

VALLE BROS., INC., PETITIONER, VS. PUBLIC SERVICE COMMISSION AND ISMAEL MELENDRES, RESPONDENTS.*G. R. No. 18694. January 31, 1966*

Ponente: REGALA, J.

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This is a petition for review of the decision of the Public Service Commission dated December 2, 1960, granting the respondent Ismael Melendres a certificate of public convenience to operate ten (10) auto-truck services on the line San Jose (Makati, Rizal) - Divisoria (Manila) and vice-versa and of the resolutions of the same Commission denying the petitioner's motion for reconsideration of the said decision.

On July 2, 1960, respondent Ismael Melendres filed with the Public Service Commission an application for a certificate of public convenience to operate 12 units on the Taguig (Rizal)—Divisoria (Manila) line, via Makati (Rizal), Sta. Ana, Paco, Ermita and Sta. Cruz and vice-versa. Among the operators affected by the above application were the Taguig-Pateros-Transportation. Company, Inc. and Fortunato Halili (Halili Transit) who both had certificates on the Taguig-Divisoria line. Prior to the filing of the respondent's application, however, the above two affected operators have re-routed their Taguig-Divisoria via Makati line on the via Mandaluyong route so that the application of the respondent herein, Ismael Melendres, on the Taguig-Divisoria via Makati line did not really concern their operation. Thus it was that in one of the hearings had on the above application, more specifically the hearing on October 31, 1960, TPT Trans. Co., Inc. and Halili Transit proposed to drop their oppositions to the application if the applicant would shorten the line applied for from the original Taguig-Divisoria line to the Makati-Divisoria line. This proposal was accepted by the applicant, thus paving the way for the promulgation of the decision under question.

On the other hand, the line authorized to the petitioner herein is Makati-Quiapo via Ayala Bridge so that respondent Ismael Melendres maintains that it is not affected by his application, even when it was shortened to the Makati-Divisoria line since the certificate of the petitioner is on the via Ayala Bridge line while his passes through the Sta. Cruz or MacArthur Bridge.

Several hearings were conducted on the original application of the above-named respondent, namely, on August 3, 1960, then on August 18, September 2 and 27, October 21 and finally October 31, 1960. As mentioned earlier, the TPT Trans. Co., Inc. and Halili Transit, the only affected operators to register their oppositions to the application, proposed at the hearing of October 31, 1960 a compromise of sorts to the effect that if the applicant would shorten his route applied for into the Makati-Divisoria line, they would withdraw their oppositions, which offer was thereupon accepted by the applicant and which agreement eventually became the basis of the Commission's decision of December 2, 1960 complained of in this instance.

As recited in the decision of December 2, 1960, the petitioner herein "received the notice sent by the applicant on July 23, 1960, and did not file any opposition on or before the date of the hearing, and upon motion made by counsel for applicant in open court, was already declared in default." This fact is even impliedly admitted by the

petitioner since in its brief, it owns that its opposition to the application was first filed on October 26, 1960, or only after some four hearings have already been had on the suit.

The decision in question, in view of the withdrawal of the oppositions to the respondent's application, was signed by just one Commissioner of the respondent Commission as the case was then deemed uncontested. Finally, the said decision found as a fact that the applicant-respondent was qualified and financially capable to operate and maintain the proposed service and that the same would inure to public interest and convenience.

The petitioner assails the validity of the aforementioned decision upon several grounds the principal ones of which are the following, to wit:

First. The amendment of the original application from the proposed Taguig-Divisoria line into the Makati-Divisoria line should have been effected in writing and notice of the same served upon all affected operators.

Second. The decision of December 2, 1960 was contrary to the respondent Commission's Memorandum Order of January 28, 1959 which prohibited the issuance of new certificates of public convenience on lines within the City of Manila and its environs.

Third. The said decision was void because it was signed by only one Commissioner even as it was a contested case.

We find the foregoing contentions untenable.

To begin with, the records of this case bear out that at the time the amendment to the original application was agreed upon by the parties herein on October 31, 1960, the petitioner herein had already lost its standing in this suit. It had previously been declared in default and the order to that effect does not appear to have ever been lifted. Even assuming, therefore, that the afore said amendment of the original application should have been effected in writing and copies of the same served upon the affected operators, still the petitioner herein would not have been entitled to it nevertheless since, upon the rules and as herebefore said, it had lost all standing.

Besides, it was not really an amendment that the respondent applicant consented to be done on his original application since the change effected therein did not involve any line or route different from any of those mentioned in the original application. All that the change consisted in was in the shortening of the line applied for, involving, however, exactly the same streets or routes as those in the original application. The original application was for the Taguig-Divisoria via Makati line: the span from Taguig to Makati was dropped and the line applied for was shortened to the length alone of the Makati-Divisoria line. What was agreed upon, therefore, was not strictly an amendment of the line applied for, but a compromise on it. And considering that the change was not really proposed or initiated by the applicant but by the oppositors — the proposal was merely accepted by the applicant — it would indeed have only been a superfluous duplicity and an unnecessary ceremony to have notified the oppositors of the shortening of the line applied for. The only oppositors at that time entitled to any such notification were the very authors of the amendment.

Neither is the contention that the decision of December 2, 1960 is contrary to the respondent Commission's Memorandum Order of January 28, 1959 well taken. The said Memorandum Order banned the issuance of certificates of public convenience on new services within the City of Manila and its environs.[1] On the other hand, what was granted in this incident was a certificate for the replacement of abandoned services on the Makati-Divisoria line. In other words, the certificate issued in this instance was not by way of providing for new services, which is what is proscribed by the Memorandum Order, but rather for the purpose of reinstating the abandoned services on the Makati-Divisoria line. The award made in this case did not involve the putting into

service of additional units on the line in question; it merely revived the abandoned units authorized therein.

Besides, in the exercise of its authority, the Commission's first consideration is and should always be public interest and convenience. (*Cebu Ice and Cold Storage Corporation v. Velez*, 57 Phil. 309). Thus, the Commission may even go so far as to revoke certificates of public convenience already issued if the circumstances under which they were granted have materially changed. (*Pasay Trans. Co. v. Public Service Commission*, 59 Phil. 278). Even if we were to accept, therefore, that the Memorandum Order in question comprehends the application of the applicant-respondent herein, still the decision prayed to be set aside ought to be sustained in view of the Commission's positive finding of public need and interest therefore. Between the latter and an administrative rule of the Commission, it seems basic that public welfare and convenience deserve the preference.

Finally, this Court finds no merit either in the claim that the decision in question is void because it was signed by only one Commissioner. While it is true that it carries the signature of only one Commissioner, it is equally true that this case is an uncontested one. Of course, at its inception, a number of oppositions were registered against this application but they were all subsequently withdrawn. Insofar as the petitioner's opposition was concerned, suffice it to say that the same was completely inconsequential and worthless considering that it was filed after it had been declared in default and stripped of any standing in relation to the application. The respondent Commission was, therefore, right and correct in ignoring the said opposition and in considering it as not having been filed at all. Consequently, there is nothing irregular nor unlawful in the decision in question having been signed by just one Commissioner since Section 3 of the Public Service Act explicitly provides that "uncontested cases, except those pertaining to the fixing of rates, shall be decided by one Commissioner."

The petitioner also questions the findings of the respondent Commission on the need and necessity for the service in question. This is, however, a factual consideration which, time and again, we have held should best be left to the sound discretion of the said Commission. Unless the evidence on record clearly show that the respondent Commission has abused its discretion in that respect, a situation that does not obtain in this instance, the finding of facts made by it will be respected by this Court.

IN VIEW OF ALL THE FOREGOING, the petition at bar is hereby dismissed and the questioned decision of December 2, 1960 affirmed. Costs against the petitioner.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, Barrera, Dizon, Makalintal, Bengzon, JP and Zaldivar, JJ., concur.

Sanchez, J., no part.

[1]So far as involved herein, the Memorandum Order provides:

"Until further orders, no application proposing the operation of new TPU, TH, TG, TAXI, G, PU and AC services within the City of Manila and its environs shall be accepted for docketing in the Commission."

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