

MANILA ELECTRIC COMPANY, PETITIONER AND APPELLANT, VS. PASAY TRANSPORTATION CO., INC., RESPONDENT AND APPELLEE.

G.R. No. 37655. February 09, 1933

Ponente: VICKERS, J.

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VICKERS, J.:

This is a petition of the Manila Electric Company for the review of an order of the Public Service Commission in case No. 13598, dated April 26, 1932.

The petitioner and appellant makes the following assignments of error:

"I. The Public Service Commission erred in holding that the suspension of the operation of auto-trucks on calles Zamora and S. Vitan by the Pasay Transportation Co. was only temporary.

"II. The Public Service Commission erred in declaring that the lines on which operation was suspended are only a small portion of the territory comprised in the certificate of public convenience granted to the Pasay Transportation Co.

"III. The Public Service Commission erred in ruling that the Pasay Transportation Co. has acquired prior rights to operate over S. Vitan, Apelo Cruz and Zamora Streets.

"IV. The Public Service Commission erred in finding that the abandonment of operation on Culi-Culi, Zamora, Apelo Cruz and S. Vitan streets by the Pasay Transportation Co. is not a sufficient cause for revocation and cancellation of the certificate held by the Pasay Transportation Co. covering said streets.

"V. The Public Service Commission erred in denying and dismissing the petition of the Manila Electric Company for revocation and cancellation of the certificate of the Pasay Transportation Co. for the operation of its auto-trucks over Culi-Culi, Zamora, Apelo Cruz and S. Vitan streets (Appendix A).

"VI. The Public Service Commission erred in overruling the motion for reconsideration of the order dismissing the said petition of the Manila Electric Company (Appendix B).

"VII. The Public Service Commission has abused its discretion in the findings made in its order of April 26, 1932 (Appendix A), and resolution of June 14, 1932 (Appendix B)."

On October 15, 1927 the Pasay Transportation Co. filed with the Public Service Commission in case No. 13598 an application that its lines be extended as follows:

"1. That the Pasay end be extended from Harrison corner Libertad through Libertad, Zamora, Apelo Cruz, S. Vitan corner F. B. Harrison;

"2. That another extension from Pasay and to Culi-Culi through "Libertad be permitted;

"3. That the line starting from Dominga be continued to Zamora and Apelo Cruz—S. Vitan to Harrison."

On October 17, 1927 the Public Service Commission granted the application, effective October 19, 1927.

On January 23, 1928 Antonio Garrido wrote a letter to the Public Service Commissioner requesting permission to suspend temporarily the operation of his auto-truck service along Dominga and Apelo Cruz streets until said streets should be repaired, and on January 25, 1928 the permission requested was granted by the commission.

On March 29, 1932 the Manila Electric Company, the petitioner and appellant herein, filed with the Public Service Commission a petition for the revocation and cancellation of the certificate of public convenience issued in case No. 13598, with respect to the above mentioned extensions on the ground that the said lines had never been operated and had entirely been abandoned by the Pasay Transportation Co.; that due to such abandonment the certificate for said lines had become ineffective and void, and the rights of the Pasay Transportation Co. thereunder had been forfeited.

On April 4, 1932 the Pasay Transportation Co. filed an opposition to said petition, alleging among other things that the following portions of the lines in question were being operated: From F. B. Harrison, corner of S. Vitan, as this zone was included in the Cavite-Manila line and intermediate points served by the respondent in accordance with case No. 22523; and from F. B. Harrison, corner of Libertad, to Calle Dominga inclusive, because it was a part of the respondent's line, F. B. Harrison-Divisoria Market and intermediate points, in accordance with case No. 13567; that the operation on the remaining portions of the lines in question was temporarily suspended with the permission of the commission (Exhibits 1 and 2); that the operation on the lines under the certificate of public convenience, the cancellation of which was asked by the petitioner, required a rearrangement of routes, for which purpose the respondent had filed an application in cases Nos. 28453 and 28375, which was pending the continuation of the trial; that the respondent had no intention of abandoning the lines described in the petition of the Manila Electric Company, and was only awaiting the rearrangement of the routes which the public convenience required, as applied for in cases Nos. 28453 and 28375; that the Manila Electric Company was not an operator on the lines which were the object of its petition for cancellation, and therefore not an interested party.

On April 6, 1932 the petitioner filed its answer to respondents's opposition, stating therein that it was true that parts of the lines described in the petition were actually being operated by the Pasay Transportation Co., and that it asked for the cancellation of only those lines not then being operated and which had not been operated for over four years, namely: Zamora, Apelo Cruz, and S. Vitan streets, and Libertad to Culi-Culi; that the reason why the Manila Electric Company asked for the cancellation of the certificate of the Pasay Transportation Co. on Zamora, Apelo Cruz, and S. Vitan streets was because during the period of four years while the Pasay Transportation Co. was not operating on said streets the Manila Electric Company obtained a certificate to operate and is actually operating on S. Vitan and Taft Avenue Extension immediately adjacent to Calle Zamora, and that after the Manila Electric Company had established its operation, it would not be just or fair to permit the Pasay Transportation Co. to resume operation on the route, which it had abandoned over four years ago, in competition with the Manila Electric Company, which had developed the business in that territory; that the letter of January 25, 1928 (Exhibit 1) gave the Pasay Transportation Co. permission to suspend the service on Dominga and Apelo Cruz streets only while these streets were being repaired, but that the repairs were completed many years ago, and that in fact the Manila Electric Company has been operating on S. Vitan since September, 1931. The petitioner asked that the certificate covering the lines not operated by the Pasay Transportation Co. for over four years on Zamora, Apelo Cruz, and S. Vitan streets, and Libertad to Culi-Culi be revoked and cancelled.

The petition was called up for hearing on April 4, 1932. No testimony was taken or any other evidence presented at that time. On April 26, 1932 the Public Service Commission denied the petition on the ground that the facts did not warrant the cancellation of the respondent's certificate, because the respondent was forced by circumstances to suspend temporarily its operation on the lines in question, and it had applied for and secured a permit to suspend

its operation.

On May 25, 1932 the petitioner filed a motion for reconsideration, to which the respondent filed an opposition.

The petitioner's motion for reconsideration was heard on June 11, 1932. After a statement had been made by the attorney for the petitioner, the following occurred:

"JUEZ. ¿Se pidió por V. entonces la presentacion de sus testigos y lo hemos denegado?

"Sr. CABRERA. No, señor, pero recuerdo que esta Comision dispuso que presentaramos memorandums." This was followed by extended statements of counsel. No evidence was presented in support of the motion for reconsideration.

The appellant is therefore asking us to set aside an order of the Public Service Commission denying the appellant's petition in case No. 13598, in support of which no evidence whatever was presented. No agreed statement of facts was submitted, and the contentions of the parties were in many respects conflicting. Whereas the petitioner maintained that the respondent had abandoned operation on the routes mentioned in its petition, as amended by its answer to the opposition, the respondent maintained that the only part of its route not operated was a small portion of Apelo Cruz street. The record shows that on January 25, 1928 the commission granted the request of Antonio Garrido to suspend temporarily the operation of his service on Dominga and Apelo Cruz streets until those streets should be repaired.

Under the circumstances, and taking into consideration the fact that the petitioner did not present any evidence in support of its petition in case No. 13598, we are constrained to affirm the order in question. It is true, nevertheless, that the Public Service Commission apparently misconceived the object of the petition, which was not for the cancellation of the respondent's certificate as to the whole route, but only as to the extensions in question. The commission ought to insist upon compliance with the terms of the certificates of public convenience and its orders, and when it authorizes a suspension of operation for cause, it should be for a definite period, and upon the expiration of that period the commission ought to require the operator to show cause why he failed to comply with its order. The public convenience is the primary consideration for which a certificate is issued, and that fact should be kept constantly in mind. An operator should be required to furnish the service which he has undertaken to render.

For the foregoing reasons, the order appealed from is affirmed, with the costs against the appellant.

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

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