

G. C. JAVIER, PETITIONER AND APPELLANT, VS. CAYETANO ORLANES, JUAN GONZALEZ AND SATURNINO CORTEZ, RESPONDENTS AND APPELLEES.

G.R. No. 31310. September 05, 1929

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition to review the joint decision rendered in cases numbered 11871, 13976, 15125 and 16478, of the Public Service Commission, dated December 13, 1928, wherein Juan M. Gonzalez, Cayetano Orlanes, Saturnino Cortez, and Gregorio C. Javier, respectively, were the applicants, the dispositive part of which, in regard to said applicants, is as follows:

"Wherefore", the Commission believes it is proper to issue, and it hereby orders that upon payment of the corresponding fees, there be issued to each of the applicants, Saturnino Cortez, Juan M. Gonzalez, Gregorio C. Javier, and Cayetano Orlanes, the certificate of public convenience which each of them applies for, and which shall be subject to the following conditions:

"1. That the applicant Saturnino Cortez (case No. 15125) shall operate in the service of the public for the transportation of passengers and freight his present auto-trucks authorized under the certificate issued in Case No. 8711, plus two additional Chevrolet auto-trucks of one-ton capacity each, on the line San Pablo-Manila via Calauang and the intermediate points and vice versa, making the trips in accordance with the schedule attached to this decision and made an integral part hereof, marked Appendix A.

"2. That the applicant Juan M. Gonzalez (case No. 11871) shall operate for the convenience of the public for the transportation of passengers and freight, his auto-truck service, whose equipment consists of eight (8) Chevrolet and International auto-trucks on the line San Pablo-Manila via Calauang and intermediate points and vice versa, making the trips in accordance with the schedule attached hereto and made an integral part hereof, marked Appendix B.

"3. That the applicant Cayetano Orlanes (case No. 13976) shall operate his auto-truck service for the transportation of passengers and freight, on the line San Pablo-Manila via Calauang and intermediate points and vice versa and Canlubang-Calamba and vice versa, making the trips subject to the schedule attached to this decision and made an integral part hereof, marked Appendix C.

"4. That the applicant Gregorio C. Javier (cases Nos. 16478 and 17364) shall operate his service in the transportation of passengers and freight, whose equipment consists of his present auto-trucks on the line San Pablo-Manila via Calauang and intermediate points and vice versa; San Pablo-Manila via Alaminos and vice versa; Manila-Pagsanjan and vice versa; and Canlubang-Calamba and vice versa, making the trips subject to the schedule attached to this decision and made an integral part hereof, marked Appendix D.

"5. That the applicants shall not modify the manner herein prescribed for making the trips of their respective transportation services, under the schedules and limitations contained in Appendices A, B, C, and D, nor shall they make trips outside of said schedules, nor shall they fail to make the trips specified therein, nor shall they

substitute their equipment, nor increase the same, nor operate beyond the lines herein authorized without previous authority from this Commission.

"And said applicants are prohibited from permitting anyone who may have or possess one or more auto-trucks registered fictitiously in the name of any of the applicants in the office of the Bureau of Public Works, or surreptitiously covered by any authorization to increase the equipment, to operate under the certificates of public convenience that may be issued in this case.

"6. That all of the trucks of the applicants when making trips on the line San Pablo-Manila via Calauang shall have the following signs:

"SAN PABLO-MANILA VIA CALAUANG

"MANILA-SAN PABLO VIA CALAUANG

"Applicant Cayetano Orlanes shall, in addition, have the following routes:

"CANLUBANG-CALAMBA

"CALAMBA-CANLUBANG

"And applicant Gregorio C. Javier, the following:

"SAN PABLO-MANILA VIA ALAMINOS

"MANILA-SAN PABLO VIA ALAMINOS

"CANLUBANG-CALAMBA

"CALAMBA-CANLUBANG

"MANILA-PAGSANJAN

"PAGSANJAN-MANILA

"And all of the applicants shall be strictly governed in their charges by the following;

"PASSENGER AND FREIGHT TARIFF

"Fare shall be collected according to the distance travelled. The passenger rate shall be 2 centavos per kilometer or fraction thereof. The minimum passenger rate shall be ten centavos. Children less than three years of age shall not pay any fare, but children from three to nine years of age shall pay half fare.

"Passengers may carry, gratuitously, baggage not exceeding ten kilos in weight, and for any excess, they shall pay in accordance with the freight tariff.

"Freight shall pay at the rate of P0.0005 per kilo per kilometer or fraction thereof. The minimum charge for freight shall be ten centavos.

"The transportation service shall be rendered in accordance with the schedules and limitations prescribed in conditions 1, 2, 3, 4, and 5.

"7. That all the applicants are required and ordered to respect and comply with and to cause all their employees, agents, and mandataries to respect and comply with each and every one of the provisions contained in chapters one and three of order No. 1 issued by the Commission and effective from January 1, 1927, in so far as they may be applicable to and compatible with the foregoing conditions.

"The certificates of public convenience that may be issued by virtue of this decision shall be in force from the date of their issuance and shall remain in force until further order to the contrary of this Commission. The applicants are advised that if they do not pay the corresponding fees for said certificates within thirty days from the date of the notification of this decision, the latter shall be revoked and set aside without previous hearing.

"Issued in Manila, December 13, 1928.

"M. V. DEL ROSARIO

"Associate Public Service Commissioner"

Gregorio C. Javier, who had objected to the applications filed by Juan M. Gonzalez, Cayetano Orlanes and Saturnino Cortez, respectively, filed the instant petition for review, based upon the following alleged errors assigned to the Public Service Commission in its aforementioned decision, to wit:

"1. The Commission erred in not denying the respective applications of Juan Gonzalez, Cayetano Orlanes, and Saturnino Cortez in cases Nos. 11871, 13976 and 15125, and in not granting petitioner's application in case No. 16478.

"2. The Commission erred in not holding that the granting of a license to four different operators over the same autobus line (San Pablo-Manila) would inevitably result in ruinous competition among them and would not be of any benefit or convenience to the public.

"3. The Commission erred in not holding that the petitioner, G. C. Javier, as the first regular operator over the autobus line in question, and in accordance with the right reserved to him by the Commission in case No. 13777, had a vested and preferential right over the respondents, each of whom seeks to acquire another and a later license over the same route.

"4. The Commission erred in denying petitioner's motion for a rehearing."

The evidence shows that on the San Pablo-Manila line, along which the applicants petitioned for authority to run their auto-trucks to carry passengers and freight during regular but different hours, the number of passengers is such that the auto-busses and auto-trucks operating thereon are not enough to transport all of them, and many have to utilize carretelas, carromatas and horses for transportation.

With respect to the first assignment of error, although it is true that Gregorio C. Javier was the first to obtain a certificate of public convenience and license to engage in the business of land transportation with fixed hours of arrival and departure between San Pablo and Manila and intermediate towns, having engaged in said business since March, 1928, it is likewise true that Juan M. Gonzalez and Saturnino Cortez had been common carriers between San Pablo and Manila before him, though with irregular hours of arrival and departure. And if they now apply for a permit to make regular trips, it is because in its decision of November 15, 1927, rendered in cases Nos. 9872 and 10135., the Commission announced its new policy of not granting a certificate of public convenience except to common carriers with regular routes, thus requiring irregular operators to convert their operation into a regular one. In view of this it is only just and equitable to grant the applications of Juan M. Gonzalez and Saturnino Cortez, since they were the first to serve the public between San Pablo and Manila, thereby contributing to the facility of communication between the two points, and aiding, at least indirectly, in the development of commerce and industry. Thanks to their initiative, and through the interest awakened in the public by their trips, Gregorio C. Javier has been able, through the proper authority, to establish the enterprise he now manages. Besides, such grant does not and cannot prejudice the interests of said Gregorio C. Javier, for the reason that he has already been operating on the same route, although irregularly.

With regard to the applicant Cayetano Orlanes, he is a new-comer who has never operated as a regular common carrier, or as an irregular carrier on the San Pablo-Manila line. He is therefore in a Worse situation than he was with respect to the Batangas Transportation Company in the case between him and said company, decided by this court on December 19, 1928 (52 Phil., 455); and the judgment therein rendered against him is, with greater reason, applicable to this case, nor are the two cases sufficiently distinguished from each other by the fact that his original application, which was not granted, was filed before that of Gregorio C. Javier, which was granted, and that there are enough passengers and freight between San Pablo and Manila to let all live. (42 Corpus Juris, 686.)

Inasmuch as Gregorio C. Javier is already an established carrier with a certificate of public convenience and license to engage in the business of land transportation with fixed hours of arrival and departure between San Pablo and Manila and intermediate towns, justice and equity demand that before a new enterprise or a new carrier be permitted to invade his territory and enter into competition with him, he be given an opportunity to extend his service in order to meet the demands of the public in the matter of transportation. This rule has been laid down in several decisions of public utility commissioners in different states of America, cited with approval by this court in the aforementioned decision of December 19, 1928, rendered in the case of Batangas Transportation Co. vs. Orlanes (52 Phil., 455), and summarized in 42 Corpus Juris 689, paragraph 124 (c), as follows:

"OPPORTUNITY TO PROVIDE SERVICE.—Under some regulations, even where an existing carrier is not giving adequate service, an applicant desiring to operate in the preempted territory cannot obtain a certificate until the existing operator is given a prescribed period of time in which to provide the service that the commission requires; and this rule applies in the case of an application by another carrier to change its route or extend its service, as well as in the case of an original application."

Neither can Cayetano Orlanes look for protection to the fact that Gregorio C. Javier has not asked for an injunction against him to restrain him from entering upon the business in pursuance of the authority granted to him in the judgment appealed from, inasmuch as Gregorio C. Javier appealed therefrom, and therefore Cayetano Orlanes was aware that if said judgment was reversed, the authority granted to him therein would be null and void. And having knowingly run the risk, he alone must suffer the consequences of his own act.

In view of the foregoing considerations, we are of opinion and so hold: (1) That a land carrier with irregular trip hours who has obtained a certificate of public convenience prior to a carrier with regular trip hours, is entitled to a license changing his irregular hours into regular hours, so long as they do not coincide with those of the land carrier with regular hours already established, nor prejudice the latter; (2) that priority in the filing of an application for a certificate of public convenience, which has not been granted, gives the party filing it no right to invade the territory of another whose application, though filed subsequently, has been granted and who has been operating as carrier by virtue of the certificate thus issued; (3) that a land carrier with regular trip hours, whose service is satisfactory and adequate, is entitled to be given an opportunity to extend said service, if the public need so requires, before a stranger or new carrier is permitted to invade his territory.

By virtue whereof, the judgment appealed from is affirmed in so far as it refers to the applications of Juan M. Gonzalez and Saturnino Cortez, respectively, and is reversed with respect to Cayetano Orlanes, Gregorio C. Javier being granted all the trips between San Pablo and Manila applied for by him during the hours to be fixed by the Public Service Commission as most convenient to the public and to the interests of the regular carriers operating on the same line, without special pronouncement as to costs. So ordered.

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

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