

RUPERTO SANTOS, PETITIONER, VS. THE PUBLIC SERVICE COMMISSION, RESPONDENT.

G.R. No. 26771. September 23, 1927

Ponente: MALCOLM, J.

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MALCOLM, J.:

In this petition for review, the petitioner challenges the jurisdiction of the Public Service Commission over the business known as "El Tren de Aguadas" which supplies water to ships in the Pasig River and Manila Bay. A decision on this issue depends in turn on whether or not "El Tren de Aguadas" is a "public utility" or "public service" within the meaning of those terms as denned in the Public Utility and Public Service Laws.

The record discloses that "El Tren de Aguadas" was organized in the City of Manila in 1894 as "una sociedad de cuentas en participacion." Apparently it only came under the observation of the former Public Utility Commission on May 25, 1920, when a complaint was filed against the business on the ground that it had a number of times refused to serve the motorship "Andalucia." "El Tren de Aguadas" answered this charge satisfactorily without any effort being made to avoid the authority of the Commission. On June 24th of the same year, the Commission required "El Tren de Aguadas" to submit to it a tariff of its water service in conformity with the law. To this "El Tren de Aguadas" responded by submitting its list of charges which was approved by the Commission on September 9, 1920. On October 1, 1920, "El Tren de Aguadas" proposed an amendment to its tariff which, after a further amendment, was approved by an order of the Commission on October 27, 1920. It was not until the 8th of June, 1921, that "El Tren de Aguadas" asked that it be exempted from submitting to the jurisdiction of the Commission. The matter was allowed to languish until more than five years later when a decision was handed down by the Public Utility Commission denying the petition, and, as a consequence, ordering that the business "El Tren de Aguadas" observe the regulations of the Commission, render the corresponding reports, and solicit without delay the proper Certificate of Public Convenience.

By placing the old law defining the term "public utility" side by side with the new law defining the term "public service," the differences between the two will be graphically illustrated.

Act No. 2307, section 14, as amended by Act No. 2694, section 9, provided the following:

"The Public Utility Utility Commissioner shall have general supervision and regulation of, jurisdiction and regulation of, jurisdiction and control over, all public utilities, and also over their property, property rights, equipment, facilities and franchises so far as may be necessary for the purpose of carrying out the provisions of this Act. The term 'public utility' is hereby defined to include every individual copartnership, association, corporation or joint stock company whether domestic or foreign, their lessees, trustees or receivers appointed by any court whatsoever, or any municipality, province or other department of the Philippine Islands, that now or hereafter may own, operate, manage or control within the Philippine Islands any common carrier, railroad, street railway, traction railway, steamboat or steamship line, small water craftm such as bancas, virais, lorchas, and others, engaged in the transportation of passengers and cargo, line of freight and passenger automobiles, shipyard,

marine railway, marine repair shop, ferry, freight or any other car service, public warehouse, public wharf or dock not under the jurisdiction of the Insular Collector of Customs, ice refrigeration, cold storage, canal, irrigation, express, subway, pipe line, gas, electric light, heat, power, water, oil, sewer, telephone, wire or wireless telegraph system, plant or equipment, for public use: * * *."

Act No. 3108, section 13 as amended by Act No. 2307, as amended, provides the following:

"The Commission shall have general supervision and regulation of, jurisdiction and control over, all public services, and also over their property, property right, equipment, facilities and franchises so far as may be necessary for the purposes of carrying out the provisions of this Act. The term 'public service' is hereby defined to include every individual, copartnership, association, corporation, or joint-stock company, whether domestic or foreign, their lessees, trustees, or receivers appointed by any court whatsoever, or any municipality, province, or other department of the Government of the Philippine Islands, that now or hereafter may own, operate manage or control within the Philippine Islands, for hire or compensation, any common carrier, railroad, street railway, traction railway, subway, freight or passenger motor vehicles, with or without fixed route, freight or any other car service, express service, steamboat or steamship line, ferries, small water craft, such as lighters, pontines, lorchas, and others, engaged in the transportation of passengers or cargo, shipyard, marine railway, marine repair shop, public warehouse, public wharf or dock not under the jurisdiction of the Insular Collector of Customs, ice, refrigeration, canal, irrigation, pipe line, gas, electric light, heat, power, water, oil, sewer, telephone, wire or wireless telegraph system, plant or equipment: * * *."

It will first be observed that the phrases "public services" and "public service" substitute and supersede the phrases "public utilities" and "public utility." It will next be observed that while the old law in defining the term "public utility" included the phrase "for public use," these words are not to be found in the new law. It will further be observed that the phrase "for hire or compensation" appearing in the new law does not appear in the old law. Under the old law, the concurrence of two things were necessary: (1) The individual, copartnership, etc. must be a "public utility" and (2) the business in which such individual, copartnership, etc. is engaged must be for public use (*Villanueva, The Public Service Law*, pp. 23 et seq.; *U. S. vs. Tan Piaco* [1920] 40 Phil 853; *Iloilo Ice and Cold Storage Co. vs. Public Utility Board* [1923], 44 Phil., 551.) Under the new law, the concurrence of two things are necessary (1) The individual, copartnership, etc. must be a "public service;" and (2) the business in which such individual, copartnership, etc. is engaged must be for hire or compensation. Whether the Legislature could properly provide for such a qualification by supplanting "public use" with "hire or compensation" is not touched upon in this case, and need not, therefore, be discussed.

Within the meaning either of the old law or the new law, it is indisputable that "El Tren de Aguadas" is dedicated to the operation of a water system, and that this service is for public use or for hire or compensation. Otherwise formulated, there is evidence supporting the conclusions of the Commissioner to this effect. The following may be noted: (1) "El Tren de Aguadas" voluntarily submitted to the jurisdiction of the Commission; (2) according to the testimony of Ruperto Santos, a former employee of the concern, "El Tren de Aguadas" appears to have sold water from its water boat to practically every person who desired to purchase it, including about forty entities; and (3) in a letter from the petitioner dated October 1, 1920, it was said: "Therefore, aside from the five shipping companies of this city with which the client has contracted for drinking water service, the preceding graduated tariff shall still be imposed upon any other private individual or juridical entity to which drinking water may be served by the launch 'El Tren de Aguadas.' "

For all the foregoing considerations, there is no escaping the conclusion that "El Tren de Aguadas" is included in the term "public utility" as formerly defined by the Public Utility Law, and in the term "public service" as now defined by the Public Service Law, and as a consequence, comes under the jurisdiction of the Public Service

Commission.

Wherefore, the decision brought here on review is confirmed, with the costs of this instance against the petitioner.

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

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