

NORTHERN LUZON TRANSPORTATION CO., INC., AND BERNARDINO TORRIJOS, PETITIONERS AND APPELLANTS, VS. PASTOR V. VALERA, RESPONDENT AND APPELLEE.

G.R. No. 39470, December 11, 1933

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is a petition for review, filed by the petitioners Northern Luzon Transportation Co., Inc., and Bernardino Torrijos, of the decision rendered by the Public Service Commission authorizing the respondent herein, Pastor V. Valera, to increase his trips over the routes covered by his certificate of public convenience and to extend his operations from Bangued, Province of Abra, to Ilagan, Province of Isabela, via San Jose, Nueva Ecija, Bangued-Lubuagan, via Tagudin and Cervantes.

In support of their petition, the petitioners herein assign the following alleged errors as committed by the Public Service Commission in its decision, to wit:

- "1. That the commission erred in rendering the decision without giving the petitioners an opportunity to be heard.
- "2. That the commission erred in authorizing respondent Valera additional trips between Bangued-Vigan via Narvacan and Bangued-Laoag via Narvacan without imposing restrictions between Narvacan-Vigan and Narvacan-Laoag.
- "3. That the commission erred in authorizing respondent Valera to operate between Bangued-Ilagan when the said route was excluded during the hearing.
- "4. That the commission erred in authorizing Pastor V. Valera to operate between Bangued-Lubuagan and Bangued-Ilagan without ordering the issuance of new certificate of public convenience.
- "5. The commission erred in denying the motion for reconsideration and rehearing."

The following pertinent facts are necessary for the resolution of the questions raised in this appeal, to wit:

On August 31, 1931, the applicant-respondent Pastor V. Valera filed an application with the Public Service Commission seeking authority to increase his trips over the routes covered by his certificate of public convenience and to extend his operations to Bangued-Narvacan, via Pilar, and Bangued-Baguio lines.

On March 5, 1932, the Public Service Commission entered the corresponding order setting the application in question for hearing on March 17, 1932.

This application was opposed by the Manila Railroad Co., the Northern Luzon Transportation Co., Inc., and Bernardino Torrijos.

On March 17, 1932, Attorney A. Brillantes, counsel for the applicant-respondent, Pastor V. Valera, served a

motion upon the aforesaid oppositors seeking authority from the commission to insert in Exhibit A of the application additional extensions of the line, to wit: Bangued-Lubuagan (Mountain Province), and Bangued-Ilagan, via San Jose, Nueva Ecija, and Bayombong, Nueva Vizcaya.

The hearing commenced on March 17th and continued through the 18th of the same month and the 2nd and 3d of September, 1932, before the then Commissioner Cruz, in the City of Manila.

Upon petition of the applicant Pastor V. Valera, the commission authorized the justice of the peace of Bangued, Abra, to receive the testimony of additional witnesses, by way of depositions. The commission to that effect was issued on October 22, 1932.

On November 19, 1932, the commission received the depositions taken therein.

On January 6, 1933, the applicant Pastor V. Valera filed with the commission an amended application accompanied by an amended time schedule, without furnishing copies thereof to the oppositors who had registered their written oppositions thereto.

On March 2, 1933, the commission, without previous notice to the oppositors, considered the amended application as well as the amended time schedule accompanying it, and rendered its decision approving it in part.

On March 14, 1933, a motion for reconsideration and new trial was filed. This motion was denied by the commission by an order dated March 18, 1933, copy of which was received by the oppositors on March 25, 1933.

The first question to decide in this petition for review is that raised in the second assignment of error consisting in the commission having authorized the applicant Pastor V. Valera to make additional trips between Bangued-Vigan via Narvacan and Bangued-Laoag via Narvacan without imposing restrictions between Narvacan-Vigan and Narvacan-Laoag.

During the hearing of the case before former Commissioner Cruz, the following incident, appearing on page 5 of the transcript of stenographic notes, took place, to wit:

"JUDGE. It is necessary to impose a restriction not to pick up passengers from Vigan to Narvacan and vice versa.—A. Yes, sir.

"JUDGE. Do those operators mentioned by you pick up passengers between those points?—A. Yes, sir.

"BRILLANTES. It means that during these additional trips we are not going to pick up passengers between those points."

In the case of Soriano and Santos vs. Del Rosario and Rural Transit Co. (55 Phil., 934, 938), this court said:

"* * * In the matter before us the hearing was before Commissioner Cruz, who in fact, upon hearing the motion, announced the conclusion to which he had come and the nature of the order which he intended to enter. After this stage of the proceedings had been reached, we are of the opinion that it was improper for Commissioner Del Rosario to decide the motion differently without at least conceding to the parties interested an opportunity to be heard. And if there cannot properly be said to have been absolute want of jurisdiction on the part of the respondent commissioner to enter the order which is the subject of this application, there was at least an irregular exercise of judicial power by him, in excess of his lawful jurisdiction, such as supplies a basis for the writ of certiorari. (Leung Ben vs. O'Brien, 38 Phil., 182, 186.)"

Pursuant to the doctrine laid down in the above case, it was therefore improper and the Public Service Commission was not justified in authorizing the additional trips sought by Pastor V. Valera without any restriction whatsoever between Narvacan-Vigan and Narvacan-Laoag. The second assignment of error is,

therefore, well taken.

The second question to decide, which is raised in the third assignment of error, is whether or not the Public Service Commission erred in authorizing the applicant, Pastor V. Valera, to operate between Bangued, Province of Abra, and Ilagan, Province of Isabela, after the route in question had been excluded during the hearing.

This same question was raised in case No. 28185 of the Public Service Commission, G. R. No. 39456[1] of this court, wherein Pastor V. Valera was applicant and the Rural Transit Co., Ltd., was oppositor, and this court held the following:

"There is no doubt that once the Bangued-Ilagan line, on which the applicant-appellee, Pastor V. Valera, had applied for authority to extend his operations, is abandoned, the Public Service Commission could not grant him such authority in its decision on the ground that no hearing relative to the line in question was held and that the opponents thereto were not given an opportunity to present evidence in support of their opposition. Therefore, the Public Service Commission exceeded its jurisdiction in granting the authority applied for."

The third assignment of alleged error is likewise well taken.

With respect to the notice to the oppositors regarding the amendment to the application, seeking additional trips and extension of the lines in operation, inasmuch as the respective attorneys for the respective oppositors appeared at the hearing of the case wherein the motion for amendment was served upon them, failure to serve previous notice thereof does not constitute a prejudicial error sufficient to justify the reversal of the judgment rendered therein.

With respect to the authority granted to Pastor V. Valera to operate between Bangued-Lubuagan and Bangued-Ilagan, without ordering the issuance of a new certificate of public convenience to that effect, it is obvious that the fourth assignment of alleged error has now become a moot question inasmuch as the decision authorizing such extension has been declared erroneous.

In view of the foregoing considerations, we are of the opinion, and so hold, that the inclusion in a decision of the Public Service Commission of an authority to extend a line, the motion for which has been excluded during the hearing, is erroneous.

Wherefore, the decision, the review of which is prayed for herein, is hereby modified, excluding therefrom the authority granted to the applicant Pastor V. Valera to extend his operations to the Bangued-Ilagan line and imposing the restriction not to pick up passengers from Vigan to Narvacan and vice versa, without special pronouncement as to costs. So ordered.

Malcolm, Hull, Imperial, and Diaz, JJ., concur.

[1] Page 93, ante.

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