

BATANGAS TRANSPORTATION CO. AND ELISEO SILVA, PETITIONERS AND APPELLANTS, VS. ORLANES & BANAAG TRANS. CO., INC., RESPONDENT AND APPELLEE.*G. R. No. 33827. March 04, 1931*

Ponente: VILLAMOR, J.

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On August 14, 1928, the applicant, the Orlanes & Banaag Trans. Co. applied for a certificate of public convenience to operate auto-trucks for the transportation of passengers and freight on the following five lines: Mabini-Tiaong, Fishery of Pansipit (San Nicolas)-San Luis, Inecbualan-Aplaya de Bauan, San Pablo-Dolores and Nasugbu-Manila. (Case No. 17059 of the Public Service Commission.)

This application was opposed by the Batangas Transportation Co. in writing on December 6 and December 19, 1923, as shown by the record, alleging that the Mabini- Bauan and Batangas-Lipa lines applied for by the Orlanes & Banaag Trans. Co. are already covered by the application filed by the opponent, the Batangas Transportation Co., case No. 16824, as well as the Lipa-Tiaong line via Lumangbayan and the Pansipit-Taal-San Luis line; that the opponent, the Batangas Transportation Co., has already been operating on the Bauan-Batangas route for ten years and is at present maintaining a half-hour schedule thereon; that a part of the Taal-San Luis line has been applied for by Cayetano Orlanes in case No. 16470, and that, therefore, the present application filed by the Orlanes & Banaag Trans. Co. should be limited to that part of the line extending from the Pansipit Fishery to Taal; that opponent Batangas Transportation Co. has also covered the whole line from San Luis to San Nicolas via Lemery and Taal in the former application, No. 16824, with a half-hour service.

An opposition was also filed by Eliseo Silva, alleging that he is an auto-truck operator, at present rendering a regular service between Banaybanay and Lipa, under a certificate of public convenience issued to him by the Public Service Commission in case No. 16098 with a fixed schedule of trips; that the service he is at present rendering is sufficient to satisfy the public needs for autotricks; and that the proposed operation by Orlanes & Banaag will not promote the public convenience, as required by Act No. 8108, but, on the contrary, will cause ruinous competition.

The commission heard this application together with those numbered 19364, 20343, 20747, and 20883, and on April 29, 1930, passed upon it authorizing the Orlanes & Banaag Trans. Co. and the Batangas Transportation Co. to operate the Mabini-Tiaong line, with a joint and combined schedule, so that both companies would render an alternate half-hour service; and issuing a certificate of public convenience to the Batangas Transportation Co. to operate the Pansipit Fishery-San Luis line, at the same time denying the application filed by the Orlanes & Banaag Trans. Co.

And with reference to the opposition filed by Eliseo Silva, the commission, by an order dated June 26, 1930, acting on the motion for reconsideration filed by said opponent, required the applicant Orlanes & Banaag Transportation Co. to observe and comply with the following condition when making trips on the

Lipa-Banaybanay-San Jose line:

"The applicant is hereby prohibited from accepting passengers and freight in Lipa or at any point Oeyond Lipa, going towards Banaybanay or any other point before, or from Banaybanay or any other point beyond Banaybanay, going to Lipa or at any point before."

The resolution regarding the Mabini-Tiaong line originated the appeal taken by the Batangas Transportation Co. (G. R. No. 33827), and that of the Pansipit Fishery-San Luis line is the object of the appeal taken by the Orlanes & Banaag Trans. Co. (G. R. No. 33839).

The appellant Batangas Transportation Co. (G. R. No. 33827) makes the following assignments of error:

- The Public Service Commission erred in granting a certificate of public convenience to the applicant, Orlanes & Banaag Transportation Co., to operate a transportation service between Mabini, Batangas, and Tiaong, Tayabas via Bauan, Batangas, San Jose, and Lumangbayan (old Rosario).
- The Public Service Commission erred in not holding that the Batangas Transportation Co. has a preferred right to extend its lines and operate exclusively on any part of the above line where it does not now operate.
- The Public Service Commission erred in denying the motion for reconsideration of the Batangas Transportation Co."

Eliseo Silva filed a petition for review of the commission's original resolution in case No. 17059 before the amendatory order referred to above was issued, and in order to obtain a categorical order with respect to the exclusion of the Banaybanay-Lipa line he appealed, making the following assignments of error:

"In not excluding Banaybanay-Lipa from the Mabini-Tiaong line, granted to the appellee in the decision rendered in this case; and

"In denying the motion for reconsideration filed by the herein appellant."

For a better understanding of the case we deem it convenient to take into account the facts considered by the commission, in issuing the order appealed from. The commission states the following in its decision:

"Mabini-Tiaong Route: The black dotted line marked X in the sketch is that referred to in the application filed by the Orlanes & Banaag Transportation Company; the red pencil dotted line indicates the portions objected to by the Batangas Transportation Company; the lines in red pencil show the present routes operated by the Batangas Transportation Company.

"The opposition, then, only covers the following portions :

"Mabini, Bauan, Batangas, San Jose, Old Rosario or Lumangbayan and Tiaong.

"The lines at present operated by opponent Batangas Transportation Company start at Bauan for Batangas, Patay, going towards Ibaan; and Lipa and Rosario. These lines are at present operated by the Batangas Transportation Company, covered by case No. 16825, and the lines mentioned in this route have been applied for in case No. 16824.

"At present the line in black ink represents the present lines of the Orlanes & Banaag Transportation Company and the black dotted lines represent also the Cayetano Orlanes route under special permits.

"On the other hand, the Orlanes & Banaag Transportation Company has applied for the Mabini-Batangas and Batangas-Lipa portion via San Jose, in cases Nos. 15173 and 16470, and the Lipa-Lumangbayan portion was also applied for in case No. 15470.

"The Lumangbayan-Tiaong portion, although only applied for in case No. 17059, is merely, according to the

allegations, the connection of the route of the applicant passing through Tiaong, with said applicant's Batangas-Lipa route via San Jose, and Cuenca-Lipa by way of Banaybanay.

"According to case No. 12746, the applicant Orlanes & Banaag Transportation Company is also at present operating a portion of the Lipa-Rosario line and from Bauan to Batangas and is also operating on the Lipa-Batangas line under a special permit, where the opponent Batangas Transportation Company has never operated.

"So that, in view of the foregoing, the most reasonable and equitable way would be, since certain portions are jointly operated by both companies, or the Orlanes & Banaag Transportation Company and the Batangas Transportation Company along entirely parallel lines (Bauang- Ba tan gas), and since the line between Lipa and Batangas is also operated, although by special permit, by the Orlanes & Banaag Transportation Company; and since also the opponent the Batangas Transportation Company, has in some cases, applications prior to those filed by the applicant Orlanes & Banaag Transportation Company, the commission believes that the only way to remove these difficulties would be to permit both the applicant Orlanes & Banaag Transportation Company, as well as the opponent Batangas Transportation Company, to operate jointly an hourly service so that the public may have a half-hour service between Tiaong and Mabini, via Bauan, Batangas, San Jose, Banaybanay, Lipa, Lumangbayan, to Tiaong.

"In favor of the applicant, for instance, is the fact that in this case, application has been made for the line from Mabini to Tiaong; there is at present a regular service from Bauan to Batangas up to Patay going towards Ibaan, which coincides with that of the Batangas Transportation Company; the same may be said of the applicant's regular line from Lipa to Rosario, and the applicant also operates, under special permit, the line between Batangas and Lipa, via Banaybanay. These operations are authorized in cases Nos. 16173, 16470, and 17059.

"In favor of the Batangas Transportation Company, there is, on the other hand, the fact that it operates a regular service between Bauan and Batangas up to Patay in the direction of Ibaan, and also the Lipa line in the direction of Rosario which are wholly coincident with those of the applicant; and also in favor of the opponent Batangas Transportation Company is the fact that prior to this case it filed an application to operate along the routes here applied for. (See cases Nos. 16824 and 16825.)

"To this end, if any part has not yet been applied for by these two companies, they should present their respective applications and determine how they are to render a joint half-hour service which will fit in with the other services already rendered by said companies.

"In recognition of the right which the Batangas Transportation Company has to several portions of this route, the amended application filed by the Orlanes & Banaag Transportation Company contains the following statement:

"On file Mabini-Tiaong line, the applicant shall not accept passengers from the town of Bauan to Batangas and viceversa; nor shall it accept passengers from Lipa to Lumangbayan (Rosario) and viceversa (Amended application of the Orlanes & Banaag Transportation Co., dated March 16, 1929.)

"But there is something more, and that is that as between the applications filed by the Orlanes & Banaag Transportation Company and by the Batangas Transportation Company, the one presented by the latter was filed prior to that of the Orlanes & Banaag Transportation Company; the numbers of their respective cases are the best evidence.

"There remain some portions for which the Batangas Transportation Company has not filed an application. For example: From Aplaya de Bauan, via Bauan, San Jose, Li pa, and Banaybanay.

* * * * *

"The Orlanes & Banaag Transportation Company also filed an application for the Pansipit Fishery line (San Nicolas), San Luis, via Mercado de Taal, as did also the Batangas Transportation Company in case No. 16824.

There is only a slight difference between the routes applied for by both companies in that while that of the Orlanes & Banaag Transportation Company goes to the Pansipit Fishery, that of the Batangas Transportation Company goes as far as the barrio of Sto. Tomas. That is to say, that while the former goes across the river to the fishery, the latter stops on the bank of the river in the barrio of San Nicolas.

"This line then was not operated by any carrier up to the time the Batangas Transportation Company filed its application in case No. 16824 and the Orlanes & Banaag Transportation Company in case No. 17059.

"From the same opposition of the Batangas Transportation Company dated December 6, 1928, it may be seen that it admits the fact that the applicant has applied for the Taal-San Luis line in case No. 16470, and therefore alleges in its opposition that the application should be limited to that part of the line from the Pansipit Fishery to Taal.

"The opponent has also applied for the San Luis-San Nicolas line, via Lemery and Taal in case No. 16824.

"Wherefore, in view of the foregoing, it is held that the applicant Batangas Transportation Company is entitled to operate along this line in order to extend its service, so that instead of stopping at Taal, it may continue on to San Nicolas, as applied for.

* * * * *

"For the foregoing considerations, and in view of the evidence and the facts established in these records, in accordance with the principles laid down by this commission and the doctrines of the Honorable Supreme Court; and taking into account the public needs and convenience, and that the establishment of these companies and the authority granted them to do business shall adequately and properly promote the public interests, we hereby issue the following

"ORDER

"The Mabini-Tiaong line is hereby adjudicated to the Orlanes & Banaag Transportation Company and the Batangas Transportation Company, for parallel operation with a combined schedule to be submitted by both companies within the period of thirty days from the promulgation of this decision, in such a manner that both companies shall alternately render a half-hour service, to be combined with their present operations, subject to the terms, conditions, and regulations hereinafter set forth.

"The San Luis-San Nicolas route via Lemery and Taal is likewise adjudicated to the Batangas Transportation Company, dismissing the opposition filed by the Orlanes & Banaag Transportation Company, and this operation shall also be subject to the terms, conditions, and regulations hereinafter specified."

Considering the motion for reconsideration filed by Eliseo Silva with reference to the decision rendered in case No. 17059, the commission said:

"In the motion and at the oral argument in open session, the movant contended that both in the decision rendered in this case, and in that rendered in case No. 17059, the Banay-banay-Lipa route is included, without any prohibition or restriction with regard to the authority given in said decisions as to this route, the same being part of the line operated by the opponent-movant Silva, according to the certificate of public convenience issued to the latter in case No. 16098.

"The movant also contends that in other applications similar to those of Mariano Uy Tek Ko and Segismundo et al., the route in question was also applied for, but on account of the movant's opposition, the applications were denied.

"A careful examination of the records of this commission shows that this contention is well founded. According to the certificate of public convenience issued in favor of Eliseo Silva in case No. 16098,

Banaybanay-Lipa is a part of the lines of this opponent.

"Besides Eliseo Silva, the Batangas Transportation Co. is also an operator along the route in question. And in several cases wherein applications were made for said route, the same were denied.

"In view of all the foregoing and considering that the request contained in the motion for reconsideration is justified, the commission hereby grants the same and orders the applicant the Orlanes & Banaag Transportation Co. to observe and comply with the following condition when making trips along the Lipa-Banaybanay-San Jose line authorized in this case:

" 'The applicant is hereby prohibited from taking passengers and freight from Lipa or beyond to Banaybanay or any point before, or from Banaybanay or beyond to Lipa or any point before.'

"This condition is hereby included in the ones prescribed in the first condition of the decision rendered in this case on April 28th, 1930, and the applicant is hereby admonished that upon the first violation of said condition the certificate of public convenience issued to it by said decision shall be cancelled."

Accepting, as we do, the facts set forth in the decision of the commission, we believe the resolution appealed from is supported by the evidence of record, and, in accordance with section 35 of Act No. 3108, we find no reason either to reverse or modify said resolution.

The ground alleged by the Batangas Transportation Co. that being an old operator in the Province of Batangas, it is entitled to the exclusive right of extending its line of operations to any public thoroughfare that may be constructed in said province, is untenable; for this would be equivalent to establishing a monopoly in this business in its favor. The decision of this court in *Javier vs. Orlanes* (53 Phil., 468), cited in support of the appellant Batangas Transportation Co., has not the effect of establishing in favor of an old carrier a sort of Torrens title on all lines constructed or to be constructed for public traffic within the jurisdiction of the province where it operates. It is true that in the decision cited it was held that before permitting a new company or a new operator to invade the territory of another already established with a certificate of public convenience, thereby entering into competition with it, if this be for the benefit of the public, the prior operator must be given an opportunity to extend its service in order to meet the public needs in the matter of transportation. This refers to a definite line, operated by one operator, on which a new operator should not be allowed to operate, without the former having refused to extend its services on the line already operated to meet the public needs in the matter of transportation. But this rule is not applicable to lines or roads not operated by the old carrier, in which case the opportunity to exploit the transportation business along those new lines must be given to all those who may apply for it, notwithstanding the fact that the former carrier has a certificate of public convenience to engage in this business in a definite province.

Inasmuch as the record shows that the order appealed from is in accordance with the facts stated in the commission's decision, and inasmuch as it has not been shown that there was abuse of discretion on the part of the commission, we are of opinion that the appeal taken by the Batangas Transportation Co. should be dismissed.

In regard to the appeal taken by Eliseo Silva, it will suffice to say that the right conferred upon him by his certificate of public convenience to operate on the Banay-banay-Lipa line is safeguarded by the order issued by the commission on June 26, 1930, quoted above, and hence, we believe this appeal has no merit.

With reference to the Pansipit-San Nicolas line, the Orlanes & Banaag Trans. Co. bases its appeal upon the fact that being an operator in the Province of Batangas at present, it is entitled to extend its service to the San Luis-Pansipit line.

The Batangas Transportation Co., in turn, argues that since it holds a certificate of public convenience to operate

an auto-truck service in the Province of Batangas, it is entitled to extend its service to the new lines of San Luis-Taal and Taal-San Nicolas in question. The record shows that the applicant Orlanes & Banaag Trans. Co. has a permit to operate its auto-trucks from certain points in the Province of Batangas to Manila, but without any right to handle passengers at intermediate points within said Province of Batangas; whereas the Batangas Transportation Co. has a certificate of public convenience to operate its auto-trucks for passengers and freight between several points of said Province of Batangas.

With regard to the new lines or routes within the jurisdiction of the Province of Batangas recently opened to public traffic, financial conditions and business facilities being equal, we believe priority in the filing of the application to be an important factor in determining the right to the certificate applied for.

According to the record, no one had operated on this line until the Batangas Transportation Co. filed its application in case No. 16824, after which the Orlanes & Banaag Trans. Co. also applied for it in the present case No. 17059. It is true that the Orlanes & Banaag had applied for the Taal-San Luis line in case No. 16470, but it does not appear that the commission acted upon it until it was again included in the present case No. 17059. The Batangas Transportation Co. then was the first to apply for the San Luis-San Nicolas line via Taal. And considering the financial condition of this company and its capacity to render satisfactory service to the public, we believe the commission was right in issuing the certificate of public convenience in question to it, with the understanding, however, that the commission should require the Batangas Transportation Co. to run its auto-trucks to the Pansipit Fishery, crossing the river in the barrio of San Nicolas.

The appellant Orlanes & Banaag Trans. Co. erroneously contends that the appellee is not entitled to ask for a positive remedy in this case, being a mere opponent, for the appellee is also an applicant, as the decision appealed from shows.

By virtue of the foregoing, the decision appealed from must be, and is hereby, affirmed with regard to the lines in question, Mabini-Tiaong and San Luis-Pansipit (San Nicolas). Without costs. So ordered.

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

STREET, J., concurring and dissenting:

I dissent from the decision rendered in G. R. No. 33827, and concur in the decision rendered in G. R. No. 33839.

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