

**SIMPLICIO DE LOS SANTOS, PETITIONER AND APPELLANT, VS.  
PASAY TRANSPORTATION CO. ET AL, OPPOSITORS AND APPELLEES.***G. R. No. 31659. January 31, 1930*

Ponente: OSTRAND, J.

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On January 6, 1928, Simplicio de los Santos applied to the Public Service Commission for a certificate of public convenience for the operation of auto-trucks along the line Manila-Hagonoy, via Caloocan, Malabon, Obando, Taliptip, Bulacan, Malolos and Paombong. The case was given the number 14088. Two weeks later, a special permit for a period of two months was issued to the applicant on the condition that he would put ten trucks in operation and that he would render reports to the commissioning the revenue and expenses incurred in the operation of his auto-trucks used under said special permit.

The Pasay Transportation Co. filed an opposition to Santos' application on the ground that it already had a pending application for a certificate of public convenience to operate an auto-bus service similar to the system of the Manila Electric Co. on the same line over which the herein applicant proposed to operate. The opponent further called attention to the fact that De los Santos had violated the conditions of the aforesaid special permit by supplying only one auto-truck instead of ten and in failing to make report to the commission as provided for in said permit.

In the meantime, the Pasay Transportation Co. applied for a certificate of public convenience for the operation of auto-busses between the Divisoria Market in Manila and the municipality of Calumpit, the intermediate points being Sangandaan, Caloocan, Polo, Meycawayan, Marilao, Bulacan, Bigaa, Guiguinto, Quingua and Pulilan, with branches to San Rafael and Baliuag, via Quingua, and to Obando via Polo. This case was given the number 14467.

Later on, the Pasay Transportation Co. filed another application, case No. 16076, for a certificate of convenience for the operation of busses between Manila and Hagonoy, through Caloocan, Malabon, Obando, Taliptip, municipality of Bulacan, Malolos and Paombong. In an amendment to the application, the applicant included another route from Hagonoy to Quingua via Paombong and Malolos and vice versa.

Cases Nos. 14467 and 16076 were heard first and decided in favor of Pasay Transportation Co. on June 13, 1928. Simplicio de los Santos presented a motion for reconsideration in regard to case No. 16076 which was denied on June 21, 1928. No exception was entered and no appeal taken, so that the decision in that case became final.

Case No. 14088 was decided on June 18, 1928, and the application of Simplicio de los Santos in that case denied. Thereafter the Pasay Transportation Co. filed a supplementary application; in case No. 16076 for the extension of its operations from Bigaa to Malolos" via Bulacan, and on motion of Santos, case No. 14088 was reopened for reception of additional evidence. The supplementary application in case No. 16076 was granted, and Santos' application in case No. 14088 was again denied on March 19, 1929. The usual motion for a new trial was filed,

and upon its denial, Simplicio de los Santos appealed to this court through a petition for review.

The appellant assigns as errors (1) that the commission erred in failing to give preference to his application for certificate of public convenience, inasmuch as that application was presented prior to the application of the Pasay Transportation Co.; (2) that the commission erred in denying the certificate of public convenience to Simplicio de los Santos for the operation of the line from Manila to Hagonoy via Caloocan, Malabon, etc., on the ground that the bridges connecting Malabon with Obando and Obando with Taliptip had not been constructed; and (3) that the commission erred in taking into consideration the fact that the appellant failed to operate ten auto-trucks under the special permit granted by the commission.

In regard to the first assignment of error, it may be noted that the appellant endeavors to bring cases Nos. 14467 and 16076 into the appeal. These cases had become final before the appeal was taken and, strictly speaking, are not entitled to consideration here, but assuming, without conceding, that they were brought properly before us, we should still feel constrained to hold that the assignment in question is of no substantial merit. Priority of application, while an element to be considered, is not ordinarily of sufficient importance to control the granting of a certificate of public convenience. (*Chicago Motor Bus Co. vs. Chicago Stage Co.*, 287 111., 320.)

In the case of *Sohngen vs. Public Utilities Commission* ( 115 Ohio St., 449), the court says:

"It is contended that the commission should have granted the application of the Traction Company because it was filed some time prior to that of King Brothers. Such claim is not well founded. The mere filing of the application does not entitle the applicant to any pre-emption of the route or territory which it traverses.

"The question to be determined under such circumstances is one calling for the sound judgment and discretion of the commission, and where at the time of the hearing it has before it the applications of various transportation companies covering the same routes, or routes traversing and serving the same territory, it is authorized to determine which of the applicants can best meet the requirements of the public convenience and necessity, and where it does not affirmatively appear from the record that it has acted unreasonably or unlawfully, its order will be affirmed."

As to the second assignment of error, it is sufficient to say that under the practise adopted by the Public Service Commission, a certificate of public convenience will generally not be issued until the road on which the applicant desires to operate is constructed. So far from being objectionable, that rule is, in our opinion, wholesome and may often obviate complications and interference with the road construction.

The third assignment' of error is also of no consequence. The appellant's failure to meet the conditions of the special permit indicates lack of reliability, an element of great importance in the public service.

The orders appealed from are affirmed with the costs against the appellant. So ordered.

Johnson, Street, Malcolm, Villamor, Johns, Romualdez and Villa-Real, JJ., concur.

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