain certificates of public convenience or prescribe their definite route or line. So, inasmuch as the water craft used by the respondent in the service between Calapan and Batangas, namely, 'R. O. Barron I', 'R. O. Barron II', and 'Batangas Liner' are motorboats and of considerable tonnage at that, The Commission has no authority to require the said boats or the respondent to obtain a certificate of public convenience or to prescribe their route such as the trip from Calapan to Batangas via Lobo. But we hold that the Commission had authority to prescribe the schedule of their trips and the rates to be charged.

* * * * *

"In view of the foregoing, we hold that the motorboat service between Calapan, Oriental Mindoro and Batangas, Batangas, constitutes interisland and coastwise trade; that the Commission has no authority to require petitioners and respondents, operators of said service to obtain a certificate of public convenience, or permit to operate, but that it may prescribe the schedule of trips and passenger and freight rates. The parties herein are reverted to their status as operators before the commencement of these proceedings before the Commission, and such proceedings, including the orders involved are held null and void. No costs." (Italics supplied.)

It is not disputed in the instant case that on July 11, 1958, defendant company obtained a coastwise license from the Bureau of Customs "to engage in the coastwise trade of the Philippines." It operates the same business of carrying or towing passengers or freight along the same route covered by plaintiff's motor launches, namely, "between the port of Tabaco, Albay and various points in the province of Catanduanes, especially Virac and Calolbon", using 2 motor launches named "Glory" and "U.O.T."

The operation of defendant company, traversing as it does the open sea between the Bicol Peninsula and the island of Catanduanes, is, therefore, interisland or coastwise trade service which does not require a certificate of public convenience from the Public Service Commission. However, in line with our ruling in the Javellana case, supra,[1] it must, nevertheless, submit its rates and schedule of trips to the Commission for approval. This being the case, plaintiff's complaint against the defendant company predicated on defendant's charging of rates below those provisionally allowed and fixed by the Public Service Commission and, subsequently, without authority at all, after the provisional permit was withdrawn, states a cause of action and should not have been dismissed.

For all the foregoing, the order of the trial court appealed from is hereby reversed and set aside, and the case is remanded to said court for further proceedings in accordance with law. Without pronouncement as to costs. So ordered.

Bengzon, Acting C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, and Dizon, JJ., concur.

[1] Reiterated, in effect, in the case of Jugueta, et al. vs. Public Service Commission, et al. (105 Phil., 721), where the authority of the Commission was upheld to fix the rates charged by an operator of a motorboat service between Atimonan (Quezon Province) and Alabat Island licensed by the Bureau of Customs, without requiring a certificate of public convenience from the Public Service Commission.

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