

THE NATIONAL COAL COMPANY, PETITIONER, VS. THE PUBLIC UTILITY COMMISSION ET AL., RESPONDENTS.

G.R. No. 23047. January 30, 1925

Ponente: STATEMENT In 1922 arrangements were made with the United States in and by which the Naval Collier Pompey, which was then at Olongapo, was turned over to the Government of the Philippine Islands for its use and benefit. This was done without charge and upon the recommendation of the Governor-General, that the collier was the type of ship which the Government of the Philippine Islands required to market its coal from the mines of the National Coal Company. It later appeared that in the marketing of this coal, the collier was operated at a loss. The National Coal Company applied for and was granted a permit by the Public Utility Commissioner to operate the collier as a public carrier and public utility between Manila and Malangas, with option to call at the ports of Cebu, Iloilo, Zamboanga, Dumaguete and Tacloban. It further appears that under such license, the collier was permitted to charge lower rates than commercial vessels were authorized to charge over the same route. Under the conditions then existing, no objection was filed to the granting of this license. Under changed conditions, the continued operation of the steamship Pompey seriously injured the Compañia Maritima and Fernandez Hermanos, the first of which had been operating over the same, route since the Spanish regime, and the Fernandez Hermanos for the last eighteen years. On February 27, 1923, the National Coal Company applied for another license to authorize it to include the port of Davao in its regular schedule. To this application objections were made not only by the Compañia Maritima and Fernandez Hermanos but also by the Philippine Shipowners' Association, upon the ground that the granting of such a license to the steamship Pompey for the coastwise trade was prejudicial to the public interests, and that upon its last voyage, the Pompey carried a large cargo and at lower rates than those which the commercial carriers were authorized to charge, and they prayed that the certificate of public convenience issued October 12, 1922, in case No. 2875, should be revoked on the following grounds: "1. That the steamship Pompey was not ceded to the Government of the Philippine Islands for commercial purposes; "2. That no capital has been invested in the operation of said steamer; "3. That it is the policy of the Government not to compete with private individuals in commercial and industrial enterprises; "4 That the competition is obviously ruinous; "5. That the utilization of this vessel on any route where commercial vessels are being operated with the consent of the Commission, results in a ruinous competition (case No. 3213, folio 1)." April 3, 1923, the Utility Commission was notified that the route between Manila and Mindanao was adequately served by commercial vessels, and that no permit should be granted the National Coal Company to call at Mindanao ports. Notwithstanding such objections, permits were granted by the Commission to include Davao as a port of call pending the final decision of the Commission. In the course of business and by mutual consent of all parties, the objections were consolidated and the cases tried as one, and the Commission rendered its decision denying both of the petitions of the National Coal Company. From this decision the National Coal Company appeals to this court, making the following assignment of errors: "I. The Public Utility Commissioner erred in not holding in his decision that, it being optional on the part of the vessels of Fernandez Hermanos to make port at Davao, the same offers less securities and reciprocal rights to passengers, merchants and shippers than would the making of said port a regular port of call, as applied for by the vessel Pompey. "II. The Public Utility Commissioner erred in not holding in his decision that, it being optional on the part of the vessels of Fernandez Hermanos to make port at Davao, there is a period in the year when only two of the five vessels making trips in the southern ports used to make port at Davao, to the damage of the passengers, merchants and shippers of that port, who became isolated without any communication with Manila for a sufficiently long period of time. "III. The Public Utility Commissioner erred in holding in his decision that it would in no manner promote the public interest of the residents of Davao to make Davao a regular port of call of the vessel Pompey, but, on the contrary, it would be competing with the vessels of Fernandez Hermanos to the latter's damage. "IV. The Public Utility Commissioner finally erred in denying the application of the vessel Pompey for permission to make Davao its regular

port of call." JOHNS, J.

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STATEMENT

In 1922 arrangements were made with the United States in and by which the Naval Collier Pompey, which was then at Olongapo, was turned over to the Government of the Philippine Islands for its use and benefit. This was done without charge and upon the recommendation of the Governor-General, that the collier was the type of ship which the Government of the Philippine Islands required to market its coal from the mines of the National Coal Company. It later appeared that in the marketing of this coal, the collier was operated at a loss. The National Coal Company applied for and was granted a permit by the Public Utility Commissioner to operate the collier as a public carrier and public utility between Manila and Malangas, with option to call at the ports of Cebu, Iloilo, Zamboanga, Dumaguete and Tacloban. It further appears that under such license, the collier was permitted to charge lower rates than commercial vessels were authorized to charge over the same route. Under the conditions then existing, no objection was filed to the granting of this license. Under changed conditions, the continued operation of the steamship Pompey seriously injured the Compañía Marítima and Fernandez Hermanos, the first of which had been operating over the same, route since the Spanish regime, and the Fernandez Hermanos for the last eighteen years.

On February 27, 1923, the National Coal Company applied for another license to authorize it to include the port of Davao in its regular schedule. To this application objections were made not only by the Compañía Marítima and Fernandez Hermanos but also by the Philippine Shipowners' Association, upon the ground that the granting of such a license to the steamship Pompey for the coastwise trade was prejudicial to the public interests, and that upon its last voyage, the Pompey carried a large cargo and at lower rates than those which the commercial carriers were authorized to charge, and they prayed that the certificate of public convenience issued October 12, 1922, in case No. 2875, should be revoked on the following grounds:

"1. That the steamship Pompey was not ceded to the Government of the Philippine Islands for commercial purposes;

"2. That no capital has been invested in the operation of said steamer;

"3. That it is the policy of the Government not to compete with private individuals in commercial and industrial enterprises;

"4 That the competition is obviously ruinous;

"5. That the utilization of this vessel on any route where commercial vessels are being operated with the consent of the Commission, results in a ruinous competition (case No. 3213, folio 1)."

April 3, 1923, the Utility Commission was notified that the route between Manila and Mindanao was adequately served by commercial vessels, and that no permit should be granted the National Coal Company to call at Mindanao ports. Notwithstanding such objections, permits were granted by the Commission to include Davao as a port of call pending the final decision of the Commission.

In the course of business and by mutual consent of all parties, the objections were consolidated and the cases tried as one, and the Commission rendered its decision denying both of the petitions of the National Coal Company. From this decision the National Coal Company appeals to this court, making the following assignment of errors:

"I. The Public Utility Commissioner erred in not holding in his decision that, it being optional on the part of

the vessels of Fernandez Hermanos to make port at Davao, the same offers less securities and reciprocal rights to passengers, merchants and shippers than would the making of said port a regular port of call, as applied for by the vessel Pompey.

"II. The Public Utility Commissioner erred in not holding in his decision that, it being optional on the part of the vessels of Fernandez Hermanos to make port at Davao, there is a period in the year when only two of the five vessels making trips in the southern ports used to make port at Davao, to the damage of the passengers, merchants and shippers of that port, who became isolated without any communication with Manila for a sufficiently long period of time.

"III. The Public Utility Commissioner erred in holding in his decision that it would in no manner promote the public interest of the residents of Davao to make Davao a regular port of call of the vessel Pompey, but, on the contrary, it would be competing with the vessels of Fernandez Hermanos to the latter's damage.

"IV. The Public Utility Commissioner finally erred in denying the application of the vessel Pompey for permission to make Davao its regular port of call."

JOHNS, J.:

It appears that when the steamship Pompey was owned by the United States, it was a naval collier, and that it was obtained by this Government from that Government to market the coal from the coal mines of the National Coal Company. In other words, that the Pompey was obtained for a specific purpose and it is now the property of this Government, and that in legal effect it is used by the Government as a public utility in competition with other commercial ships which are owned by and operated with private capital. When it appeared that the Pompey was operated at a loss in the marketing of coal, it was then sought to recoup those losses by the operation of the ship as a public utility in connection with its business of marketing coal. In other words, the ship would come to Manila from the coal mines loaded with coal and over the proposed route would return loaded with freight and passengers.

In the very nature of things, the operation of a Government owned ship, as a public utility, and in particular upon the facts shown in the instant case, is unfair competition with vessels which are owned as private property and operated as a public utility. A Government owned ship is owned and operated at the sole expense of the Government, and it is exempt from all kinds of license and taxation. In any event, when operated as a public utility, a Government owned ship should not have any other or greater rights or privileges than a ship which is owned and operated by private capital.

If a Government owned ship is to be operated as a public utility for one purpose, it should be operated as a public utility for all purposes. In other words, it should not be permitted to mingle its own personal operations with its operations as a public utility. If it is to be a public utility for one purpose, it should be a public utility for all purposes. If it is to be operated by the Government for certain purposes, it should be confined and limited to those purposes, and, should not at the same time, and as a part of that business, be operated as a public utility. That would be unfair competition. This would be especially true where the Government owned ship is operated at a loss.

Legally speaking, there cannot be a monopoly when a property is operated as a public utility. As such, it is clothed with a public interest and devoted to a public use, so that when one devotes his property to a use in which the public has an interest, he virtually grants to the public an interest in that use and submits it to such public use under reasonable rules and regulations to be fixed by the Public Utility Commission.

If it be a fact that the public interests of Davao were not being properly served under the licenses which were previously granted by the Public Utility Commission for that port, the remedy is to file a petition before the

Commission alleging such facts and asking for a hearing. If upon that hearing it should be found that the allegations are true, it would then be the duty of the Commission to make the necessary orders requiring the holders of existing licenses to improve the service or to revoke their licenses.

It will be noted that, excluding the call to Davao, the Public Utility Commission granted the National Coal Company everything which it sought to obtain. In a well written and exhaustive opinion, the Utility Commission found as a fact that the granting of a license to the National Coal Company to make Davao a port of call, under existing conditions, would be unjust and unfair to commercial owned ships operating under existing licenses.

Under the facts shown in the record, and under the provisions of section 37 of Act No. 2306, that finding must be sustained. The relief, if any, to which the public of Davao is entitled can be obtained upon proper petition and showing before the Public Utility Commission.

The decision of the Commission is affirmed, without costs. So ordered.

Johnson, Street, Malcolm, Villamor, and Romualdez, JJ., concur.

DISSENTING

OSTRAND, J.:

I dissent.

The court apparently regards the case as primarily a question between the National Coal Company and Fernandez Hermanos. Such is not the case. It may be of some convenience to the Coal Company to maintain its Davao service, but it also appears that the service is rendered in response to a public demand. There is in the record a petition dated April 23, 1923, addressed to the Public Utilities Commission and signed by twenty-two merchants, planters, and hemp dealers in Davao, asking that in view of the increase in hemp production that the Pompey be retained on the route and that at least one additional steamer be allocated to the run. There is also the testimony and affidavits of several witnesses to the same effect.

The firm of Fernandez Hermanos, operating the ships of the Compañía Maritima as well as its own, has for many years enjoyed a monopoly of transportation to and from Davao. The place has in recent years become a port of importance and the shipping from there is on an average steadily increasing. It would therefore seem that in the absence of special reasons to the contrary, the port is entitled to competitive transportation.

I am unable to find any real evidence in the record that such special reasons exist. The finding of the Public Utilities Commission that the competition of the Pompey is ruinous to Fernandez Hermanos is, as far as I am able to see, entirely unsupported by proof. It is true that Mr. Mateo, the manager of the shipping department of Fernandez Hermanos, in answer to a question by the attorney for his firm expressed the opinion that the competition of the Pompey would be "ruinosa" but that can hardly be regarded as evidence; the witness did not state the facts upon which his opinion was based and he is, of course, not a disinterested witness. There is also some statistics in the record tending to show that the ships of Fernandez Hermanos carried more cargo during the first semester of 1922 than during the corresponding period of 1923, but this may have been due to other causes than the competition of the Pompey, and it is not shown that the shipping business of the firm was unprofitable during the latter period. Some of the ships were from time to time removed from the Davao run and placed on other routes served by the firm, but that appears also to have been the general practice in previous years. The

Fernandez Hermanos' boats on the Davao route are operated on an optional schedule and naturally the amount of the traffic from the various ports will vary according to the season and the conditions of the market. The shifting of boats from one route to another may be due to increased traffic on the latter. Mr. Mateo himself, in answer to the question as to what month brought the greatest volume of traffic, stated:

"There is nothing fixed; it all depends on the state of the market; when the price of hemp is high in Manila, more hemp is shipped."

It may be noted that several witnesses, giving specific instances, testified that even after the competition of the Pompey began, cargo was frequently refused by the ships of Fernandez Hermanos and had to lie over until the next boat. It also appears that none of the ships have been laid up for lack of cargo.

I cannot attach much weight to the statement in the decision of the court that "legally speaking, there cannot be a monopoly when a property is operated as a public utility." There are many things in connection with transportation service which cannot be conveniently reached and remedied by the orders of a Public Utilities Commission and it is an illusion to hope that a monopoly can be so regulated by decrees as to eliminate all of its disadvantageous features. Competitive service is always preferable whenever conditions are such that it can be maintained.

In this connection, I may quote the testimony of Mr. H. H. Boyle, an important exporter of hemp and apparently an impartial witness:

"Q. As an exporter of hemp, have you bought hemp in Davao?—A. I buy abaca and have considered entering the Davao market, but on account of the conditions in regard to freight, telegrams, labor and minor facilities, I have not been able to see my way clear to enter that field of operations. One of the principal reasons is the monopolistic tendencies of the shipping companies which serve that port. Until competitive lines of commercial coast shipping in Davao are established and proper facilities are provided by the shipping companies, I do not see how money can be invested there. What I desire principally is that there be competitive lines in the service of this port and I believe it would benefit the hemp planters in that district."

The opinion of the court lays stress on the fact that the Pompey is a Government owned ship, exempt from certain of the expenses with which a privately owned vessel is necessarily burdened and that, therefore, the operation of the vessel would be unfair competition. I can see no force in this observation. The Pompey is operated as a public utility; its rates are fixed by the Public Utilities Commission and must be the same as those charged by privately owned vessels. Under these circumstances, it is difficult to find anything unfair in the competition if the situation otherwise justifies competitive service. That the Government by reason of lesser expenses may make greater profits from the operation of its vessel should not injure the interests of private shipping if the rates fixed are fair and reasonable. Neither is there anything reprehensible in the Government using its vessels for commercial traffic when the public interests so require. It is a fact of which we may well take judicial notice that coastwise shipping facilities in the Philippines are not very satisfactory and that it frequently has been found necessary to utilize Government vessels in interisland traffic.

It is stated in the opinion of the court that "If it be a fact that the public interests of Davao were not being properly served under the licenses which were previously granted by the Public Utility Commission for that port, the remedy is to file a petition before the Commission alleging such facts * * *." That is exactly what twenty-two of the principal shippers in Davao—probably the great majority of the directly interested merchants—have done in this case, with the result that both the Public Utilities Commission and this court, upon the testimony of the shipping manager of the firm to which competition is inconvenient, have in effect held that non-competitive shipping service on an optional schedule is sufficient for the now important port of Davao and that the shippers and merchants there do not know what is good for them.

It is interesting to note that before acquiring the Pompey the National Coal Company tried to make arrangements for coal shipments by privately owned vessels, but without success. At first, the various firms approached declined to consider such shipments; later an offer appears to have been received for the transportation of coal at the prohibitive rate of P14 per ton from Malangas to Manila, a distance of 600 miles. Coal is carried from Japan to Manila, a distance of from 1,500 to 1,800 miles, for P5 per ton. (See testimony of Mr. C. Russell.)

The facts here stated are somewhat at variance with the statement of facts in the majority opinion, but are amply sustained by the record and practically uncontradicted. The competition of the Pompey has naturally tended to reduce to some extent the volume of the business of Fernandez Hermanos, but there is nothing to show that such competition has been ruinous or that the shipping of the firm has been unprofitable. Considering the desires of the Davao business men as revealed by their petition and by the testimony, and considering further the fact that the volume of the traffic of the port is in general increasing from year to year, the decision of the Public Utilities Commission should have been reversed and the petition for a certificate of public convenience granted.

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