

ALEJANDRA MEJICA, PETITIONER, VS. THE PUBLIC UTILITY COMMISSION, RESPONDENT. FRANCIS J. COOPER, NEGROS TRANSPORTATION CO. AND RAMON MIRASOL, INTERVENORS.*G. R. No. 25940. December 18, 1926*

Ponente: MALCOLM, J.

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Two questions are before the court for decision. The first is preliminary in nature and relates to the motions to dismiss presented by the intervenors. The second question goes to the merits, and relates to the legal right of the Public Utility Commission to impose conditions upon public utilities operating auto trucks obliging them to follow fixed routes and schedules and to respect the operation of other public utilities.

The petitioner is Alejandra Mejica who was likewise the petitioner before the Public Utility Commission. The respondent to the petition is made the Public Utility Commission. The intervenors are Francis J. Cooper, the Negros Transportation Co., and Ramon Mirasol, who were the opponents before the Public Utility Commission. The writing filed here is entitled "Petition for Review" and is predicated on the grounds "(a) that no evidence was produced before the respondent commission upon the matter of fact which will justify the restriction of the time of departure of the increase of seven trucks belonging to the herein petitioner," and "(b) that said order is unjust and prejudicial to the public interest." The brief for the petitioner is labeled "Certiorari" and the same reasons advanced in the petition for review are relied upon as "Grounds for Certiorari."

It will be noted that the petitioner has made the Public Utility Commission the respondent, as in certiorari cases, without advancing any allegation that the commission has exceeded its jurisdiction. As, however, the petition follows the statutory language providing for petitions for review, and as the intervenors have presented their contentions to the court, we prefer to treat this as a petition for review, and for the better satisfaction of the parties, will proceed to decide the case on its merits. (See *Manila Railroad Company vs. A. L. Ammen Transportation Co.*, [1925], 48 Phil., 266.)

In connection with the main point at issue, it is well to recall that the petitioner and the intervenors are all public utilities engaged in the operation of auto truck services for the transportation of passengers and freight over practically the same territory. The certificates of public convenience first issued authorized operation without stated hours or routes. Subsequently, however, Francis J. Cooper and the Negros Transportation Co. changed their methods of operation with the approval of the Public Utility Commission from ones without fixed hours or routes to services with fixed hours and routes. It is also our understanding that Ramon Mirasol has pending an application for a similar certificate. The petitioner Alejandra Mejica has preferred to operate her vehicles upon irregular schedules. By means of two cases presented to the Public Utility Commission by Francis J. Cooper and the Negros Transportation Co., Alejandra Mejica was forbidden, when operating on the same line with Francis J. Cooper and the Negros Transportation Co. or either of them, to do so from any point within less than two hours before or one hour after the scheduled hours of departure of their trucks.

Thus remained the situation, until Alexandra Mejica asked the Public Utility Commission for authority to increase her equipment by seven auto trucks with a capacity of twenty-eight passengers each, and to operate them on the same route and under the same conditions prescribed in her previous certificate of conveyance. To this application, Francis J. Cooper and the Negros Transportation Co. filed opposition. After hearing; the Assistant Public Utility Commissioner, Honorable M. V. del Rosario, rendered his decision. The Commissioner found that the evidence presented clearly showed that there existed sufficient traffic for the granting of the increase of equipment applied for in the proceeding. The Commissioner then treated of the more important question of whether the trucks should be permitted to operate pursuant to a fixed itinerary route. On this point, it was said:

" * * * The Commission has said on various occasions, in solving similar questions to that now under consideration, that it will protect and render every reasonable and necessary support for the defense of their interests which concern the public, to those operators who operate with a fixed route or itinerary of trips with their specified hours of departure, inasmuch as it means a good service to the public that makes use of this means of transportation.

"And while this does not mean that the interests of the other operators affected will be disregarded, yet it is indisputable that those who operate with fixed route and itinerary and with fixed hours of trips, deserve all the attention and reasonable protection of the Commission, in order that the public may always have proper and adequate service on fixed hours, which necessarily redounds to the benefit of the public itself.

"That is not the case with other operators who, not desiring to submit to a fixed route or itinerary of trips and much less to fixed hours of departure, depart and operate at their convenience, without in the least considering the interests of the public that makes use of said means of transportation."

In the same connection, there can be noted Public Utility Case No. 4345, Manuel R. Lopez, applicant, and Public Utility Case No. 1525, Vivencio Oefemia, applicant. The following taken from Huddy on Automobiles, 6th ed., 193, although relating more directly to the legislative power, is nevertheless indicative of the general trend:

"The fixing of routes and schedules for jitneys is an appropriate exercise of the regulatory power of States and municipalities. A jitney regulation may properly require the proprietor to maintain a regular schedule of his trips for certain hours. And a jitney owner may be required to operate over a designated route and no other, and on a fixed schedule without repetition in whole or in part of the scheduled trips, and that the machines shall be operated a certain number of hours during each day. * * *." (Citing *Hutson vs. City of Des Moines*, 176 Iowa, 455; 156 N. W., 883; *Ex parte Lee*, 28 Cal. App., 719; 153; Pac, 992; *Ex parte Dickey*, 76 W. Va., 576; 85 S. E., 781; *Booth vs. Dallas* [Tex. Civ. App.], 179 S. W., 301; *Commonwealth vs. Slocum*, 230 Mass., 180; 119 N. E., 687; *West vs. Asbury Park* [N. J.], 99 Atl., 190; *Allen vs. City of Bellingham*, 95 Wash., 12; 163 Pac, 18.)

As suggested by counsel for the intervenors, a resolution of two questions will decide the larger question at issue before this court. They are; (1) Did the Public Utility Commission have the power to establish the rule announced in its decisions that regular operators of auto trucks will be protected from the competition of irregular operators? (2) Was there any evidence before the Public Utility Commission when it made the decision appealed from which supported reasonably the order applying the rule to the petitioner?

The general rule established by the Public Utility Commission speaks for itself. It is its own best advocate. It appeals to one's sense of justice. The general public, in the opinion of the Commission, is better served by regular service than it is by irregular service. The public utility operators in the opinion of the Commission are better protected from ruinous competition by the enforcement of a method fair to all.

In the exercise of the power conferred on the Commission, the court should not interfere. The Commission should

not be hampered by technical obstruction. The court should not attempt to substitute its judgment for the judgment of the Public Utility Commission if there be evidence before it supporting its order. In this instance, that there was ample evidence before the Commissioner, is plain.

Going on the assumption that this is a petition for review and that all the parties thereto are properly before the court, it yet results that the decision of the Public Utility Commissioner is reasonably supported by the evidence and is within the jurisdiction of the Commission. Wherefore the decision is affirmed, with costs against the petitioner.

Avanceña, C. J., Johnson, Street, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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