

HILARIO CALABIA, APPLICANT AND APPELLANT, VS. ORLANES & BANAAG TRANSPORTATION CO., LAGUNA-TAYABAS BUS CO., AND AGAPITO RAMOS, OPPONENTS AND APPELLEES.

G. R. No. 33869. February 20, 1931

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This appeal is for the review of the decision rendered by the Public Service Commission in cases Nos. 17059, 19364, 20343, 20747, and 20883 thereof, with reference to the exploitation of the new route between Dolores, Province of Tayabas, and San Pablo, Province of Laguna.

In the first four cases, the following applications were filed to operate on said line:

Orlanes & Banaag Transportation Co., on August 14, 1928;

Hilario Calabia, on April 17, 1929;

LagunaTayabas Bus Co., on August 16, 1929; and Agapito Ramos, on September 24, 1929.

The application filed by Orlanes & Banaag Transportation Co. was opposed by Hilario Calabia, Laguna-Tayabas Bus Co., and Agapito Ramos.

Hilario Calabia's application was opposed by the Orlanes & Banaag Transportation Co., and the Laguna-Tayabas Bus Co.

The application of the Laguna-Tayabas Bus Co. was opposed by Orlanes & Banaag Transportation Co., Hilario Calabia, and Agapito Ramos.

And Agapito Ramos' application was opposed by Orlanes & Banaag Transportation Company, and the Laguna-Tayabas Bus Co.

At the hearing held on the 23d of January, 1930, opponent Orlanes & Banaag Transportation Company withdrew its opposition to Hilario Calabia's application, making the following statement:

"QUIOGUE. In the case of Mr. Hilario Calabia, the Orlanes & Banaag Transportation Company withdraws its opposition with reference to the San Pablo-Dolores line."

After the evidence had all been adduced by the interested parties, the commission rendered its judgment on April 29, 1930, with reference to said San Pablo-Dolores line in the following terms:

"For a better understanding of the line between San Pablo," Laguna, and Dolores, Tayabas, the portion designated No. 4 on the drawing X indicates the route which is intended to be operated, and which is at present a third-class road, but is in course of reconstruction.

"At the beginning of these proceedings, the respective counsel recorded the following agreement:

" 'Lockwood. Your Honor: I wish to make a suggestion. I propose that we begin right now to adduce evidence

with reference to the San Pablo-Dolores line, for which there are four different applicants. On this line, I think, each applicant should adduce his evidence as he thinks best.

" 'Judge. That portion may be dealt with.

" 'Lockwood. To begin with we are agreed, and I ask that it be made a matter of record, that the public convenience demands a regular operation as soon as the road is opened to motor traffic for the transportation of passengers and freight along this road.

" 'Harvey. Agreed.

" 'Carpena. Agreed.

""Quioque. Agreed.'

"Since the public necessity and convenience of the proposed operation has been admitted by counsel for the parties in the first four cases above entitled, the commission shall now proceed to determine which of these four operators has the best right to operate on the line applied for, in accordance with the principles established by this commission and the doctrines of the Supreme Court.

* * * * *

"The (last) line or route applied for in this case is that between San Pablo and Dolores, via the barrio of Sta. Elena. This is at present a third-class road, but repairs are being made to convert it into a first-class road. This route starts at San Pablo runs through the barrios of San Ignacio and Sta. Elena, and ends at the town of Dolores, Province of Tayabas. This line has also been applied for in case No. 19364, above entitled, by Hilario Calabia.

"There is no doubt but that the Orianes & Banaag Transportation Company has the right of priority along this line.

"It is alleged that inasmuch as Hilario Calabia is an irregular operator, he is entitled to convert his service into a regular run in accordance with the regulations of the commission. This is true; but the line applied for does not come within Hilario Calabia's irregular service, and that is why the decision of June 5, 1929, denied the petition to convert his irregular into a regular service. Hilario Calabia has at no time been an operator along this line or route, San Pablo to Dolores; he applied for it for the first time in this case No. 19364.

"Agapito Ramos, in case No. 20747 also makes application to operate on this Dolores-San Pablo line, via the new road, alleging that it is an extension of his autobus service; but prior to Agapito Ramos' application, this route had already been applied for by the Orianes & Banaag Transportation Company and the Laguna-Tayabas Bus Company for a combined half-hour service by the two opposing companies.

"Agapito Ramos at present operates from Dolores to San Pablo along the old road to Tiaong, but has never operated along the new road from San Pablo to Dolores, via the barrio of San Ignacio and Sta. Elena. Then the Orianes & Banaag Transportation Company in case No. 17059 and the Laguna-Tayabas Bus Company in case No. 20343 applied for a combined service on this new line at the same time that Agapito Ramos in his later application, or case No. 20747, applied for the right to operate on this new line from San Pablo to Dolores.

"Inasmuch as the applications of the Orianes & Banaag Transportation Company and the Laguna-Tayabas Bus Company, offering to render a combined half-hour service were filed first, they are entitled to preference and, consequently, this line must be adjudicated equally to the Orlanes & Banaag Transportation Company and the Laguna-Tayabas Bus Company, and therefore Agapito Ramos' application must be denied.

"The operation proposed by Agapito Ramos is not an extension of his line. Neither is the proposed operation of Orlanes & Banaag Transportation Company and the Laguna-Tayabas Bus Company an extension of their line, because these three companies operate from San Pablo to Dolores via the old road which leads to Tiaong.

"This refers to a new route or line, which has been applied for by these three operators in their respective proceedings.

"By virtue of the foregoing, after due consideration of the evidence and the facts established in these proceedings, in accordance with the established principles of this commission and the doctrines of the Honorable Supreme Court; and taking into account the public necessity and convenience, and that the establishment of the said companies and the authority given them to engage in their business shall adequately and conveniently promote the public interests, we hereby issue the following:

"ORDER

"* * * The line San Pablo-Dolores, via San Ignacio, Sta. Elena, etc., is hereby adjudicated to the Orlanes & Banaag Transportation Company and Laguna-Tayabas Bus Company for a combined half-hour service to be rendered by both companies, according to a schedule to be presented to this commission on or before the period of thirty days from the date of the publication of this decision; as a consequence of which the oppositions filed by Hilario Calabia and Agapito Ramos are dismissed, and therefore their applications to operate on this route are also denied."

The appellant contends that the commission erred in not holding that the applicant Hilario Calabia has a preferred right to operate on the San Pablo-Dolores line, for the reason that this being a new line, preference must be given to the first applicant in point of time. And he contends that while the Orlanes & Banaag Transportation Co. was the first to present an application, it has, nevertheless, withdrawn its opposition to the appellant's application in favor of the latter, who is therefore entitled to the certificate of public convenience in justice and equity. The appellant's contention is untenable considering that in withdrawing its opposition to the appellant's application, the Orlanes & Banaag Transportation Co. did not withdraw its right to prosecute its own application which was filed before the appellant's.

The appellant complains that the commission has granted the Laguna-Tayabas Bus Co.'s petition to operate on the line in question together with the Orlanes & Banaag Transportation Co. notwithstanding the fact that the application of the Laguna-Tayabas Bus Co. was filed after that of Hilario Calabia. We believe the resolution of the commission to be well founded.

A historical account of the working agreement between the two companies to coordinate their operations in the Provinces of Laguna and Tayabas, establishing an alternate half-hour service along their routes, is given in the brief submitted by counsel for the appellee, the Laguna-Tayabas Bus Co. The record shows that in 1927 the Batangas Transportation Co. and Cayetano Orlanes applied practically at the same time for certificates of public convenience to operate their auto-busses on fixed time schedules between the main points of the Provinces of Laguna and Tayabas. Their applications were approved by the Public Service Commission in a joint decision in 1928. Later on the Batangas Transportation Co. transferred all its rights and interests, including its certificate of public convenience for said Provinces of Laguna and Tayabas, to the Laguna-Tayabas Bus Co., and Cayetano Orlanes also organized a corporation, the Orlanes & Banaag Transportation Co. to which he transferred all his rights as a common carrier. By a mutual agreement, and with the approval of the Public Service Commission, the Laguna-Tayabas Bus Co. and the Orlanes & Banaag Transportation Co. coordinated their service in the Provinces of Laguna and Tayabas, establishing along all their routes a regular alternate half-hour service. At present the two companies, the Orlanes & Banaag and the Laguna-Tayabas, operate alternately every thirty minutes between San Pablo and Dolores via Tiaong. When the Orlanes & Banaag Transportation Co. filed an application to operate a half-hour service on the new road between San Pablo and Dolores, said company proposed to the Laguna-Tayabas Bus Co. to operate jointly with itself a half-hour service on the same route and under the same conditions. This explains the allegation in the application of the Laguna-Tayabas Bus Co., and in its opposition"

to the applications of Hilario Calabia and Agapito Ramos, to the effect that the Orlanes & Banaag Transportation Co., the first applicant, had offered to share with the Laguna-Tayabas Bus Co. regularly its time schedule. This being so, and considering the economic conditions of the two companies, the facilities which they enjoy for furnishing the public a satisfactory service, better than the other applicants, we believe the commission did right in granting the certificate of public convenience to said two companies to operate on the new Dolores-San Pablo line.

The appellant also complains that the commission has not authorized him to operate on the line in question, when according to the regulations of the commission, an irregular operator, as the appellant, is entitled to become a regular operator. Such a right, however, exists only with reference to the line on which said irregular carrier operates, and not with regard to a new route, such as that in dispute among the four applicants, in the above-numbered cases.

The important question in this case is that raised in the memorandum filed by the appellant after the oral argument before this court. In said memorandum the appellant says: "The only question we desire to raise for the consideration of this Honorable Court is whether, under the circumstances surrounding this case, priority in the filing of the application is not to be taken into account, and the application is denied on the ground that the route applied for is not included in the irregular operation." This question has been decided by this court in the case of *De los Santos vs. Pasay Transportation Co.* (54 Phil., 357), where the court said:

"The priority of an application for permission to operate public auto-busses on public roads is an element to be considered, but is not ordinarily of sufficient importance to control the granting of a certificate of convenience, and when there are various applications, the Public Service Commission is authorized to determine which of the applicants can best meet the requirements of the public convenience."

In the decision of said case, the case of *Sohnngen vs. Public Utilities Commission* (115 Ohio St., 449) was cited with approval, in which the court said:

"It is contended that the commission should have granted the application of the Traction Company because it was filed some time prior to that of King Bros. Such claim is not well founded. The mere filing of the application does not entitle the applicant to any pre-emption of the route or territory which it traverses.

"The question to be determined under such circumstances is one calling for the sound judgment and discretion of the commission, and where at the time of the hearing it has before it the applications of various transportation companies covering the same routes, or routes traversing and serving the same territory, it is authorized to determine which of the applicants can best meet the requirements of the public convenience and necessity, and where it does not affirmatively appear from the record that it has acted unreasonably or unlawfully, its order will be affirmed."

Section 35 of Act No. 3108 only confers jurisdiction upon the Supreme Court to review any order of the Public Service Commission, and to modify or set aside such order when it clearly, appears that there was no evidence before the commission to support reasonably such order, or that the same was without the jurisdiction of the commission. In the present case, we believe that the evidence presented to the commission reasonably supports the decision appealed from.

Furthermore, under the provisions of section 15, paragraph (i), of Act No. 3108, as amended, the Public Service Commission is authorized to issue a certificate of public convenience to the applicant that can best comply with the requirements of the public convenience, to the effect that the operation of said public utility and the authorization to do business will promote the public interests in a proper and suitable manner. And unless it is shown that the commission has abused such power, which does not appear in this instance, its decision cannot be

reversed or modified.

Wherefore, the decision of the Public Service Commission, here appealed, must be and is, hereby affirmed, with costs against the appellant. So ordered.

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

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