

**PASAY TRANSPORTATION CO., INC., PETITIONER AND APPELLANT,
VS. TANAY TRANSIT CO. (TEODORO R. YANGCO), RESPONDENT AND
APPELLEE.***G. R. No. 44096. January 15, 1936*

Ponente: IMPERIAL, J.

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This is a petition filed by the Pasay Transportation Co., Inc., to review the order of the Public Service Commission of July 16, 1935, denying its motion for reconsideration and rehearing of September 25, 1933, asking that the decision of April 30, 1931, and the order of August 29th of said year, rendered in case No. 21766 of said commission, be set aside.

The facts that gave rise to this petition are as follows:

Inocencio Sta. Ana, as agent of the respondent Tanay Transit Co., instituted case No. 2217 of the Public Service Commission and obtained a certificate of public convenience to operate auto-buses on the Pililla-Manila line with the right to pick up freight and passengers in Tanay, Baras, Morong, Cardona and Binangonan. It was not permitted to pick up nor drop freight and passengers between Binangonan and Manila because the line was then being served by the Manila Railroad Company. The respondent Tanay Transit Company later instituted case No. 11371 applying for and obtaining an amendment of its route and increase in equipment. Later it again instituted case No. 21766 and asked for an increase of its time schedule and for permission to pick up and drop freight and passengers in Taytay and Cainta on its trips for Manila and vice versa. Raymundo Transportation Co., among others, opposed the petition. The petitioner Pasay Transportation Co., Inc., was served with a notice of the hearing of the petition and its counsel, Rivera, personally appeared and promised to file an opposition thereto in the afternoon, but the pleading was never filed nor registered* On December 20, 1930, the commission granted new routes to the respondent Tanay Transit Company and to the Raymundo Transportation Company but on January 8, 1931, it set aside the order so promulgated and in another order of February 19th of the same year required the appearance of all the operators affected by the application. On April 27, 1931, the respondent Tanay Transit Company and Raymundo Transportation Company submitted a stipulation proposing the time schedule that could be granted to the former and the commission, in a decision of April 30, 1931, approved the stipulation and prescribed new routes, increasing the respondent's time schedule. On August 29, 1931, the respondent Tanay Transit Company filed another petition in said case asking for the approval of an amended route and also for the cancellation of the restriction so as to permit it to pick up and drop freight and passengers anywhere on its Pililla-Manila line on its round trips. The commission granted the petition on the same date and the respondent was thus operating when the petitioner Pasay Transportation Co., Inc., on September 25, 1933, filed a "Protest-Petition for Reconsideration and a Rehearing" which was denied in an order of July 16, 1935.

The petitioner contends that the Public Service Commission erred in granting to the respondent the additional trips leaving Pililla at 3, 3.30 and 7 a. m., and leaving Manila at 6 a. m., 7 a. m., 7 p. m. and 8 p. m.; in cancelling the prohibition to pick up freight and passengers between Rosario and Manila, and in denying the "Protest-Petition for Reconsideration and a Rehearing".

Our first reason for declaring that the petition is unfounded is that the petitioner's appeal is really taken from the decision of April 30, 1931, and the order or resolution of August 29th of said year, which appeal has been filed out of time, that is, after the lapse of more than two years from the date said decision and resolution took effect, and not within thirty days as provided by section 35 of Act No. 3108, as amended by section 1 of Act No. 3316. The so-called "Protest-Petition for Reconsideration and a Rehearing" was not filed in accordance with the provisions of section 28 of said Act and therefore the order of July 16, 1935, denying it is not properly appealable, it being interlocutory in character and merely denying a motion for reconsideration and a rehearing of a decision and resolution that had already become final.

When the respondent Tanay Transit Company instituted case No. 21766 and for the first time requested an increase of its time schedule, for the cancellation of the prohibition to pick up and drop freight and passengers between Rosario and Manila, and to be permitted to pick up and drop freight and passengers in Taytay and Cainta on its round trips to Manila, said petition was set for hearing and the petitioner Pasay Transportation Co., Inc., was duly notified thereof. Attorney Rivera, representing the petitioner, personally appeared at the first hearing held on January 13, 1930, and after having been informed of the nature of the petition stated to the commission that he would file his opposition in the afternoon of said day, but it seems that the opposition was never filed. The respondent and the Raymundo Transportation Company later agreed to equitably apportion the time schedule on the Pililla-Manila line between themselves and the commission afterwards granted to the respondent the additional time schedule now objected to by the petitioner and cancelled the restriction to pick up and drop freight and passengers between Rosario and Manila. In view of these facts, it clearly appears that the petitioner cannot successfully allege that no hearing was held of the respondent's petition for an increase of its time schedule and the cancellation of said restriction, nor claim that it was given no opportunity to appear and oppose the petition. As to whether or not the petition was meritorious, the commission had absolute discretion to grant it, concluding that in so increasing the respondent's time schedule public interest was better served. We hold that the foregoing is another reason in support of our conclusion that the first assignment of error is not well founded.

The second assignment of error, as stated, refers to the resolution of August 29, 1931, which, besides approving a complete route of the respondent's trips, cancels the established restriction to pick up and drop freight and passengers between Rosario and Manila and in Taytay and Cainta. The petitioner's objection is without legal foundation if we take into consideration the fact that the restriction or prohibition was imposed only for the benefit of the Manila, Railroad Company which was then operating a railway service on said line. When the restriction was imposed the petitioner was not yet an operator and had no interest whatsoever in the line. From the time the services of the Manila Railroad Company remained outside the jurisdiction of the Public Service Commission by express provision of Act No. 3376, the commission believed that there was no reason to maintain the prohibition any longer and therefore cancelled and set it aside. It follows therefore that the second assignment of error is likewise untenable.

The third and last assignment of error refers to the denial of the "Protest-Petition for Reconsideration and a Rehearing" filed by the petitioner. It contends that the commission, in denying it, abused its sane discretion. We stated that the petition in question was really for reconsideration and a rehearing of the decision of April 30, 1931, and of the resolution of August 29th of said year which had already become final and that it was not properly a remedy invoked under section 28 of Act No. 3108. From this point of view, the Public Service Commission correctly denied it. Neither was there any reason to set aside the decision and resolution which had already become final, particularly because, granting that its "Protest-Petition for Reconsideration and a Rehearing" was filed in accordance with the provisions of section 28, the petitioner had not presented evidence in support of its allegations or contentions.

In view of the foregoing, the petition for review is denied, with costs to the petitioner Pasay Transportation Co., Inc. So ordered.

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

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