

PANGASINAN TRANSPORTATION COMPANY, PETITIONER AND APPELLANT, VS. MANILA RAILROAD COMPANY, RESPONDENT AND APPELLEE.

G. R. No. 41471. September 15, 1934

Ponente: MALCOLM, J.

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MALCOLM, J.:

The petitioner and appellant in this case complains that the Public Service Commission erred in granting to the Manila Railroad Company a certificate of public convenience to invade the regular route adequately and efficiently served by the Pangasinan Transportation Company.

The Pangasinan Transportation Company operates an autobus service in the Province of Pangasinan and other provinces. The Manila Railroad Company operates the Benguet Auto Line from Baguio by way of the Kennon Road to Sison. The railroad now desires to extend its auto line from Sison to Binalonan via Pozorrubio in the Province of Pangasinan. If this be permitted it will be a competitor of the busses of the Pangasinan Transportation Company.

The basic inquiry in this as in other public service commission cases is whether or not it clearly appears that there was no evidence before the commission to support reasonably its order. Our mature judgment is that the findings of fact made by the commission do not meet this test.

In one class of cases it has oft been emphasized, and properly, that the convenience of the public must be taken into account and is a prime criterion. In another class of cases it has as appropriately been emphasized that the investments made by public service operators must be protected rather than destroyed. Here we have the two principles meeting in collision. It is our desire at once to afford all reasonable facilities to the public and to afford all reasonable safeguards for capital invested in the transportation business.

On the one hand it is shown that there are a few passengers whose convenience would be better served if the Manila Railroad Company was permitted to extend its buss service from Sison to Binalonan. However, their convenience is more fancied than real, for the busses of the Pangasinan Transportation Company and the Manila Railroad Company meet at Sison and if there is any difference in the hour of meeting this could readily be arranged. On the other side, it is disclosed that while busses of the Pangasinan Transportation Company have a capacity for thirtytwo pay passengers, they are only carrying an average load of six passengers on these trips. It has further been established that from June, 1932, to May, 1933, the Pangasinan Transportation Company lost ₱2,733.29 on this line alone. Under these conditions, can it be said that public necessity is more compelling than what amounts to ruinous competition?

The true effect of granting the petition of the Manila Railroad Company would be to force the Pangasinan Transportation Company out of the Sison-Pozorrubio-Binalonan territory. Moreover, if the railroad company could extend its auto line to Binalonan, it requires no vast amount of imagination to visualize the company extending its line to the next municipality and so on indefinitely, to the great disadvantage of other operators and

with the result that they would be deprived of substantial revenue. With all due respect to the Public Service Commission which we are the first to uphold when its decisions can be justified, we are unable to put the stamp of our approval on the principle it has invoked and sanctioned in this case.

Agreeable to the foregoing, the assigned errors will be sustained, and the decision set aside, with the costs of both instances to be paid by the respondent and appellee.

Street, Villa-Real, Hull, Vickers, Butte, Goddard, and Diaz, JJ., concur.

DISSENTING

IMPERIAL, J.,

The majority opinion for the first time abandons the uniform and well established doctrine in this jurisdiction that this court shall in no case substitute its discretion for the sound discretion of the Public Service Commission as recognized by law, and that the judgment rendered by it shall not be altered nor reversed unless the conclusions therein are not reasonably supported by the evidence (sec. 35, Act No. 3108, as amended by Act No. 3316).

The facts of the case are those contained in the majority opinion; but in addition thereto it must be stated that the extension of service applied for, is supported by the testimony of the superintendent of the Benguet Auto Line and also by written petitions signed by more than one hundred (100) residents of Binalonan, most of them merchants; and by a resolution of the municipal council of Binalonan praying that the present service of the appellee be extended from Sison to Binalonan.

There can be no doubt that the requested extension of service will redound to the benefit of the public concerned, inasmuch as the proposed trips will save the passengers from the annoyance of having to change cars at the station in Sison and to unload and load their baggage and freight. This is shown by the petitions of numerous persons and the resolution of the municipal council of Binalonan, and no evidence was presented by the appellant which would weaken the evidentiary force of said petitions and resolution. By reason thereof it clearly follows that in this respect the judgment appealed from is reasonably and sufficiently supported by the evidence.

In the instant case the doctrine above referred to finds special application inasmuch as no new service is contemplated, but merely an extension of the present line maintained by the Manila Railroad Company is requested.

In the case of *Raymundo Transportation Co. vs. Perez* (56 Phil., 274), this court said:

"While it is the duty of the government as far as possible to protect public utility operators against unfair and unjustified competition, it is nevertheless obvious that public convenience must have the first consideration."

In the case of *Mindanao Bus Company vs. Paradies* (G. R. No. 38442, 58 Phil., 970), it was also said:

"It is the convenience of the public that must be taken into account, other things being equal, and that convenience would be effectuated by passengers who take buses at points in one part of a line being able to proceed beyond those points without having to change buses and to await the arrival of buses of a competitive operator. We can perceive how under such conditions one public utility could gain business at the expense of a rival."

As will readily be seen, this court in said cases laid down the doctrine that public convenience is the first and

primordial consideration to be kept in mind in determining whether a service should be granted and whether a certificate of public convenience should be issued. The majority opinion completely abandons the doctrine thus laid down, and holds that, in conjunction with public convenience, the private interest of an operator should be taken into consideration in order to avoid ruinous competition.

In the case at bar the alleged ruinous competition does not exist or, at least, it has not been satisfactorily established. Admitting that the appellant has suffered losses in its trips from Binalonan to Sison as shown by its evidence, this fact, however, does not necessarily lead to the conclusion that a ruinous competition will arise upon the approval of the extension of service requested by the Manila Railroad Company. The failure of a business of this nature must not be based upon the partial losses suffered by the operator, but upon the result of the business on all the lines maintained by it. The appellant may have really suffered losses in that particular line but the same would be compensated if his business on all the lines shows a reasonable margin of profit.

The majority opinion deprives a great part of the public of a necessary and convenient service, and strips the Public Service Commission of the exercise of its sound discretion, and for these reasons, with all due respect, I dissent, and believe that the judgment appealed from should be affirmed.

ACANCENA, C. J., concurs in this dissenting opinion of Justice Imperial.

ABAD SANTOS, J.:

I concur in the dissenting opinion of Justice Imperial.

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