

ORLANES & BANAAG TRANSPORTATION COMPANY, INC., ET AL., PETITIONERS AND APPELLANTS, VS. THE ASIATIC PETROLEUM COMPANY (P. I.), LTD., AND LAGUNA-TAYABAS BUS COMPANY, RESPONDENTS A...

G. R. No. 39574. January 30, 1934

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the Orlanes & Banaag Transportation Co., Inc., Ricardo Remo, Laureano Calongcalong and Emilia Remo from the order of the Public Service Commission, the dispositive part of which reads as follows:

"Upon consideration of the reasons alleged by both applicants and oppositors, and following the precedent established by this commission in case No. 26298, 'Parsons Hardware Co., Inc., applicant,' the commission hereby renders judgment declaring that, without prejudice to setting this case for hearing later on, after case No. 3377 of the Court of First Instance of Tayabas is decided, it should as it does hereby recognize the Laguna-Tayabas Bus Company as the assignee de facto of the above-mentioned certificates of public convenience of the Orlanes & Banaag Transportation Co., Inc., which were sold at public auction by the sheriff of the City of Manila to the Asiatic Petroleum Co. (P. I.), Ltd., and resold by the latter to said Laguna-Tayabas Bus Company, with the right to temporarily operate under such certificates until further orders to the contrary from this commission.

"Wherefore, the Laguna-Tayabas Bus Company is hereby authorized to temporarily operate the land transportation service awarded to the Orlanes & Banaag Transportation Co., Inc., in cases Nos. 16582, 16197, 20633, 17059, 16667, 20334, 11815, 11645, 12313, 16474, 16475, 13976, 16470, and 16476, of this commission subject, however, to strict compliance with the conditions imposed in each and every one of the aforesaid certificates.

"This decision does not resolve nor in any manner affect the question raised by the receiver Jose Antillon before the Court of First Instance of Tayabas in case No. 3377, relative to the legality of the sale of the certificates of the Orlanes & Banaag Transportation Co., Inc., by the sheriff of the City of Manila, and is understood to be without prejudice to whatever may be the result of said case."

In support of their appeal, the appellants assign the following alleged errors as committed by the Public Service Commission in its aforesaid order, to wit:

"1. In recognizing the Laguna-Tayabas Bus Company as assignee de facto of the certificates of public convenience issued to the Orlanes & Banaag Transportation Company, Inc., in cases Nos. 16582, 16197, 20633, 17059, 16667, 20334, 11815, 11645, 12313, 16474, 16475, 13976, 16470, and 16476.

"2. In authorizing the Laguna-Tayabas Bus Company, under special permit, to temporarily operate the service awarded to the Orlanes & Banaag Transportation Company, Inc., under the certificates of public convenience issued in the above-mentioned cases.

"3. In denying the petitioners-appellants' motion for reconsideration."

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

On July 2, 1931, the Asiatic Petroleum Co. (P. I.), Ltd., filed a complaint docketed in the Court of First Instance of Tayabas as civil case No. 3047, against the Orlanes & Banaag Transportation Co., Inc., for the recovery of certain sums of money, praying, among other things for the appointment of a receiver of all the property, credits and equipment of said defendant company. In accordance with said petition, the court appointed the Philippine Trust Company as judicial receiver, which, in such capacity, took possession of the property of said defendant company and assumed the management of the transportation business thereof.

The Philippine Trust Company was succeeded in its capacity as judicial receiver by Enrique Bautista, who, in turn, was subsequently succeeded by the present receiver Jose Antillon.

During the pendency of the aforesaid civil case No. 3047 in the Court of First Instance of Tayabas and before the hearing of the same was held, many individuals and firms filed third party claims therein.

After due hearing, the Court of First Instance of Tayabas rendered judgment in favor of the plaintiff the Asiatic Petroleum Co. (P. I.), Ltd., and third party claimants, ordering the defendant Orlanes & Banaag Transportation Co., Inc., and the receiver Philippine Trust Company to pay to the plaintiff the Asiatic Petroleum Co. (P. I.), Ltd., the sum of P37,488.16 with interest thereon at 9 per cent per annum from August 26, 1931, until fully paid, together with the sum of P2,094.98 representing the accrued interest on the capital from January 31 to August 25, 1931.

Not being satisfied with the decision, the Orlanes & Banaag Transportation Co., Inc. appealed therefrom to this court, which appeal was docketed as G. R. No. 38097.[1]

Pending said appeal, the Court of First Instance of Tayabas issued a writ of execution of the judgment appealed from. Under said writ the sheriff of Manila and of the Provinces of Tayabas and Batangas attached the certificates of public convenience issued by the Public Service Commission in favor of Orlanes & Banaag Transportation Co., Inc., in cases Nos. 16582, 16197, 20633, 16059, 16667, 20334, 11815, 11645, 12313, 16474, 16475, 13976, 16470, and 16476, which were under the control and management of the judicial receiver Jose Antillon, and after the necessary proceedings sold them at public auction, adjudicating all of said certificates to the Asiatic Petroleum Co. (P. L.), Ltd., the highest bidder at the said sale.

Inasmuch as the Asiatic Petroleum Co. (P. I.), Ltd., was not engaged in the transportation business nor was it disposed to operate the transportation lines covered by said certificates of public convenience, it transferred all its rights, title and interest therein to the Laguna-Tayabas Bus Company (Exhibits A and B).

On November 10, 1932, the Asiatic Petroleum Co. (P. I.), Ltd., and the Laguna-Tayabas Bus Co. applied to the Public Service Commission in case No. 34371, now under consideration, for the approval of the sale of the aforesaid certificates of public convenience by the sheriff of the City of Manila to said Asiatic Petroleum Co. (P. I.), Ltd., and of the transfer thereof by the latter to the Laguna-Tayabas Bus Company, in accordance with the provisions of section 16, paragraph (h) of Act No. 3108, as amended. The Laguna-Tayabas Bus Company further prayed for authority to operate the lines specified in said certificates. Upon notice to the parties and after due hearing, the Public Service Commission granted said application and on March 26, 1933, issued the order hereinbefore quoted.

The appeal taken in said civil case No. 3047 of the Court of First Instance of Tayabas, which was docketed in this court as G. R. No. 38097, supra, was decided by affirming the appealed judgment in toto.

The first question to decide in this appeal, which is raised in the first assignment of error, is whether or not the Public Service Commission committed an error in recognizing the Laguna-Tayabas Bus Company as assignee de facto of the certificates of public convenience in question issued in favor of Orlanes & Banaag Transportation Co., Inc.

In case No. 26298 of the Public Service Commission, G. R. No. 36713 [1] of this court, wherein Parsons Hardware Co., Inc., had filed an application for the approval of the sale of certain certificates of public convenience of the Orlanes & Banaag Transportation Company, Inc., by the sheriff of the City of Manila on February 5, 1931, by virtue of an extra judicial foreclosure of chattel mortgage, which certificates were adjudicated to said applicant as the highest bidder, and of the assignment of its rights thereto to the Laguna-Tayabas Bus Company, said commission granted the application in question, approved said sale, and recognized the Laguna-Tayabas Bus Company as assignee de facto of said certificates of public convenience, authorizing it to temporarily operate the land transportation service awarded to the Orlanes & Banaag Transportation Co., Inc., in cases Nos. 16197/ 16582, 16667, 20633, and 10756. Against said order the Orlanes & Banaag Transportation Co., Inc., applied to this court for a writ of certiorari questioning the jurisdiction of the Public Service Commission to approve said sale, assignment, and authority issued to the Laguna-Tayabas Bus Company to temporarily operate the transportation lines granted under said certificates of public convenience.

Upon review of said appeal and after considering all the questions raised therein, this court denied the writ.

In denying the petition for a writ of certiorari filed against the order issued in said case No. 26298, declaring that both the sale and the assignment of said certificates of public convenience were legal and valid, this court implicitly declared that the holding of the Public Service Commission to the effect that the Laguna-Tayabas Bus Company was an assignee de facto was also legal and valid.

The appellants contend that inasmuch as the certificates of public convenience in question were in the hands and under the control of a judicial receiver and, therefore, in custodia legis, the Court of First Instance of Tayabas had no jurisdiction to order the sale thereof and, consequently, the sale made by the sheriff of the City of Manila to the Asiatic Petroleum Company (P. I.), Ltd., and the assignment for the latter of its rights in favor of the Laguna-Tayabas Bus Company are null and void.

In the case of *Cu Unjieng e Hijos vs. Mabalacat Sugar Co.* (58 Phil., 439), which was decided on September 22, 1933, this court held that the court, which ordered the placing of the mortgaged property in the hands of a receiver in a foreclosure proceeding, has jurisdiction to order the sale of said property at public auction even before the termination of the receivership.

In the case under consideration, it was the same Court of First Instance of Tayabas, which ordered the certificates of public convenience in question placed in the hands of a receiver, appointed the receiver who was to take charge thereof, and ordered the receiver thus appointed to sell said certificates. In accordance with the afore-cited doctrine, said Court of First Instance of Tayabas had jurisdiction to order said sale.

Therefore, the first question raised by the appellants in their first assignment of error has already been decided by this court in the certiorari proceeding, instituted in case No. 26298 of the Public Service Commission, G. R. No. 36713, *supra*, of this court.

With respect to the second assignment of error, inasmuch as the sale and assignment of the certificates of public convenience in question are legal and valid, the authority given to the assignee Laguna-Tayabas Bus Company to operate the transportation lines awarded under said certificates is likewise legal and valid as a logical consequence

of the said sale and assignment which were declared legal and valid.

In view of the foregoing considerations, this court is of the opinion and so declares: (1) That Courts of First Instance have jurisdiction to appoint judicial receivers in actions for recovery of sums of money, wherein the attachment of certificates of public convenience and the placing thereof, in the hands of a receiver are prayed for, and to order the sale of said certificates at public auction even before the termination of the receivership, and (2) that the Public Service Commission has jurisdiction to approve the sale of certificates of public convenience in the hands of a receiver as well as the assignment made by the purchaser at public auction of his rights therein, and to authorize said assignee to operate the transportation lines awarded under said certificates (*Raymundo vs. Luneta Motor Co.*, [1933], 58 Phil., 889).

Wherefore, the order appealed from is hereby affirmed, with costs against the appellants. So ordered.

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

[1] *Asiatic Petroleum Co. vs. Orlanes & Banaag Transportation Co.*, p. 24, ante.

[1] *Orlanes & Banaag Transportation Co. vs. Public Service Commission* (57 Phil., 634).

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