

RAYMUNDO TRANSPORTATION COMPANY, PETITIONER AND APPELLANT, VS. LAGUNA TAYABAS BUS COMPANY, RESPONDENT AND APPELLEE.

G.R. No. 42522, February 25, 1935

Ponente: BUTTE, J.

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BUTTE, J.:

This is a petition for review of a decision of the Public Service Commission dated July 23, 1934, in which the commission found and determined that "as matters now stand, the Raymundo Transportation Company has no right to pick up passengers and freight on the line Santa Cruz-Mabitac; and it having been brought to the attention of the commission that said company is indulging in that practice to the prejudice of the petitioner Laguna-Tayabas Bus Company, as successor to Cayetano Orlanes and Batangas Transportation Company, it is deemed advisable for the commission now to declare, as it hereby declares, for the guidance of all concerned, that the operation of the Raymundo Transportation Company under the certificate of public convenience granted in case No. 13064 is subject to the restriction that it shall not pick up passengers or freight on the said line. The Raymundo Transportation Company is hereby instructed to observe this restriction in its operation on the line in question."

Under date of September 13, 1934, upon consideration of the motion for reconsideration of the said resolution of the commission it was declared: "As a clarification of the prohibition or restriction prescribed in said decision of July 23, 1934, as requested by the movant, the commission hereby declares that the Raymundo Transportation Co., Inc., is not prohibited by the said decision from picking passengers and freight between Santa Cruz and Mabitac provided they are destined for its places of operation beyond Mabitac, or from dropping passengers and freight coming from its points of operation beyond Mabitac at any place between Mabitac and Santa Cruz. In other words, the said decision of this commission of July 23, 1934, prohibits local operation between Mabitac and Santa Cruz by the Raymundo Transportation Co., Inc."

It appears from the records of the commission that under date of January 20, 1928, the appellant Raymundo Transportation Company was granted a certificate of public convenience to operate an auto truck service between Manila and Santa Cruz, Laguna, including other lines not here involved. This certificate contained the following restriction :

"The applicant's busses passing through the intermediate towns along the Mabitac-Santa Cruz line, shall not pick up any passenger or freight for transportation from any point served by Cayetano Orlanes and the Batangas Transportation Co. to a point served by the same, unless the said applicant's busses pass one hour before, or half an hour after those of Cayetano Orlanes and the Batangas Transportation Co. following the time schedules approved in cases 9872 and 10135."

In a decision dated December 8, 1928, in case No. 16474 in which the Raymundo Transportation Company was a party opposing, the commission construed the certificate granted to the appellant under date of January 20, 1928,

and held that "la Raymundo Transportation Company no tiene ningtin derecho de tomar pasajeros y carga entre Santa Cruz y» Mabitac y viceversa". No petition for review of the decision of the commission in case No. 16474 was filed by the Raymundo Transportation Company and it must be assumed that since that date the Raymundo Transportation Company acquiesced in said decision of December 8, 1928, and complied with the same up to the time the LagunaTayabas Bus Company, the respondent-appellee, filed its complaint against the Raymundo Transportation Company charging that the latter is picking up local passengers and freight between Mabitac and Santa Cruz, which is the subject matter of the decision here under review.

The decision and resolution of the commission dated December 8, 1928, in case No. 16474 therefore became final some seven years ago.

But the appellant argues that the declaration in the decision of December 8, 1928, to the effect that the Raymundo Transportation Company has no right whatever to pick up passengers or freight between Santa Cruz and Mabitac or vice versa is obiter dictum and should not be construed as an amendment or repeal of that provision of its certificate of public convenience dated January 20, 1928, in which the restriction as to said local traffic was not absolute and unconditional. Holding that view, the appellant on this appeal argues the validity of the decision of December 8, 1928. We cannot accept the view that the resolution of the commission in case No. 16474 dated December 8, 1928, is mere obiter dictum. The record discloses that the Raymundo Transportation Company in that case based its opposition upon the authority which it alleged was granted to it by its certificate dated January 20, 1928. The commission in case No. 16474 was therefore obliged to decide the same substantial issue which the appellant raises on the present appeal.

We think that the decision of the commission here under review rightly upheld the resolution and determination of the commission of December 8, 1928, in case No. 16474, under the circumstances of this case, and therefore the petition for review must be dismissed at the cost of the petitioner-appellant.

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

Decision affirmed.

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