

ALFREDO CARMELO AND RAMON ORIOI, PETITIONERS AND APPELLANTS, VS. ENRIQUE MONSERRAT, RESPONDENT AND APPELLEE.

G. R. No. 33867. February 17, 1931

Ponente: JOHNS, J.

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JOHNS, J.:

STATEMENT

Desiring to obtain a license to operate a taxicab service in the City of Manila, Enrique Monserrat twice applied to the Legislature for an exclusive franchise for that purpose and twice it passed a bill giving him such exclusive franchise for the period of ten years, and wisely, for many reasons, the Governor-General twice vetoed the bill. Monserrat then made application to the Public Service Commission for a certificate of public convenience to operate a taxicab service in the City of Manila and surrounding municipalities which, after due notice and hearing, was granted December, 1929, and among other things provides:

"That the petitioner shall operate, without fixed route or a regular terminus, within the City of Manila and its suburbs, a passenger transportation service only, with or without personal baggage, by means of Citroen motor taxicabs with a capacity of four passengers each, and such service shall commence with only one taxicab, the number being increased when the service so requires, and within the period of one year, until there shall be 100 taxicabs, and at the expiration of said period of one year, the number of taxicabs of the petitioner that have been operated within said period shall be considered as the only equipments authorized."

Thereafter, on December 27, 1929, the petitioners, Alfredo Carmelo and Ramon Oriol, applied to the Public Service Commission for a certificate of public convenience to operate a taxicab service within the City of Manila and surrounding municipalities, notice of which was duly published.

To this application an opposition was filed by Enrique Monserrat, and the case was heard and tried by the commission on January 16, 1930, which on May 30, 1930, rendered a decision denying the application of the petitioners, with one of its members dissenting, from which Carmelo and Oriol filed a petition for review and assigned the following errors:

"I. The Public Service Commission erred in failing to hold that the operation of a taxicab service in the City of Manila and surrounding municipalities as proposed by the appellants will promote the general public welfare in a proper and suitable manner.

"II. The Public Service Commission erred in not holding and concluding that the preponderance of the evidence had established the necessity and reasonableness of the issuance of a certificate of public convenience in favor of the appellants for the operation of the proposed taxicab service in the City of Manila and surrounding municipalities.

"III. The conclusion in the decision of the majority members of the commission that 'sobre la actual necesidad de tales servicios en Manila, no hay prueba concluyente en autos' is not supported by the weight of the

evidence and it is an erroneous interpretation of the accepted meaning of the words 'convenience' and 'necessity.'

"IV. That the Public Service Commission erred in denying the motion for rehearing presented by the appellants."

This is another case of first impression in this court, and for aught that appears in the record, the underlying, fundamental legal principles involved have never been decided by any court.

In 1920 the City of Manila had an area of 36 square kilometers and a population of 233,613, and it is a matter of common knowledge that since then there has been a very material increase in its area, and that the population of the city is now about 400,000, and that portions of the city are used exclusively for business districts, and at times there is a severe congestion of traffic. That the streets are in general use by the carromatas and carretelas, garage and public utility cars, and the Manila Electric Company. It is also a matter of common knowledge that the city is laid out in a large number of streets and alleys of different widths and at all angles and points of the compass. That it is growing fast, and that we are living in a progressive age in which there is a continuous change in the method and mode of travel by the public, and, figuratively speaking, that which is modern today is out of date tomorrow. The auto and motor car is an innovation which in the last thirty years has worked a complete revolution in public travel.

So that now, in lieu of the old private owned carriage and horses and of the carromata, which you formerly went out in person and picked up on the street, you can 'phone to a garage and an auto will come to your home or any place that you may direct, and continue in your service as long as you may wish. All of such garage and public utility cars are operated and are under the control and supervision of the Public Utility Commission with fixed charges for service. The operation of a garage car is not confined or limited to any particular street within the city limits or to any given course or distance, and each car has the right to the use of any and all streets for passenger traffic.

Such were the conditions at the time Monserrat applied for and obtained his certificate of convenience for his taxicab service, which is another modern innovation that is more or less in conflict with the garage for hire auto. Both are similar conveyances operated by motor power, and in the last analysis, the only real difference is the rate of compensation. One is a charge for the actual distance travelled, and the other for the time consumed. Yet, it is conceded that there are now 800 garage cars in operation in the City of Manila, and it appears that at present Monserrat is operating about 26 taxies in and over the same streets in the City of Manila.

The business of the taxicab is new and the public here is not yet accustomed to that kind of service, and like other innovations, it is one more or less of education. Even so, in all cities in the United States of the size of Manila, taxi-cabs are in general use and are very convenient to the travelling public, and in so far as we are advised there is no city of the size of Manila that does not have at least two or more taxicab companies in actual operation.

Everything else being equal, the real, primary question involved is whether it is better and more convenient for the travelling public in the City of Manila to have two taxi-cab companies in operation than it is to have one, and whether in truth and in fact the granting of another similar license to the petitioners would operate as a real injury to Monserrat. He is the first in the field and so long as he maintains good and efficient service and meets the demand of the public, it is fair to assume that he will hold his present customers and would have nothing to fear from the granting of a license to the petitioners, and if for any reason he does not give the required kind of service or satisfy the needs of the public, then he would have no right to complain.

If, as contended, the use of a taxi is largely one of education, then it must be conceded that the operator prior in time does not have any exclusive right to and over the people who are not educated to travel in taxies.

It is admitted that the Public Service Commission had granted a certificate of public convenience to Monserrat to operate a taxicab service within the limits of the City of Manila prior to the filing of petitioners' application for a certificate, and it is contended that because he is prior in time, he is prior in right, and the granting of the certificate to the petitioners would not be for the benefit of the public. That it would create unfair and unjust competition and injure and impair Monserrat's investment, and for such reasons the granting of another certificate would be in conflict with and overrule the decision of this court in the case of the Batangas Transportation Company vs. Orlanes[1] and other like decisions, which have become and are now the law of this court. But from an examination of those decisions and the authorities therein cited, it appears that the questions there presented and decided were the legal rights of an operator under a prior license to operate an autobus line between certain points on a fixed schedule over a provincial road as against a subsequent applicant for a license to operate between those points and over the same route of travel.

In the final analysis, there is a very marked distinction between all of those cases and this case. Here, there is no schedule for operation, and there is no fixed route of travel between points.

In the one, you go to some point on a provincial road or to the office of the company and wait for the autobus to come along and pick you up and take you to some particular place on a specific route, over which the operator has a license to operate his autobus on a fixed schedule.

In the other, in response to a telephone, a taxi at any time comes to your home or any other place you may direct, and takes you over any street in the City of Manila, in any direction, and to any place that you may wish to go.

That is to say, taxis are not operated on any schedule or over any certain route or between certain points or in any direction, and that the certificate granted to Monserrat is in the nature of a blanket franchise to operate a taxicab service over any and all of the streets and alleys of the city, in any direction, from any place, and at any time, subject to the call and wish of the customer only both as to time, place, and route of travel. That is to say, it is in the sole discretion of the person desiring to travel whether he shall call a taxi or an auto garage car, and as to when he shall call it, and where he shall go, and in the operation of an autobus line, the operator must maintain a fixed schedule over a specified route between certain points, and must make his trips with or without passengers.

In the granting or refusal of a certificate of public convenience, all things considered, the question is what is for the best interests of the public. Tested by that rule, it is hard to conceive how it would be for the best interests of the public to have one taxicab service only, and how the public would be injured by the granting of the certificate in question, for it must be conceded that two companies in the Held would stimulate the business, and that the public would much sooner and much easier become educated in the use of the taxi.

As stated, counsel have not cited decision of any court in which the exclusive rights of a prior operator of a taxicab company in a city of the size of the City of Manila have been sustained, and there is no valid, legal reason why Monserrat should have the exclusive right to operate a taxicab service in the City of Manila or that such exclusive right would be for the benefit of the public. Neither does he have a vested right in the business of any person that might want the use of a taxi, for the simple reason that the use of any taxi is in the sole discretion of the customer.

We are clearly of the opinion that the same rule of law does not apply to the granting of a certificate of public convenience over the numerous crowded streets of a densely populated city for the operation "of a taxicab service and the granting of such a certificate for the operation of an autobus on a fixed schedule in a given direction between certain points on a provincial road, and that under the conditions existing in the City of Manila, it would not be for the best interest of the public, in particular, that Monserrat should have the exclusive right to operate a taxicab service within the city limits, and if, as Monserrat contends, the field is open, the business is more or less

of an experiment, and the public is not educated to the use of the taxi, how can it be claimed or asserted that he has such a prior or vested right in the business as would inhibit or prevent the granting of a certificate to the petitioners for like service?

If, on the other hand, as the petitioners claim, there is now a large and general demand by the public for an increased taxicab service, and that the service rendered by Monserrat does not meet the demands of the public, then he would have no just cause to complain for the granting of a certificate to the petitioners, and in either event, it might well be contended that the granting of another certificate would promote and stimulate the use of the taxi, and give the public better and more efficient service.

In the very nature of things, the granting of a license to the petitioners would not be "the granting of a subsequent license to another for the same thing over the same route of travel," for as to whether or not the taxi travels at all or where it goes or when it goes or how far it goes is a matter exclusively at the call and in the discretion of the customer; otherwise, the taxi would remain idle—not so with an autobus operating on a fixed schedule between certain points on a provincial road.

There is no valid, legal reason why Monserrat should have the exclusive right of operating a taxicab service within the limits of the City of Manila, and it is very apparent that such an exclusive right would be against the best interest of the public. Neither is there any valid reason why the petitioners should not have a like certificate of public convenience, subject only to the reasonable rules and regulations of the commission.

In the last analysis, the only real question presented in the record is one of law. The decision of the commission denying the petitioners a certificate of public convenience is reversed and the case is remanded to the commission, with instructions to grant the petition and for such other and further proceedings as are not inconsistent with this opinion, with costs against Monserrat. So ordered.

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

Johnson, J.:

I reserve my vote.

[1] 52 Phil., 455.

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