

THE CITY OF MANILA, PETITIONER, VS. THE PUBLIC SERVICE COMMISSION, RESPONDENT.

G.R. No. 29955. December 22, 1928

Ponente: MALCOLM, J.

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MALCOLM, J.:

The fundamental legal question in these proceedings is as to which of two existing agencies of the Government of the Philippine Islands, the City of Manila or the Public Service Commission is confided the power to authorize the Manila Electric Company to abandon a trolley bus service and a street car service, and to substitute therefor exclusively an auto bus service. The Attorney-General and counsel for the Manila Electric Company unite in sustaining the Public Service Commission in the exercise of this power. The fiscal of the City of Manila upholds the side of the city.

The Manila Electric Company first applied to the Public Service Commission for authority to abandon the trolley bus service then operating in Intramuros, Manila, and the street car service then operating on Taft Avenue, Manila, and to substitute therefor temporarily an auto bus service to operate on a specified route. The Commission granted a permit for an experimental period of thirty days and later extended the permit for another period of thirty days. Before the time thus delimited had expired, the Manila Electric Company applied for permanent authority for the operation of an auto bus service "under the terms of petitioner's franchise." In support of this application, petitioner alleged "that the proposed service has been demonstrated to be a public convenience and necessity." The City of Manila opposed the petition on the ground that the bus service, although involving a change for the better, is in violation of the franchise of the Manila Electric Company, and under the franchise, requires the city's consent to the substitution and abandonment of the electric car service. After taking the testimony of the Vice-President of the Manila Electric Company, a decision was handed down by the Commissioner which dismissed the opposition of the city, and ratified the authority formerly given the petitioner by making it permanent.

The franchise of the Manila Electric Company was granted that company by Act No. 484 of the Philippine Commission, as carried into effect by Ordinance No. 44 of the City of Manila in 1903, and as later amended by Act No. 1112 of the Philippine Commission, as carried into effect by Ordinance No. 70 of the City of Manila in 1904. The franchise was to run for a period of fifty years and authorized the construction and maintenance of an electric street railway in the streets of the City of Manila "in accordance with the terms and conditions set forth in the two parts" of the franchise "and the laws and ordinances, not inconsistent herewith, now or hereafter in force." The streets, thoroughfares, bridges, and public places upon which the grantee was authorized to make excavations and constructions were enumerated. Then it was provided that "The Manila Electric Railroad and Light Company shall be authorized to make excavations and constructions for the purposes prescribed in Part One of said Ordinance Numbered Forty-four, upon such further streets, thoroughfares, bridges, and public places within the City of Manila as may, from time to time, be approved by the Municipal Board." Of a similar tenor was the following provision of the amended franchise: "All reasonable or proper or necessary changes on the lines or

routes of the grantee, or the abandonment of any part of its franchise, or of any street or streets which it may not be desirable or advisable to use, may be made by the grantee, with the approval of the municipal authorities." The grantee was to "pave and keep in good and permanent repair the surface of the street between its rails and between its tracks and for eighteen inches on each side of its tracks under the supervision of the municipal authorities and in such manner as they shall prescribe." As to the system of electric railroad to be installed, it was to be the "overhead trolley system," but the "grantee shall have the right and privilege to modify, improve, and change such system in such manner as the progress of science and improvements in and the development of motive power may make reasonable and proper." Finally, it was provided that the "franchises here granted shall be subject to amendment, alteration, or repeal by the Congress of the United States."

From time to time, changes in the lines of the Manila Electric Company have been requested and permitted. One such concession as to single tracks and removal was provided for by the Philippine Commission in Act No. 1447 enacted in 1906. Other changes were approved by ordinances enacted by the Municipal Board of the City of Manila beginning with 1904 and continuing until 1924. (Among others, Ordinances Nos. 71, 144, 272, 167, 192, 490, 903, 988, 1162, 1244.)

The Board of Public Utility Commissioners was created by Act No. 2307 which went into force in 1913. That law repealed any act or part of act inconsistent with its provisions. Act No. 2307 has subsequently been amended and superseded by Acts Nos. 2362, 2694, and 3108. The latter act known as the Public Service Law, as amended by Act No. 3316, is the prevailing law.

To the Public Service Commission has been delegated "general supervision and regulation of, jurisdiction and control over, all public services, and also over their property, property rights, 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 * * * corporation * * * that now or hereafter may own, operate, manage, or control within the Philippine Islands, for hire or compensation any * * * street railway, * * *" (Act No. 3108, sec. 13, as amended by Act No. 3316, sec. 6.) The Commission shall also have power to do a number of specified things in connection with public services, as for instance "To permit any street railway or traction company to change its existing gauge to standard steam railway gauge, upon such terms and conditions as said Commission shall prescribe" (sec. 14). The Commission shall also have power, after hearing, upon notice, by order in writing to require every public service "To comply with the laws of the Philippine Islands and with any provincial resolution or municipal ordinance relating thereto and to conform to the duties imposed upon it thereby or by the provisions of its own charter, whether obtained under any general or special law of the Philippine Islands;" and "to establish, construct, maintain, and operate any reasonable extension of its existing facilities" (sec. 15). The tracks of any street railway cannot be laid across any highway, so as to make a new crossing at grade; nor shall the tracks of any street railway be laid across the tracks of any other railroad or street railway or traction company without first obtaining permission therefor from the Commission (sec. 19 in connection with sec. 20). Also "No privilege or franchise hereafter granted to any public utility as herein defined, by any political subdivision of the Philippine Islands, shall be valid until approved by said Commission" (sec. 22). Along towards the end of the law is the repealing clause specifically repealing Acts Nos. 2307, 2362, and 2694, and generally repealing "any Act or part of Act inconsistent with the provisions of this Act" (sec. 40).

The material parts of the franchise of the Manila Electric Company lie before us. So likewise do the important portions of the Public Service Law. The franchise granted by the City of Manila to the Manila Electric Company is in the nature of a contract which the parties to it must respect. That is true. But it is not a contract such as is protected from impairment by the Constitution. The franchise was originally authorized by the Legislature. It was made effective by a municipal corporation acting pursuant to delegated power. What the principal has given into

the hands of the agent may subsequently be recalled by the principal. So uncomplicated by constitutional limitations, the question recurs if the Philippine Legislature by placing on the statute books Act No. 2307 and its successors intended thereby to withdraw from the City of Manila certain power previously conferred by the Philippine Commission, or whether the contrary was the legislative purpose. The question whether by the establishment of the Public Service Commission municipal jurisdiction is excluded or alone obtains, or is concurrent with that of the State, is solely one of legislative intent.

The previous decisions of this court have touched lightly upon the point. For instance, the franchise of the Manila Electric Company contained the following provision: "Members of the police and fire department of the City of Manila wearing official badges shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed." The Public Utility Commissioners issued an order requiring the Manila Electric Company to carry on its street cars free of charge the members of the secret service force of the City of Manila. The company raised many questions relative to the jurisdiction, authority, and power of the Board of Public Utility Commissioners. But this court avoided the discussion of the same, and contented itself with sustaining the construction placed by the company and the city on the clause of the franchise already referred to. As a result, the order of the Board of Public Utility Commissioners was vacated, set aside, and annulled. (*Manila Electric Railroad & Light Co. vs. Board of Public Utility Commissioners* [1915], 30 Phil., 387.)

Again the franchise of the Manila Electric Company provided that the maximum rate of speed at which the grantee shall operate its cars shall be fixed by the municipal authorities. So the city authorities enacted section 391 of the Revised Ordinances concerning the speed of street cars. The opinion of the Attorney-General was requested as to whether or not the provisions of Act No. 2307, as amended, operated to take away from the City of Manila the authority of regulating the speed of vehicles conferred by its charter. The Attorney-General stated that it did. Relying upon this opinion, the Board of Public Utility Commissioners entertained a petition of the Manila Electric Company only to be met with the objection of the city that the Board has no jurisdiction to regulate the speed of cars in the City of Manila, and that said power is vested in the Municipal Board. This objection was overruled by the Board of Public Utility Commissioners, and a decision was rendered allowing the Manila Electric Company to operate its cars at the speed desired. The Supreme Court, speaking through Mr. Justice Moreland, said: "There can be no doubt that, until the establishment of the Board of Public Utility Commissioners, the City of Manila had the regulatory power for which it now contends. But it is equally true that the city held this power at the pleasure of the Legislature.

"Act No. 2307, creating a Board of Public Utility Commissioners, does not specifically repeal any provision of the Manila charter nor of Act No. 484 (the franchise of the Manila Electric Company); but it does, in general terms, repeal 'any Act or part of Act inconsistent with the provisions of this Act.' It follows that, if Act No. 2307 grants to the Board of Public Utility Commissioners the right to regulate the speed of street cars, it thereby repeals the corresponding right previously vested in the City of Manila. Our inquiry is therefore narrowed to an examination of Act No. 2307, for the purpose of determining whether it authorizes the Board of Public Utility Commissioners to regulate the speed of street cars." Continuing, the court ruled that the order of the Board of Public Utility Commissioners should be vacated and set aside, with two Justices dissenting. (*City of Manila vs. Manila Electric Railroad & Light Co. and Board of Public Utility Commissioners* [1917], 36 Phil., 89.)

In another case, the Supreme Court was called upon to decide if the Manila Railroad Company could be required to pay an internal revenue tax under the Act of Congress of October 3, 1913. The Railroad Company contended that it was not required to pay this tax on account of its special charter exempting it from the obligation to satisfy all taxes. The court, speaking through Mr. Justice Johnson, reached the conclusion that the franchise of the Manila Railroad Company had not been amended, altered, or repealed by any Act of Congress, and that accordingly the

company was relieved from the payment of the internal "revenue tax collected by the Government. The basis of the decision as disclosed by the syllabus is as follows:

"1. TAXES; EXEMPTION; SPECIAL LAWS, REPEAL OF, BY GENERAL LAWS.—Special laws or charters may not be amended, altered, or repealed by a general law, by mere implication.

"2. ID.; ID.; ID.—Repeal of laws by implication is not favored. The mere repugnancy between two statutes should be very clear in order to warrant the court in holding that the later in time repeals the former, when it does not in terms purport to do so.

"3. ID.; ID.; ID.—It is well settled that a special and local statute is not repealed by a subsequent statute unless the intent to repeal or alter it is manifest, although the terms of the general act are broad enough to include the cases in the special law.

"4. ID.; ID.; ID.—Where there are two statutes, the earlier special and the later general—the terms of the general broad enough to include the matter provided for in the special—the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general—one as a general law of the land, the other as the law of a particular case.

"5. ID.; ID.; ID.—Charters or special laws granted and enacted by the Legislature are in the nature of private contracts. They do not constitute a part of the machinery of the general government. They are usually adopted after careful consideration of the private rights in relation with resultant benefits to the State. They stand upon a different footing from general laws.

"6. ID.; ID.; ID.—The reason why a general law will not repeal a special law or charter is because in passing a special charter the attention of the Legislature is directed to the facts and circumstances which the act or charter is intended to meet. The Legislature consider and make provision for all the circumstances of a particular case. The Legislature having specially considered all of the facts and circumstances in a particular case in granting a special charter, it will not be considered that the Legislature, by adopting a general law without any mention of its intention to amend or modify the charter, intended to amend, repeal, or modify the special act or charter." (Manila Railroad Co. vs. Rafferty [1919], 40 Phil., 224.)

While the three Philippine decisions which are mentioned do not decide the issue in these proceedings, they do disclose that the Supreme Court on two occasions has been constrained to vacate orders provided by the Public Service Commission, and to require adherence to the provisions of the franchise of the Manila Electric Company. On the third occasion, it was shown that when there is a conflict between a franchise, a special law, and a later general law, the court will proceed cautiously before permitting of an implied repeal of any portion of the franchise. While the American authorities on the subject have been investigated, and to an extent are enlightening, each of them, of course, must be understood in relation with the exact phraseology of Philippine law.

For the purposes of this decision, it may be conceded that the substitution of a bus line for a street railway service is effective under a franchise requiring street railway operation, but which contemplates improvements and changes in the system such as the progress of science and the development of motive power may make reasonable and proper. That impresses us as the better and more liberal view. (Contrast *City of Spartanburg vs. South Carolina Gas & Elec. Co.* [1924], 125 S. E., 295; *P. U. R. An.*, 1925C, 459 with two out of five members dissenting, with *Re Boise Street Car Company*, *P. U. R. An.*, 1926-E, 637.) Nor need we decide if a showing that the street railroad is operating at a loss, as has been required in practically all the pertinent public utility cases, is necessary. (See *Re Utah Light and Traction Company*, *P. U. R. An.*, 1927-A, 310.) That contingency does not seem to be contemplated by the paragraph of the franchise of the Manila Electric Company dealing with changes of routes, and it is our understanding that the instant case goes no further than this. The point is if the consent of the city authorities must be obtained before the Manila Electric Company can take up its street railway tracks and

in lieu thereof begin a subsidiary business with motor busses.

Contrasting the Philippine law with the law of Oklahoma which came before the Supreme Court of the United States on review, an essential difference is noted. The complaint in the Oklahoma case had to do with an order of the Corporation Commission regulating the rates and services of a gas company. The state legislature gave to the Corporation Commission "general supervision over all public utilities, with power to fix and establish rates and to prescribe rules, requirements and regulations, affecting their services." Dealing with the contention of the Oklahoma City, the state court, while fully conceding that the earlier statute delegated to the city the authority claimed by it, held that under the state Constitution, the legislature could withdraw that authority from the city whenever, in its judgment, the public interest would be subserved thereby; and that it was effectively withdrawn from the city and confided to the Corporation Commission by the Act of 1913. The United States Supreme Court dismissed the writ of error upon the ground that only a question of local law was involved. The deduction to be drawn from the Oklahoma law as construed by the courts is that in addition to a grant of general power to the Commission, there was necessary a grant of a special right to fix rates which was enforced. (*City of Pawhuska vs. Pawhuska Oil & Gas Co.* [1919], 250 U. S., 394.)

Again, in a New Jersey decision pertaining to the New Jersey Law from which the Philippine law was derived, it was held that an order of the Public Utility Commissioners, directing a change of gauge of the tracks of the Phillipsburg Horse Car Railroad Company, was within the jurisdiction of the commissioners, under the provisions of the Public Utility Act. But it is to be observed that by the terms of the Public Utility Act, it was given general supervision, jurisdiction, and control "over all public utilities, and also over their property rights, equipments, facilities and franchises," and particular power "to permit any street railway to change its existing gauge to standard steam railway gauge, upon such terms and conditions as said board shall prescribe." (*Inhabitants of Town of Phillipsburg vs. Board of Public Utility Commissioners* [1913], 85 N. J. L., 141; 88 Atl., 1096.) In *Re Burling County Transit Co.* (May 25, 1926), in approving the discontinuance of street railway service, the new Jersey Board said: "The Burlington County Transit Company has been operating at a financial loss for at least a considerable period and has established a bus service over practically the same route as is followed by the trolley service under the authority of local permits approved by this Board; that the operation of the bus service appears to be a more satisfactory means of transportation in the particular territory in question than the operation of the existing trolley line and that the public convenience and necessity of the patrons will be better served through the operation of the auto bus line" (P. U. R. An., 1927-A, 417.)

In a California case, it appeared that the Union Traction Company had petitioned the Railroad Commission for an order authorizing the discontinuance of street railway service, abandonment, and removal of tracks and appurtenances on a portion of its street railway system in the City of Santa Cruz. The applicant alleged that the operation of the line proposed to be abandoned was unprofitable. The applicant proposed, if the application be granted, to install an automobile bus service in lieu of the street railway service over the line sought to be abandoned. The California Railroad Commission promulgated the following:

"ORDER

"A public hearing having been held in the above entitled proceeding, the matter having been duly submitted, the Commission being now fully advised and basing its order on the finding of fact as appearing in the opinion which precedes this order;

"It is hereby ordered, that applicant, Union Traction Company, a corporation, be and the same hereby is authorized to discontinue operation of its street car service heretofore rendered in the City of Santa Cruz over the following described route:

"Commencing at the intersection of Pacific Avenue and Mission Street, thence along Mission Street to its intersection with Younglove Avenue, thence along Younglove Avenue to its intersection with Errett circle, thence along Errett circle to its intersection with Woodrow Avenue (formerly Garfield Avenue), thence along Woodrow Avenue to the intersection of Woodrow Avenue and Cliff Drive, all in the City of Santa Cruz, and to abandon and remove its tracks and appurtenances thereto, subject to the following terms and conditions:

"I. Applicant will be required to file with this Commission a certified copy of an ordinance or other appropriate authorization of the city council of the City of Santa Cruz granting relinquishment of such franchises or portion of franchises which have heretofore been granted by the city council of the City of Santa Cruz covering the line herein authorized to be abandoned.

"II. Applicant will be required to file with this Commission a certified copy of an ordinance or other appropriate authorization of the city council of the City of Santa Cruz granting authority for the operation of an automobile bus line over the route heretofore served by street railway transportation, such automobile bus service to be initially established on schedule similar to that heretofore rendered by the street railway service herein authorized to be abandoned.

"This order shall become effective upon the filing by the applicant of certified copies of ordinances or other appropriate authorizations of the city council of the City of Santa Cruz as hereinabove required." (Re Union Traction Company, P. U. R. An., 1925-E, 503.)

The Public Service Law grants to the Public Service Commission general jurisdiction and control over public utilities. The main purpose, speaking in broad terms, is the supervision and regulation of the operation and maintenance of public utilities. The law also specifies certain particular powers of the Public Service Commission. But among these specified powers, there can be found no mention of a prerogative of the Commission to allow street railways to make changes on its lines or routes or to abandon any part of its franchise. With a general law on the one side, and a special law although earlier on the other side, the provisions of the special law must continue in the face of a lack of intention shown by the Legislature to repeal it by the later general law.

The attitude assumed by the city authorities is strengthened in this instance by the obvious fact that a change in route or abandonment of a line of the street railway relates to a matter which peculiarly concerns the city. The City of Manila is given wide authority by its charter to regulate the use of the city streets. An important part of the consideration for the franchise contract permitting the Manila Electric Company to place its tracks on the city streets was the repair and maintenance of the portion of the streets used.

Whenever any change in the lines of the Manila Electric Company has been made heretofore, it has invariably been pursuant to express legislative permission. In one case, the change was authorized by the Philippine Commission, and in the other cases by the Municipal Board of the City of Manila. This was true even after the Public Utility Commission was provided, for subsequent to December 19, 1913, when the Public Utility Law was enacted, the Manila Electric Company applied a number of times to the city for the right to make certain changes in its routes, and this permission was authorized by the city. In one aspect, therefore, the Manila Electric Company is estopped through conformity to settled practice to contest the legal power of the city in the premises. If ambiguity exists, which we doubt, that construction should be adopted which the parties have placed upon the law by their own acts.

It is our conclusion that it was not the legislative intent as disclosed by the Public Service Law to grant power to the Public Service Commission to abrogate the franchise provisions of the Manila Electric Company concerning abandonment and substitution of service. The agency of the Government of the Philippine Islands to which is confided the power to authorize the Manila Electric Company to abandon a trolley bus service and a street car

service and to substitute therefor exclusively an auto bus service is the City of Manila and not the Public Service Commission.

While the proper legal ruling impresses itself on the mind in a clear-cut manner, yet in deciding the abstract question, it should not be forgotten that very important property rights are involved. The Manila Electric Company has already proceeded to make the desired changes and substitutions in conformity with permits conceded by supposedly competent authority. The company undoubtedly is not at all interested in who grants the permission but is vitally concerned in getting it. The property rights of the company and the public convenience should not be unnecessarily disturbed while two branches of the Government contend as to which has the superior power. The consent of the municipal authorities as evidenced by an ordinance passed by the Municipal Board and approved by the Mayor of the City of Manila should have been made the basis of any action taken by the Public Service Commission in the instant case, and then should have been limited to confirming and enforcing the same. Inasmuch, however, as the reverse procedure has been attempted, the Manila Electric Company should be allowed a reasonable period of time within which to secure municipal approval of the desired changes, which is fixed at three months from final judgment, the decision of the Public Service Commissioner in the meantime being left as it is.

Subject to the qualification above indicated, the decision of the Public Service Commissioner under review will be vacated and set aside. So ordered without special pronouncement as to costs.

Avanceña, C. J., Johnson, Street, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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