

RED LINE TRANSPORTATION CO., PETITIONER AND APPELLANT, VS. RURAL TRANSIT CO., LTD., RESPONDENT AND APPELLEE.*G. R. No. 41570. September 06, 1934*

Ponente: BUTTE, J.

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This case is before us on a petition for review of an order of the Public Service Commission entered December 21, 1932, granting to the Rural Transit Company, Ltd., a certificate of public convenience to operate a transportation service between Ilagan in the Province of Isabela and Tuguegarao in the Province of Cagayan, and additional trips in its existing express service between Manila and Tuguegarao.

On June 4, 1932, the Rural Transit Company, Ltd., a Philippine corporation, filed with the Public Service Commission an application in which it is stated in substance that it is the holder of a certificate of public convenience to operate a passenger bus service between Manila and Tuguegarao; that it is the only operator of direct service between said points and the present authorized schedule of only one trip daily is not sufficient; that it will be also to the public convenience to grant the applicant a certificate for a new service between Tuguegarao and Ilagan.

On July 22, 1932, the appellant, Red Line Transportation Company, filed an opposition to the said application alleging in substance that as to the service between Tuguegarao and Ilagan, the oppositor already holds a certificate of public convenience and is rendering adequate and satisfactory service; that the granting of the application of the Rural Transit Company, Ltd., would not serve public convenience but would constitute a ruinous competition for the oppositor over said route.

After testimony was taken, the commission, on December 21, 1932, approved the application of the Rural Transit Company, Ltd., and ordered that the certificate of public convenience applied for be "issued to the applicant Rural Transit Company, Ltd.," with the condition, among others, that "all the other terms and conditions of the various certificates of public convenience of the herein applicant and herein incorporated are made a part hereof."

On January 14, 1933, the oppositor Red Line Transportation Company filed a motion for rehearing and reconsideration in which it called the commission's attention to the fact that there was pending in the Court of First Instance of Manila case No. 42343, an application for the voluntary dissolution of the corporation, Rural Transit Company, Ltd. Said motion for reconsideration was set down for hearing on March 24, 1933. On March 23, 1933, the Rural Transit Company, Ltd., the applicant, filed a motion for postponement. This motion was verified by M. Olsen who swears "that he was the secretary of the Rural Transit Company, Ltd., in the above entitled case." Upon the hearing of the motion for reconsideration, the commission admitted without objection the following documents filed in said case No. 42343 in the Court of First Instance of Manila for the dissolution of the Rural Transit Company, Ltd., the petition for dissolution dated July 6, 1932, the decision of the said Court of First Instance of Manila, dated February 28, 1933, decreeing the dissolution of the Rural Transit Company, Ltd.

At the trial of this case before the Public Service Commission an issue was raised as to who was the real party in

interest making the application, whether the Rural Transit Company, Ltd., as appeared on the face of the application, or the Bachrach Motor Company, Inc., using the name of the Rural Transit Company, Ltd., as a trade name. The evidence given by the applicant's secretary, Olsen, is certainly very dubious and confusing, as may be seen from the following:

"Q.

Will you please answer the question whether it is the Bachrach Motor Company operating under the trade name of the Rural Transit Company, Limited, or whether it is the Rural Transit Company, Limited in its own name this application was filed?

—

A.

The Bachrach Motor Company is the principal stockholder.

"Q.

Please answer the question.

"ESPELERA. Objecion porque la pregunta ya ha sido contestada.

"JUEZ. Puede contestar.

"A.

I do not know what the legal construction or relationship existing between the two.

"JUDGE.

I do not know what is in your mind by not telling the real applicant in this case?

"A.

It is the Rural Transit Company, Ltd.

"JUDGE.

As an entity by itself and not by the Bachrach Motor Company?

"A.

I do not know. I have not given that phase of the matter much thought, as in previous occasion had not necessitated.

"JUDGE.

In filing this application, you filed it for the operator on that line? Is it not?

"A.

Yes, sir.

"JUDGE.

Who is that operator?

"A.

The Rural Transit Company, Ltd.

"JUDGE. By itself, or as a commercial name of the Bachrach Motor Company?

"A.

I cannot say.

"ESPELETA. The Rural Transit Company, Ltd., is a corporation duly established in accordance with the laws of the Philippine Islands.

"JUDGE. According to the records of this commission the Bachrach Motor Company is the owner of the certificates and the Rural Transit Company, Ltd., is operating without any certificate.

"JUDGE. If you filed this application for the Rural Transit Company, Ltd., and afterwards it is found out that the Rural Transit Company, Ltd., is not an operator, everything will be turned down.

"JUDGE. My question was, when you filed this application you evidently made it for the operator ?

"A.

Yes, sir.

"JUDGE. Who was that operator you had in mind?

"A.

According to the status of the ownership of the certificates of the former Rural Transit Company, the operator was the operator authorized in case No. 23217 to whom all of the assets of the former Rural Transit Company were sold

"JUDGE. The Bachrach Motor Company?

"A.

All actions have been prosecuted in the name of the Rural Transit Company, Ltd.

"JUDGE. You mean the Bachrach Motor Company, Inc., doing business under the name of the Rural Transit Company, Ltd.?

"A.

Yes, sir.

"LOCKWOOD. I move that this case be dismissed, your Honor, on the ground that this application was made in

the name of one party but the real owner is another party.

"ESPELETA. We object to that petition.

"JUDGE. I will have that in mind when I decide the case. If I agree with you everything would be finished."

The Bachrach Motor Company, Inc., entered no appearance and ostensibly took no part in the hearing of the application of the Rural Transit Company, Ltd. It may be a matter of some surprise that the commission did not on its own motion order the amendment of the application by substituting the Bachrach Motor Company, Inc., as the applicant. However, the hearing proceeded on the application as filed and the decision of December 21, 1932, was rendered in favor of the Rural Transit Company, Ltd., and the certificate ordered to be issued in its name, in the face of the evidence that the said corporation was not the real party in interest. In its said decision, the commission undertook to meet the objection by referring to its resolution of November 26, 1932, entered in another case. This resolution in case No. 23217 concludes as follows:

"Premises considered we hereby authorize the Bachrach Motor Co., Inc., to continue using the name of 'Rural Transit Co., Ltd.,' as its trade name in all the applications, motions or other petitions to be filed in this commission in connection with said business and that this authority is given retroactive effect as of the date of filing of the application in this case, to wit, April 28, 1930."

"We know of no law that empowers the Public Service Commission or any court in this jurisdiction to authorize one corporation to assume the name of another corporation as a trade name. Both the Rural Transit Company, Ltd., and the Bachrach Motor Co., Inc., are Philippine corporations and the very law of their creation and continued existence requires each to adopt and certify a distinctive name. The incorporators "constitute a body politic and corporate under the name stated in the certificate." (Section 11, Act No. 1459, as amended.) A corporation has the power "of succession by its corporate name." (Section 13, *ibid.*) The name of a corporation is therefore essential to its existence. It cannot change its name except in the manner provided by the statute. By that name alone is it authorized to transact business. The law gives a corporation no express or implied authority to assume another name that is unappropriated; still less that of another corporation, which is expressly set apart for it and protected by the law. If any corporation could assume at pleasure as an unregistered trade name the name of another corporation, this practice would result in confusion and open the door to frauds and evasions and difficulties of administration and supervision. The policy of the law as expressed in our corporation statute and the Code of Commerce is clearly against such a practice. (Cf. *Scarsdale Pub. Co. Colonial Press vs. Carter*, 116 New York Supplement, 731; *Svenska Nat. F. i. C. vs. Swedish Nat. Assn.*, 205 Illinois (Appellate Courts), 428, 434.)

The order of the commission of November 26, 1932. authorizing the Bachrach Motor Co., Incorporated, to assume the name of the Rural Transit Co., Ltd., likewise incorporated, as its trade name being void, and accepting the order of December 21, 1932, at its face as granting a certificate of public convenience to the applicant Rural Transit Co., Ltd., the said order last mentioned is set aside and vacated on the ground that the Rural Transit Company, Ltd., is not the real party in interest and its application was fictitious.

In view of the dissolution of the Rural Transit Company, Ltd. by judicial decree of February 28, 1933, we do not see how we can assess costs against said respondent, Rural Transit Company, Ltd.

Malcolm, Villa-Real, Imperial,, and Goddard, JJ., concur.

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