

SERAPIA OCHOA, PETITIONER AND APPELLANT, VS. SEBAFIN DE LEON, RESPONDENT AND APPELLEE.

G.R. No. 33494. December 02, 1930

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

On November 27, 1929, the Public Service Commission issued an order to the effect that upon payment of the proper fees by Serafin de Leon, the appellee, the certificate of public convenience applied for by him should be issued subject to the conditions set forth in the decision of said commission on December 26, 1928.

Serapia Ochoa, the appellant, filed motions of reconsideration on December 17, 1929, and April 9, 1930, for the review of said order, which motions the commission denied on the 12th and 16th of April, 1930; whereupon the appellant took the instant appeal based upon the following assignments of error:

"1. The Public Service Commission erred in granting a certificate of public convenience to Serafin de Leon without notice to the herein petitioner.

"2. The Public Service Commission erred in reinstating the certificate of Serafin de Leon after the same had been cancelled, also without notice to the herein petitioner.

"3. The Public Service Commission erred in denying the motion for rehearing."

The facts of the case are the following:

On April 29, 1927, Serafin de Leon filed application No. 12262 for a certificate of public convenience to operate a transportation service between Talisay, Province of Batangas and the City of Manila, going both ways.

On July 11, 1927, while the petition was pending, the commission granted a special permit to Serafin de Leon, to operate the service in question.

On August 29, 1927, the hearing was held on the application.

On December 19, 1927, the commission issued in favor of Serapia Ochoa the certificate of public convenience for the same transportation service between Talisay and Manila. The application which gave rise to said certificate must have been submitted before Serafin de Leon's since the latter's petition bears No. 12262, while that of Serapia Ochoa is numbered 11859.

Over a year later, that is, on December 26, 1928, the commission granted the application, ordering the issuance to Serafin de Leon of a certificate of public convenience for the same service over the same route, upon payment by

him of the proper fees within thirty days.

Serapia Ochoa was not notified of Serafin de Leon's application.

In view of the fact that Serafin de Leon did not pay the certificate fees in time, the commission, on March 4, 1929, and because said interested party did not operate the transportation service authorized, cancelled and revoked the authority granted to said Serafin de Leon.

On November 22, 1929, the latter moved the commission to set aside the order of revocation given on March 4, 1929.

On November 27, 1929, the commission reinstated the decision of December 26, 1928, and ordered the issuance of the certificate to Serafin de Leon. Neither was Serapia Ochoa notified of this order.

On December 17, 1929, Serapia Ochoa, as was stated at the beginning, filed a motion for reconsideration which was repeated on April 9, 1930, both of which the commission denied.

It appears from these facts that Serapia Ochoa preceded Serafin de Leon, both in applying for a certificate of convenience and in obtaining such certificate. Applying the doctrine enunciated in *A. L. Ammen Transportation Co. vs. De Margallo* (54 Phil., 570), Serapia Ochoa was entitled to notification of Serafin de Leon's application; and since no such notification was given, all orders and decisions rendered upon said application of Serafin de Leon's are not legally binding upon Serapia Ochoa, whose rights to the transportation service along the lines in question remain intact.

For the lack of notification as required by section 29 of Act No. 3108, the order of November 27, 1929, reinstating the decision of December 26, 1928, given in favor of Serafin de Leon must be and is hereby reversed. Without costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Johns and Villa-Real, JJ., concur.

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