

## TOLEDO TRANSPORTATION CO., INC., OPPOSITOR AND APPELLANT, VS. MANILA RAILROAD CO., PETITIONER AND APPELLEE.

*G. R. No. 40705. February 28, 1934*

Ponente: VILLA-REAL, J.

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### VILLA-REAL, J.:

This is an appeal taken by the oppositor Toledo Transportation Co., Inc., from the decision rendered by the Public Service Commission in case No. 36883, the dispositive part of which reads as follows:

"It is therefore ordered that, upon payment of the corresponding fees, a certificate of public convenience be issued in favor of the Cavite Land Transportation, for the operation of its buses in the municipality of Rosario, Province of Cavite, along the main or provincial road toward the streets named Padre Burgos, M. Pujeda, Evangelista and the main or provincial road, and vice versa, during the following hours:

#### AMAYA-CAVITE

#### CAVITE-AMAYA

10:05 a.m.

9:00 a.m.

11:05 a.m.

10:00 a.m.

2:05 p.m.

11:00 a.m.

6:05 p.m.

4:00 p.m.

7:05 p.m.

5:00 p. m.

6:00 p.m.

"The said buses are hereby authorized to pick up and drop passengers in those streets at convenient places and shall be subject to all the conditions imposed upon said service in case No. 32386.

"The applicant shall pay the above-mentioned fees within the period of thirty days from date of service hereof, and upon its failure to make such payment this decision shall be declared null and void without previous hearing."

By reason of its appeal, the appellant assigns the following alleged errors as committed by the Public Service Commission in its decision in question, to wit:

"1. The Public Service Commission erred in holding that to permit the appellee to run a bus service in the streets of P. Burgos, M. Pujeda and Evangelista in the municipality of Rosario, Cavite, is not a ruinous competition with the autotruck operation of the appellant in the same municipality.

"2. The Public Service Commission erred in granting a certificate to appellee to serve a public which already is being served adequately and satisfactorily by the appellant.

"3. The Public Service Commission erred in denying protection to the appellant which is the first and oldest operator in the disputed territory.

"4. The Public Service Commission erred in dismissing appellant's motion for reconsideration."

The oppositor-appellant Toledo Transportation Co., Inc., is a land carrier duly authorized to put into operation, and in fact it put into operation, autotrucks, with a fixed time table, for freight and passenger service from Amadeo to Cavite or Manila, via General Trias and intermediate points.

The petitioner-appellee Manila Railroad Co. acquired the rights of the Tanza Traffic Company, which was another land carrier authorized to operate, and in fact it operated, autotrucks, also with a fixed time table, from Amaya to Cavite or Manila, via Tanza and other intermediate points.

Both lines meet at Tejeron and run along the main road or Real Street of the municipality of Rosario, Cavite, as far as their respective terminals.

The oppositor-appellant Toledo Transportation Co., Inc., is not restricted in the number of its trips while the petitioner-appellee is authorized to make only three round trips daily between Amaya and the municipality of Cavite and three round trips daily between Amaya and Manila, via Rosario, without any restriction as to picking up and dropping passengers in said municipality. The same petitioner-appellee is also authorized to make fifteen direct and continuous round trips daily between Indang and Cavite, via Rosario, but with prohibition to pick up passengers in Rosario.

From June 16, 1932, both companies have been operating and rendering service in the municipality of Rosario along the provincial road, in accordance with their respective certificates of public convenience.

A little more than one year after the petitioner-appellee had acquired the rights of the Tanza Traffic Company in the transportation business, it filed an application in this case, No. 36883 of the Public Service Commission, for authorization to extend its service to the barrios of Kalunuran and Muzon, which are situated along the seashore and at some distance from the center of the poblacion of the municipality of Rosario, using for that purpose some of the fifteen round trips, subject to the prohibition of picking up passengers in the main street when passing through the town of Rosario.

The filing of the application in this case was prompted by the petition of various residents of the municipality of Rosario to the effect that the petitioner-appellee should extend the trips of its buses to the streets of P. Burgos, M. Pujeda and Evangelista, and as the result of an investigation of the needs of the residents of the barrios of Kalunuran and Muzon.

M. Pujeda Street, which had been opened to traffic more than one year ago, runs parallel to the main street of the municipality of Rosario, passing along the shore of Manila Bay. P. Burgos and Evangelista streets run perpendicularly to the main street and M. Pujeda Street. In order to reach the main street, the residents of the barrios of Kalunuran and Muzon may pass through either P. Burgos or Rizal or Evangelista Street, walking for

about four minutes.

Before the petitioner-appellee filed its application, no land carrier had applied for authorization to extend its service to the said barrios of Kalunuran and Muzon. The said oppositor-appellant did not deem it necessary to apply for such extension of service and only when the petitioner-appellee filed its application in this case did the former, without previous authorization, cause its buses to pass through said barrios for three days during the month of August, 1933.

The principal question to decide in this case is whether or not the Public Service Commission erred in authorizing the Manila Railroad Co. to extend the service of the Cavite Land Transportation Co., Inc. to the barrios of Kalunuran and Muzon of the municipality of Rosario, with a fixed route and regular time table.

The oppositor-appellant Toledo Transportation Co., Inc., contends that the public necessity and convenience do not demand such extension inasmuch as the present means of transportation therein are more than sufficient to satisfy the actual needs of the residents of said barrios, for, although the autotrucks do not pass through the above-mentioned lateral and parallel streets, said residents may take the buses that pass through the main street by merely walking for about four minutes. To the Toledo Transportation Co., Inc., there is no inconvenience in walking for about four minutes in order to take a bus. However, several residents of the municipality of Rosario have filed a petition to the Public Service Commission to the effect that they be given such facility and convenience, which shows that their needs in matters of transportation are not satisfied.

The other ground of the oppositor-appellant's opposition is that the authorization given to the petitioner-appellee by the Public Service Commission would give rise to a ruinous competition.

The Public Service Commission has found no such disastrous result either for the transportation business in Cavite or for the public, nor has the Toledo Transportation Co., Inc., so established conclusively.

Therefore, there exists no probability of ruin for both carriers as a result of the extension to the barrios of Kalunuran and Muzon of the service of the Cavite Land Transportation Co. managed by the petitioner-appellee Manila Railroad Co.

As its last ground, the oppositor-appellant contends that, it being the first in the transportation business in the locality, it should be given preference in extending its lines to the aforesaid barrios, invoking to that effect the doctrine laid down in the cases of *Javier vs. Orlanes* (53 Phil., 468), and *Silang Traffic Co. vs. Karungkong* (56 Phil., 826). These two cases are not applicable here inasmuch as the case at bar involves, not a land carrier invading for the first time a territory already served by another which has a regular route and is not restricted as to picking up passengers, but a land carrier with a certificate of public convenience, rendering public service with another in the same territory and practically under the same conditions, although with certain restrictions as to picking up passengers, and which is trying to establish a collateral line, joined to its main line, in a territory not served by the other. In the case of *Orlanes & Banaag Transportation Co. and Orlanes vs. Ochoa* (57 Phil., 962), where the petitioner's situation was the same as that of the petitioner in this case, this court affirmed the decision of the Public Service Commission authorizing the extension applied for, having found it necessary and convenient to the public.

In view of the foregoing, this court is of the opinion and so holds that when two or more land carriers are authorized to render service on the same line, any of them may be permitted to collaterally extend its service if the convenience of the public so demands and none of the other carriers has previously obtained authorization for such extension.

Wherefore, not finding any error in the decision appealed from, it is hereby affirmed in toto, with costs against the

appellant. So ordered.

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

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