

BOHOL LAND TRANSPORTATION CO., PETITIONER AND APPELLANT, VS. NAZARIO S. JUREIDINI, RESPONDENT AND APPELLEE.

G.R. No. 31244. September 23, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition filed by the Bohol Land Transportation Co. praying for the review and reversal of an order issued by the Public Service Commission on November 23, 1928, admitting the application of respondent Nazario S. Jureidini, granting him a certificate of public necessity and convenience to operate regularly fourteen trucks in the Province of Bohol where the petitioner and appellant is a common carrier, and cancelling the authority given to the Bohol Land Transportation Co. in its certificate of public convenience and utility, to make special trips.

In support of its appeal, the petitioner assigns the following alleged errors as committed by the Public Service Commission in said order, to wit:

"1. That the Public Service Commission erred in granting a certificate of public convenience to the applicant Nazario S. Jureidini.

"2. That the Public Service Commission erred in ordering the cancellation of the right of the opponent Bohol Land Transportation Co, to make special trips."

In support of his application for a certificate of public utility and convenience, respondent-appellee Nazario S. Jureidini attempted to prove the following facts: That the Bohol people often had to remain a long time along the roads waiting for some means of transportation; that it often happened that the busses of the Bohol Land Transportation Co. were so crowded that many people had to be left behind; that for lack of space the articles carried by the passengers could not be taken aboard; that many of the automobile and truck drivers with certificates of public utility and convenience, including some in the employ of the petitioner-appellant, have been arrested and sentenced for the overloading of passengers and freight; that the trucks of the Bohol Land Transportation Co. sometimes change routes without proper authorization, and their special cars operate without previous application for permission to do so, and at hours which prejudice the trucks of the respondent-appellee, depriving him of his passengers; that the Bohol Land Transportation Co. refused to carry the mail for three days during the year 1927 without a just cause.

Upon these facts, testimony was given by the respondents appellee himself, Nazario S. Jureidini; Justo Acierto, a Constabulary sergeant who had served fifteen years in Bohol; Jose Hugo, owner of five Public Utility automobiles, and a competitor of the Bohol Land Transportation Co.; Juan Sarmiento, inspector of the Bureau of Public Works, whose duty is to inspect automobiles and provincial roads; Angel Osea, a telegraph operator of the Bureau of Posts; Juan Castro and Sotero Bunac, ex-employees of the Bohol Land Transportation Co., who were dismissed from the service.

In order to offset the testimony of the respondent-appellee, Nazario S. Jureidini, and his witnesses with respect to the insufficiency of the service rendered by the Bohol Land Transportation Co., the latter presented Exhibits 1, 2,

3, 5, 6, 7, 8 and 9, consisting in reports of the trips made by its busses during the months of January, February, and March, 1928, preceding the trial which took place in the month of May of the same year, showing that the number of passengers in Bohol was so small that in January their average hardly reached 28 per cent of the total capacity; in the months of February and March, 24 per cent; and in the month of April, 32 per cent; that is, an average of 28 per cent; that said figures were compiled from the records prescribed by the Public Service Commission.

With respect to the refusal of the Bohol Land Transportation Co. to carry the mail during three days, said company endeavored to prove that at the request of the Director of Posts, the company commenced to carry mail on January 1, 1925; that having failed to reach an agreement as to the compensation to be paid for the service, by mutual consent the matter was referred to the Public Service Commission for decision; that after hearing both parties, said Commission issued an order in November, 1926, fixing the compensation at 2 centavos per kilometer regardless of weight; that the company considered this compensation too small; and that inasmuch as the company had been carrying the mail during the years 1925 and 1926 without having received any compensation, the officers of the company decided not to do anything more than what they were required to do, that is, carry the mail on the company's trucks; that in view of this the employees of the Bureau of Posts were notified that they should place the mail on the company's trucks; that said employees refused to do so and demanded that the employees of said company go into the post office, take the mail bags, and put them on the trucks, as they had done theretofore; that, in consequence of this mutual refusal, the mail could not be transported notwithstanding the fact that the company's trucks went to the Tagbilaran post office at the appointed hours to collect the mail; that the reason for the Bohol Land Transportation Co. in refusing to permit its employees to enter the post office was to avoid all responsibility for any loss that might occur in said office; that the company and the Director of Posts finally agreed that the employees of said office would place the mail bags at the main entrance, and that the employees of said company would take them from there; that during the year 1927 the contract was extended for six months more, that is, until July 1, 1928, at the request of the Director of Posts, during which time, according to the testimony of the Bureau of Posts employee, the service was good.

Examining the evidence of both parties, we find, in the first place, that it does not appear that any official or unofficial complaint was filed with the Public Service Commission against the Bohol Land Transportation Co. for inadequate service or for violation of any of the terms of its certificate, save the refusal to carry the mail. We also find that aside from Juan Sarmiento's testimony, corroborated by the notes taken by him, the testimony given by the other witnesses, who specified neither dates nor time cannot serve as the basis for determining whether or not the Bohol Land Transportation Co. has in fact rendered deficient service. With regard to Juan Sarmiento's testimony, it appears that the days when he noted a lack of means of transportation, were feast days and days on which fairs were held, and as such cannot serve as the basis for determining the sufficiency or insufficiency of the service. As to the testimony of the other witnesses, especially that of the two ex-employees of the company, if it were true that they used to leave passengers behind on the road for lack of room, they were in duty bound to report that fact to the company and should have done so, and since they failed to do so, it is presumed that there was no such deficiency.

Against all this, we have statistics showing the number of passengers transported by the Bohol Land Transportation Co.'s buses in relation to their capacity. Said statistics show that the average number of passengers transported by the company during the months of January, February, March and April, 1928, immediately preceding the trial of this case in the municipality of Tagbilaran, was not more than 28 per cent of said capacity.

Regarding the change of route and the operation of special cars without previous application, there is no evidence of any complaint having been lodged against the Bohol Land Transportation Co.

Let us now pass to a consideration of the assignments of error alleged to have been committed by the Public Service Commission in its decision. In said decision dated November 23, 1928, said commission said the following:

"Until recently, the conditions were such that the service rendered by the Bohol Land Transportation Co. was, in the opinion of this commission, sufficient and adequate for the volume of traffic existing there; but about six months ago said volume of traffic increased to such an extent that the service rendered by the Bohol Land Transportation Co. is insufficient and inadequate, which the said opponent company must have noticed when, for several months, it frequently made special trips, which it was authorized to make, which shows that the regular service heretofore rendered was not sufficient to take care of all the traffic existing in the Province of Bohol."

It will be seen that, according to the commission, until six months prior to November 23, 1928, the service rendered by the Bohol Land Transportation Co. was adequate and sufficient, and it was only after that date that it became insufficient and inadequate due to the increased volume of traffic. The Bohol Land Transportation Co. has denied such a state of affairs and attempted to prove such denial by its statistics. But even where existing means of transportation, including those of the Bohol Land Transportation Co., should prove inadequate, that is not sufficient to grant a certificate of public utility and convenience to a new common carrier, without first giving the Bohol Land Transportation Co. an opportunity to improve its service by increasing the means of transportation, as this court held in the case of *Batangas Transportation Co. vs. Orlanes* (52 Phil., 455) and in the recent case of *Javier vs. Orlanes* (G. R. No. 31310)[1] decided by this court on September 5, 1929.

As to the second assignment of error, the decision appealed from holds as follows:

"In view of the readjustment of the hours of the applicant and of the opponent Bohol Land Transportation Co. on the lines authorized herein, the extra or special trips which said opponent Bohol Land Transportation Co. was authorized to make in its certificate of public convenience are no longer necessary to the public, and should therefore be cancelled. Wherefore, the commission hereby orders said trips cancelled, and that portion excluded from the decisions rendered in proceedings Nos. 5108 and 3814 which says: "The Bohol Land Transportation Company may, however, upon application therefor, make special trips outside the hours set forth in the aforesaid routes and schedules."

The cancellation of the right or authority granted the Bohol Land Transportation Co. in its certificate of public utility and convenience to make extra or special trips upon application therefor, is a partial revocation of said certificate. The total or partial revocation of a certificate of public utility and convenience can take place only when the holder thereof has violated some law, ordinance or condition thereof. The commission's only reason for cancelling the authority granted the Bohol Land Transportation Co. to make special trips is the readjustment of the applicant's and the opponent's hours, as a result of granting the former a certificate of public utility and convenience. If, as we have said, the commission erred in granting a certificate of public utility and convenience to Nazario S. Jureidini, such concession cannot justify the cancellation of said authority.

Even if there were a good reason for such cancellation, the Bohol Land Transportation Co. should have been notified thereof, and given an opportunity to be heard before carrying it out. Although it is quite true that Act No. 3108, as amended, does not expressly provide for such notification and hearing, as much may be inferred from its provisions, for section 15 thereof requires such notification and hearing in order to make a holder of a certificate of public utility and convenience comply with his duties. If the law demands this condition for lesser things, it should be understood to demand it for greater ones, for the requirement that a duty be complied with is less onerous than the deprivation of a right.

Therefore, the Bohol Land Transportation Co. was entitled to receive notice and be heard before being deprived

of its right, and the commission erred in depriving it of such right without first giving notice and a hearing on any complaint against it for any inefficiency.

Another reason why the Public Service Commission granted a certificate of public necessity and convenience to the applicant and appellee Nazario S. Jureidini is thus expressed by said commission:

"Moreover,, the opponent company, the Bohol Land Transportation Co., which was one of the first operators that established a regular service in the Province of Bohol, had been transporting the mails of the Bureau of Posts under contract throughout the island, but for some reason or other the authorities of the Bureau of Posts were obliged to withdraw this service from the Bohol Land Transportation Co., apparently due to charges on the part of said company that sought to collect a greater amount for this service than the Bureau of Posts had provided therefor.

"Conditions came to such a pass that the Bohol Land Transportation Co. willfully and without permission or authority from this commission, arbitrarily and abusively discontinued the transportation of the mails in Bohol, so that for three consecutive days the whole province was without postal communication."

In the case *Re Neri T. Hoxie* (PUR [1920B], 671), the California Railroad Commission, denying the application of one Neri T. Hoxie for a certificate of public necessity and convenience, held:

"The possession of a United States mail contract and the necessity for compliance with a time of departure, as imposed by such contract, is not an indication that public convenience and necessity require the operation of a stage line as a common carrier under the jurisdiction of this commission in conformity with the statutory law."

Furthermore, section 17-A of Act No. 3108, as amended by Act No. 3299, provides:

"SEC. 17-A. Every person, association, or firm engaged in the transportation of passengers or freight by land, subject to the regulations of the Public Utility Commission, shall carry and transport the mails whenever requested by the Director of Posts or his representatives, under such terms and conditions, and for such amount of compensation as may be agreed upon between the Director of Posts and the carrier. In case the Director of Posts and the carrier fail to come to an agreement concerning the amount of compensation to be paid for the carriage of the mails, the same shall be fixed by the Commission in accordance with subsection (c), section fourteen of this Act: Provided, That the failure of the Director of Posts and the carrier to come to such agreement shall not be ground for refusal on the part of the carrier to carry and transport the mails who shall render such service pending determination of the amount of compensation by the Commission."

If, according to the above-quoted doctrine, the possession of a mail contract and the necessity for compliance with a time of departure, as imposed by such contract, is not an indication that public convenience and necessity require the operation of a transportation line, and if, according to the above-quoted legal provision, the Public Service Commission may compel a common carrier to transport the mails when no agreement has been reached by and between said carrier and the Director of Posts, there is no reason for granting, simply because there exists a mail contract, a certificate of public necessity and convenience to a new common carrier without first affording the present common carrier an opportunity to improve its service, if it be deficient, or to be heard and to defend itself in case of a complaint being filed against it for the violation of any law or of the terms of its certificate.

While it is true that the Bohol Land Transportation Co. failed in its duty to carry the Bohol mail for three consecutive days, and that the excuse given for such failure, namely, that it did not wish its employees to go into the post office to take the mail bags where they were prepared, so as to incur no responsibility for any loss that might occur, is insufficient to warrant depriving the public of the postal service, nevertheless, such violation should have been investigated, with a hearing of the parties, by the commission, which should then have taken the necessary measures justified by the result.

The fact that the Bohol Land Transportation Co. did not bid for the mail contract of Bohol, is not sufficient reason to issue in favor of the one who obtained the contract a certificate of public necessity and convenience without first giving an opportunity to the former to improve its service, binding itself to carry the mails in accordance with law.

For the foregoing considerations, we are of opinion and so hold: (1) That before giving a certificate of public necessity and convenience to a transportation company or common land carrier, there being another in existence with the proper certificate, the latter must be given an opportunity to improve its service, should it be deficient or inadequate ; (2) that before a total or partial revocation of a certificate of public necessity and convenience, the party thereby affected must be notified and heard; (3) that the mere possession of a public mail contract is not a sufficient indication of the convenience and necessity of a new transportation line, and hence, will not sustain the issuance of a certificate of public necessity and convenience.

Wherefore, the decision appealed from is hereby reversed, with costs against the appellee. So ordered.

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

[1] P. 468, ante.

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