

A. L. AMMEN TRANSPORTATION CO., INC., PETITIONER AND APPELLANT, VS. MARIA DE MARGALLO, OBJECTOR AND APPELLEE.*G. R. No. 31946. March 12, 1930*

Ponente: JOHNS, J.

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As stated by the petitioner, no important questions of fact are involved.

It appears that the application of the Ammen Transportation Company for a certificate of public convenience was filed on February 10, 1926. That a hearing was had on February 16, 1927, and the decision granting the certificate was rendered on April 30, 1927.

That the original application of Maria de Margallo for the certificate was filed September 23, 1926, upon which a hearing was had March 14, 1928, and the decision granting her certificate was rendered on June 11, 1929. That in the Lotivio case, the application for the certificate was filed October 23, 1926, upon which a hearing was had January 12, 1927, and the decision granting the certificate was rendered on April 19, 1927. That is to say, that Lotivio was granted his certificate more than two years before Maria de Margallo was granted her certificate. It also appears that the petition for the approval of the sale which Lotivio made to the Ammen Transportation Company of his certificate was presented to the commission on March 29, 1927, and approved by it on April 19, 1927. It thus appears that the certificate of the Ammen Transportation Company was prior in time, both as to the filing of the application and the granting of the certificate. That Maria de Margallo's application was filed one month before the Lotivio's filing was made, but the decision granting the Lotivio certificate was rendered on April 19, 1927, and the certificate was granted to Maria de Margallo on June 11, 1929.

The record is conclusive that after a hearing in case No. 8859, the commission granted the certificate of public convenience to the Ammen Transportation Company to operate an auto-truck service between Legaspi and Banquerohan, which is over the same route and about 40 per cent of the distance from Legaspi to Manito, and there' is no claim or pretense that any complaint or criticism was made by the public of the service which it rendered between Legaspi and Banquerohan. In fact it appears from the record that the Ammen Transportation Company on its own motion and to meet the growing demands of the public, applied to the commission for a half hour schedule between those points. That is to say, it is an undisputed fact that the Ammen Transportation Company made the first application and was granted the first license, and for aught that appears in the record, it was rendering good and efficient service without any complaint or criticism from the public, and that on its own motion and to make the service more efficient, it applied for a half hour schedule, from which it must follow that as to Maria de Margallo, it was prior in both time and right between Legaspi and Banquerohan, and that in all things and respects, the legal rights of the Ammen Transportation Company come within the law laid down by this court in the cases of Batangas Transportation Co. vs. Orlanes (52 Phil., 455), and Javier vs. Orlanes (53 Phil., 468); from which it must follow that all of that portion of the decision of the commission which grants a certificate of public convenience to Maria de Margallo to operate an autobus line between Legaspi and Banquerohan must be revoked, for the reason that it is in conflict with those decisions, and for want of any

evidence to sustain it, and that the application of the Ammen Transportation Company for a half hour schedule between those points should be granted.

The record presents a very novel situation. The application of Maria de Margallo to operate between Legaspi and Manito was filed on September 23, 1926, and that of Lotivio over the same route was filed on October 23, 1926, upon which a hearing was had January 12, 1927, and a certificate was granted to him on April 19, 1927. But strange as it may seem, Maria de Margallo with a prior application, for some unknown reason, was not notified and was not a party to that hearing. Yet it appears from the record of the commission that her application over the same route was prior to that of Lotivio. For want of such notice, any decision rendered in the Lotivio case was not legally binding on Maria de Margallo, and any rights which the Ammen Transportation Company acquired from the purchase of the Lotivio certificate would be subject to any right which Maria de Margallo may have acquired by her prior application to that of Lotivio. In addition to that, it appears that one member of the commission at a former hearing refused to grant a certificate to Maria de Margallo, for the simple reason that the road was not then constructed, and that another member of the commission granted a certificate to Lotivio over a road which was not then constructed. The application of Maria de Margallo being prior to that of Lotivio, it is hard to conceive how she could be divested of her rights by the granting of the certificate by the commission in the Lotivio case, of which she did not have any notice, and to which she was not a party, and, in particular, because the hearing on her application was delayed and postponed by one commissioner, because the road was not then constructed, and another commissioner granted Lotivio his certificate over a road which was not then constructed.

It may well be doubted Whether the Public Service Commission should, or that it has any legal right to, grant a certificate of public convenience over a proposed road "which has not been constructed. The granting of such a certificate presupposes that it is granted for the use and benefit and convenience of the travelling public, and if the route over which the certificate is granted is nothing more than a proposed road, which has not been constructed, and hence cannot be used or travelled by the public, how then can it be claimed or asserted that the certificate was granted for the convenience of the public? Be that as it may, it must be conceded that the commission has the power to grant a certificate of public convenience for any portion of a proposed road when and as soon as such portion to any given point is constructed and ready for use. It must also be conceded that everything else being equal, the commission has more or less discretion in deciding as to whom the certificate shall issue, having in mind the ability and equipment of the applicant to render the best and most efficient service to the public.

In the pending case based upon the undisputed facts, we hold that based upon its prior application and the services which it has since rendered, the Ammen Transportation Company is both prior in time and right to operate between Legaspi and Banquerohan, for which it should have a corresponding certificate. Its application was filed February 10, 1926, in which it was expressly stated that "As soon as the road between Jomapon and Banquerohan is completed, the hours of departure from Banquerohan shall be the same hours of departure from Jomapon, prescribed in this itinerary," and it further appears that since the granting of its certificate, it has been rendering good and efficient service over the route as fast and as soon as the road has been constructed.

As between Banquerohan and Manito or intervening points, the court is not disposed to define the legal rights of either party, for the simple reason that the road between those points is nothing but a proposed road which has never been constructed, and which for many years may not be constructed, to which we might add that any rights which Maria de Margallo may have acquired by virtue of her prior filing to operate over the road between Banquerohan and Manito, when constructed or any portion of it, were not divested by the granting of the certificate to Lotivio, to which she was not a party and of which she did not have any notice.

The decision of the commission is reversed, and based upon its original application, an exclusive certificate of public convenience should be issued to the Ammen Transportation Company to operate between Legaspi and

Banquerohan, so long as it shall render good and efficient service and meet the reasonable demands of the public, but in so far as the legal rights of the parties are not defined, and for the reasons stated, the court is not disposed to otherwise define the legal rights of either party for a certificate of public convenience to operate between Banquerohan and Manito. Neither party to recover costs on this appeal. So ordered.

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

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