

**MINDANAO BUS COMPANY, PETITIONER AND APPELLANT, VS,
CAGAYAN-MISAMIS LAND TRANSPORTATION CO., RESPONDENT
AND APPELLEE.***G. R. No. 33689. March 13, 1931*

Ponente: STREET, J.

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This is a petition for revision in this court of a decision made by the Public Service Commission whereby a certificate of public convenience was granted to Teofilo Bungabong, on behalf of the Cagayan-Misamis Land Transportation Co. The petitioner in review is the Mindanao Bus Co., which also holds a certificate of public convenience for the operation of a land transportation service over the same lines included in the certificate of the Cagayan-Misamis Land Transportation Co.

It appears that on July 17, 1928, Teofilo Bungabong as manager of the Cagayan-Misamis Land Transportation Co. presented a petition before the Public Service Commission asking for a certificate of public convenience authorizing said company to operate an autotruck service over the lines radiating east, south, and west from Cagayan. This application was accompanied by a letter in which Bungabong requested that all communications addressed to him during the pendency of the application should be addressed to him at Albuquerque, Bohol. In disregard of this request, the notice of the date set for the hearing of this petition was addressed to the Cagayan-Misamis Land Transportation Co. at Cagayan, Misamis, with the result that Bungabong did not receive the notice in time to enable him to appear at the appointed date. In view therefore of his non-appearance upon the appointed date, which was August 20, 1928, the Public Service Commission transferred the hearing to September 3, 1928, at the provisional office of the commission at Cebu. Notice of this action was again erroneously sent to Cagayan, Misamis, instead of to Albuquerque, Bohol, with the result that Bungabong again did not appear. The petition was accordingly, on the last-named date, dismissed. Upon being informed of this action, Bungabong, on September 10, asked for a reinstatement of the petition; and the commission, in view of the facts above-mentioned, reinstated the petition by order of October 4, 1928.

On September 11, 1928, or one day after Bungabong had filed his motion for reinstatement of the petition, Pedro Diaz, acting on behalf of the Mindanao Bus Co., filed a petition with the commission for a certificate of public convenience authorizing the operation of an autobus line over the same routes covered by the application of the Cagayan-Misamis Land Transportation Co. This petition followed the usual course, and on April 19, 1929, a decision was rendered granting the certificate of public convenience to the Mindanao Bus Company. Action on the prior petition of the Cagayan-Misamis Land Transportation Co. was more sluggish, but in the end, on July 7, 1929, the Public Service Commission granted a certificate of public convenience to this company also;

It will thus be seen that while the petition of the Cagayan-Misamis Land Transportation Co. was filed with the commission prior to the date of the filing of the petition of the Mindanao Bus Co., favorable action upon the later petition was taken first. It will be noted also that the petition of the Mindanao Bus Co. was filed in the interval

between September 3 and October 4, 1928, during which period the prior petition of the Cagayan-Misamis Land Transportation Co. was in a state of abatement, and before it was reinstated.

Upon this state of facts it is contended for. the appellant, the Mindanao Bus Co., that this company should be considered to have the prior right and that the petition filed by Bungabong should be considered as if it had been first filed on the date when reinstatement was permitted. Upon the same facts it is further contended that, when the petition of the Cagayan-Misamis Land Transportation Co. was reinstated, formal notice should have been given to the Mindanao Bus Co., as a prior applicant, and inasmuch as no notice of such reinstatement was given, the commission had no jurisdiction to grant the reinstated petition.

We are unable to agree with these contentions. In the first place, priority of application in the granting of a certificate of public convenience, although to be considered, is not necessarily a controlling reason for the issuance of the corresponding certificate to the prior applicant. It has been repeatedly held by public utility regulatory bodies that the question to be considered in cases where there are many applications over the same territory is, which applicant or applicants can render the best service, considering the whole territory to be developed and served by the kind of service under consideration and the conditions and qualifications of the respective applicants to furnish the same. Priority in the making of application does not entitle the applicant to an absolute monopoly over the route or routes traversed by it. The priority of application is a factor to be considered, but it does not necessarily control the granting of a certificate of convenience where there are various applications. (*De los Santos vs. Pasay Transportation Co.*, 54 Phil., 357.) The use of improved public highways for private gain is a permissive use and not a matter of right, and where several companies are seeking certificates of convenience involving the same service, the commission will consider whether the public convenience and necessity will be best served by granting certificates of convenience to one particular applicant or to more than one. (In *re Suburban Auto Livery Co.*, cited in *P. U. R.*, 1923E, page 524.) It results, therefore, that even considering the Mindanao Bus Co. as the prior applicant, it would not necessarily follow that it is entitled to the monopolistic concession sought by it without regard to the rights of other applicants. But, as a matter of fact, we do not consider the Mindanao Bus Co. as the prior applicant. Its competitor, the Cagayan-Misamis Land Transportation Co., was the prior applicant, and although the petition of the latter company may have suffered a temporary abatement, nevertheless the petition was reinstated for sufficient cause, and the Mindanao Bus Co. must be taken to have filed its petition subject to the contingency of the reinstatement of the petition of its rival.

Upon the point respecting the necessity for notification to the Mindanao Bus Co. as a competing applicant, upon the occasion of the reinstatement of the petition of the Cagayan-Misamis Land Transportation Co., we are of the opinion that the rule requiring such notification does not apply. The prior petitioner in point of fact, the Cagayan-Misamis Land Transportation Co., had a right to prosecute its petition without giving notice to the petitioner in an application of later origin. But, even though it might be considered that the Mindanao Bus Co. was entitled to such notice, it appears that after the petition of the respondent had been granted, a motion was made by the Mindanao Bus Co. for reconsideration, upon the hearing of which the latter company, as opponent, presented the considerations pertinent to the alleged conflict of rights.

In conclusion we note that, when the petition of the respondent was granted, the court imposed as a condition that the certificate fees should be paid within thirty days from the date of notification of the decision. It appears, however, that Bungabong did not receive notification of the decision for some time, owing to the same mistake in the clerical department of the commission that had prevented him from receiving prompt notice of the earlier acts of the commission. But within a few days after notification was received, the dues were promptly paid.

Our conclusion is that the petition for review is not well grounded, and the same is accordingly dismissed. So ordered, with costs against the petitioner.

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

I certify that Justice C. A. Johns voted for the majority opinion.—AVANCEÑA, C. J.

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