

INOCENCIO TAN SIMA, APPLICANT AND APPELLEE, VS. DOLORES HACBANG, OPPONENT AND APPELLANT.*G.R. No. 37321. March 03, 1933*

Ponente: IMPERIAL, J.

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This is a petition filed by Dolores Hacbang to have this court review the decision rendered by the Public Service Commission in case No. 23966, to set aside the same and to cancel the certificate of public convenience issued to Inocencio Tan Sima. In other words, this is an appeal from said decision.

In the above-mentioned case No. 23966, Inocencio Tan Sima filed an application to operate two trucks between Catbalogan and Gandara; and Catbalogan, Wright and Loquinlocon, and vice versa. Dolores Hacbang opposed this application alleging that she is a regular operator on said lines, that the service rendered by her nine (9) trucks is satisfactory, that the public interests would not be served by granting the new certificate of public convenience applied for, and the issuance thereof would only result in encouraging ruinous competition. Evidence therein was heard by the justice of the peace of the provincial capital of Catbalogan who was designated commissioner for that purpose. Considerable time having elapsed without Hacbang's presenting any evidence, the Public Service Commission, on January 15, 1932, rendered the decision appealed from granting Tan Sima the permit applied for and issuing the corresponding certificate. Hacbang filed a motion for a new trial and succeeded in having the commission reopen the case in order to permit her to present her evidence in the said justice of the peace court. After the additional evidence had been presented, the commission, on March 22d of the same year, denied the motion for a new trial and affirmed its former decision permitting Tan Sima to operate his two trucks under the certificate already issued to him. Subsequent to the filing of Tan Sima's application, Hacbang filed cases Nos. 27850, 28004 and 28123 with the Public Service Commission. In the first case she was granted a certificate to operate nine (9) trucks between:

Calbayog-Loquinlocon

Loquinlocon-Calbayog

Oquendo-Calbayog

Calbayog-Oquendo

Oquendo-Catarman

Catarman-Oquendo

In the second, she was permitted to operate the same trucks between:

Calbayog-Oquendo

Oquendo-Calbayog

Calbayog-Tambungan

Tambungan-Calbayog

and in the last, she was authorized to operate the same equipment on the following routes:

Calbayog-Gandara

Gandara-Calbayog

Calbayog-Oquendo

Oquendo-Calbayog

Hacbang obtained her certificates in the above three cases prior to Tan Sima in spite of the fact that he filed his application in the aforementioned case before she did. The lines granted Tan Sima are:

Catbalogan-Gandara

Gandara-Catbalogan

Catbalogan-Wright

Wright-Catbalogan

Wright-Loquinlocon

Loquinlocon-Wright

Dolores Hacbang assigns the following alleged errors in the decision appealed from:

"FIRST ERROR

"The decision of the Public Service Commission dated January 15th last and affirmed by another dated March 22d last is uneconomic (anti-economica).

"SECOND ERROR

"The aforementioned decision is in conflict with the general rule laid down by this court in similar and analogous cases."

There is not the least doubt that Hacbang was an operator rendering regular service on the lines covered by the certificate subsequently granted Tan Sima, and the only question raised in the appeal is whether the facts proved and the law applicable thereto warrant the issuance in his name of the new certificate of public convenience.

Taking into consideration the number of passengers and the volume of freight involved, we find that Hacbang rendered satisfactory service on said lines. There was no necessity of granting a certificate to a new operator on said lines because public interests would not be benefited nor served thereby. In view of the traffic conditions and the volume of business handled by the lines in question, it may be said that an additional carrier would give rise to unjust and ruinous competition.

On the other hand, it appears that, as a prior operator Hacbang was not given the opportunity either to improve her service or to increase her equipment in the event that such action would have been justified. Later, another carrier was permitted to operate over the same route which, naturally, prejudiced the former's certificates which should

be protected in conformity with the law.

In the case of *Batangas Transportation Co. vs. Orlanes* (52 Phil., 455), this court enunciated the principles that should govern the granting of certificates of public convenience as follows:

"It is not the policy of the law for a Public Service Commission to issue a certificate of public convenience to a second operator to cover the same field and in competition with a first operator who is rendering sufficient, adequate and satisfactory service, and who in all things and respects is complying with the rules and regulations of the commission.

* * * * *

"So long as the first licensee keeps and performs the terms and conditions of its license and complies with the reasonable rules and regulations of the commission and meets the reasonable demands of the public, it has more or less of a vested and preferential right over another who seeks to acquire a later license to operate over the same route.

"To carry out the purpose and intent for which the Public Service Commission was created, the law contemplates that the first licensee will be protected in his investment and will not be subjected to a ruinous competition.

"The primary purpose of the Public Service Commission Law is to secure adequate, sustained service for the public at the least possible cost, and to protect and conserve investments which have already been made for that purpose.

"A certificate of convenience and necessity for the operation of an auto truck line in occupied territory ought not to be granted where there is no complaint as to existing rates and the company in the field is rendering adequate service."

The same rule has been followed by this court in the case of *Batangas Transportation Company vs. Ochoa* (G. R. No. 29154).[1]

In the case of *Bohol Land Transportation Co. vs. Jureidini* (53 Phil., 560), this court said:

"Before granting a certificate of public necessity and convenience to a transportation company or common carrier on land, there being another with a proper certificate, the latter should be given an opportunity to improve its service, if deficient or inadequate."

In granting Tan Sima his certificate, it appears that the commission's decision was based principally on the circumstance that he was the first to file his application, but this reason was not sufficient to warrant such action because the priority which the law protects does not consist in the date of the filing of the application but that of the issuance of the certificate of convenience and, in any event, that on which a public service begins to operate. In the case at bar, it appears that Hacbong has priority rights, being the first to obtain certificates of convenience and also the first to operate a unit of nine (9) trucks on the lines in question.

In the case of *Javier vs. Orlanes* (53 Phil., 468), we held that "priority in filing an application for a certificate of public convenience, which has not been acted upon, does not give the party filing it any right to invade the territory of another whose application, though filed subsequently, has been acted upon, and to whom the certificate solicited has been issued."

The decision appealed from is hereby reversed and the certificate of public convenience issued to Inocencio Tan Sima cancelled, with costs against the appellee. So ordered.

Villamor, Villa-Real, Hull, and Vickers, JJ., concur.

[1] Promulgated December 20, 1928, not reported.

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