

**ALFREDO POSAS AND MANILA RAILROAD COMPANY, PETITIONERS
AND APPELLEES, VS. TOLEDO TRANSPORTATION COMPANY, INC.,
OPPOSITOR AND APPELLANT.***G.R. No. 43836. October 14, 1935*

Ponente: IMPERIAL, J.

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The Toledo Transportation Co., Inc., and Alfredo Posas were operators of auto-trucks along the Manila-General Trias line, the latter with authority to operate two (2) auto-trucks, one in operation and the other in reserve. In Public Service Commission Case No. 35242, Alfredo Posas obtained another certificate of public convenience to operate the General Trias-Julugan-Tanza line with two (2) autotrucks, one in operation and the other in reserve. In this case the Toledo Transportation Co., Inc., and the Manila Railroad Company filed oppositions. To avoid competition with any of them, the certificate imposed as a condition that the auto-trucks of Posas would not pick up or discharge passengers between General Trias-Tejeros and Tanza but would take them direct to Julugan and on their return trip would take them to General Trias. The decision rendered by the commission to this effect became final.

Upon motion of the Toledo Transportation Co., Inc., based on the ground that Alfredo Posas did not register the required equipment within the prescribed period, the commission, on August 8, 1934, issued an order revoking the certificate of public convenience granted to Posas. On petition of Alfredo Posas, the commission, on the 28th of the same month, set aside the order of revocation on condition that he would register the auto-truck he had in storage, or any other that he might have acquired, within, thirty (30) days. The Toledo Transportation Co., Inc., moved that the commission set aside its last order and enforce the former one revoking the certificate of Alfredo Posas. The commission denied this motion as well as the one for reconsideration which was filed, whereupon the Toledo Transportation Co., Inc., brought this petition for review.

In Public Service Commission Case No. 41532, Alfredo Posas and the Manila Railroad Company applied for the approval by the commission of the sale made by the former to the latter of his certificates of public convenience issued in cases Nos. 15112, 18018, 20148 and 35242, together with two (2) Chevrolet auto-trucks. This was opposed by the Toledo Transportation Co., Inc., but the commission, after hearing, approved the sale. After its motion for reconsideration and new trial was denied, the Toledo Transportation Co., Inc., filed the petition for review.

The Toledo Transportation Co., Inc., did not challenge the validity of the certificate of public convenience granted to Alfredo Posas in case No. 35242 until it was revoked, but insists that the commission acted in excess of its jurisdiction in issuing the order setting aside the revocation. It also contends that, Posas' certificate having been cancelled, the latter had nothing to convey or sell to the Manila Railroad Company, wherefore, the decision of the commission authorizing the sale is likewise null and void. We believe that the questions raised may be reduced to two: first, whether the Toledo Transportation Co., Inc., has any material and direct interest in the two cases, and,

second, whether the order revoking Fosás' certificate was legal or valid.

It will be recalled that one of the limitations imposed in the decision on the certificate of public convenience issued to Posas was that, in operating the General Trias-Julugan line, via Tejeros-Tanza, he could not pick up or discharge passengers at points between General Trias and Tanza on his round trips, in order to avoid unjust competition with the service being already operated along the same line by the Toledo Transportation Co., Inc., and the Manila Railroad Company. This being so and the Toledo Transportation Co., Inc., not having been affected or prejudiced by the auto-truck service granted to Posas, it is evident that the former ceased to have any interest in the cases and cannot successfully oppose either the order lifting the revocation of the certificate or the decision approving the conveyance in favor of the Manila Railroad Company (*Enriquez vs. Pampanga Bus Co.*, 58 Phil., 353).

It is conceded by the parties that the order of August 8, 1934, cancelling the certificate of public convenience of Alfredo Posas was entered ex-parte, on petition of the Toledo Transportation Co., Inc., without trial at which Alfredo Posas could have had an opportunity to be heard. The procedure thus followed is an open violation of the last paragraph of subsection (i) of section 15 of Act No. 3108 providing that no certificate of public convenience shall be suspended, revoked, or cancelled without first giving the interested party an opportunity to be heard. For this reason we unhesitatingly hold that the aforesaid order was null and void ab initio, and, consequently, Posas' certificate remained in full force irrespective of the other order of August 28, 1934, the nullity of which is one of the objects of these appeals.

Reiterating, therefore, that the Toledo Transportation Co., Inc., is not an interested party in these cases because it ceased to have any material and direct interest therein, and that the certificate of public convenience granted to Alfredo Posas to operate auto-trucks on the General Trias-Julugan line remained always in full force and effect inasmuch as the order revoking it was null and void ab initio, the order of August 28, 1934 and the decision rendered in case No. 41532 of the commission are affirmed, with the costs of both cases to the Toledo Transportation Co., Inc. So ordered.

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

Order and decision affirmed.

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