

GENANICHI ISHI, PETITIONER, VS. PUBLIC SERVICE COMMISSION, RESPONDENT.

G. R. No. 45134. September 10, 1936

Ponente: RECTO, J.

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RECTO, J.:

On December 18, 1929, a certificate of public convenience was granted to the petitioner, a Japanese subject, to operate a Ford automobile for the transportation of passengers in the Province of Davao, subject to the following conditions which were accepted by him, to wit:

"And without authorization from this commission previously had, the applicant shall not alter the manner of operating his cars prescribed herein, increase or decrease the number thereof, substitute them with others, change the form of the carriage with a different one, or in any case send them on a trip outside the zone of operation of the service herein authorized.

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"The certificate of public convenience to be issued to him by virtue of this decision shall take effect on the date the same is issued and shall continue in force until further order to the contrary from this commission." (Case No. 21268, Public Service Commission.)

On October 23, 1935, the petitioner filed an application for authority to increase his present equipment by the addition of another Ford automobile, alleging that the number of automobiles registered under "PU" denomination in the Province of Davao was not sufficient to meet the demand for transportation of the inhabitants of the province. The Public Service Commission, in an order issued on February 14, 1936, denied said application in view of the constitutional inhibition that no franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty per centum of the capital of which is owned by citizens of the Philippines (Article XIII, section 8).

A petition for a writ of certiorari has been filed against this order. The allegations of the petition fail to state that the respondent exceeded its jurisdiction in issuing the order in question. They do not, therefore, justify the issuance of the writ applied for, in accordance with section 35 of Act No. 3108, as amended. The proper remedy would have been to apply for the review of the disputed order in accordance with said section 35 of said Act. Before disposing of the case, this court deems it advisable, however, to state its opinion on the constitutional question raised in order to decide the case once for all.

The question raised is whether or not the petitioner's application for an increase of his equipment comes within the constitutional prohibition contained in Article XIII, section 8, of the Constitution of the Philippines, notwithstanding the fact that a certificate of public convenience to operate a Ford automobile for the transportation of passengers in the Province of Davao had been issued to the petitioner before the Constitution took effect on November 15, 1935. This court must decide the question in the affirmative. It is admitted that the

petitioner is neither a citizen of the Philippines nor a corporation sixty per centum of the capital of which is owned by citizens of the Philippines, His application for an increase of equipment may not require the granting of a new franchise or certificate but it certainly requires an authorization the granting of which in any form is limited by the Constitution to the citizens and corporations above-stated. This was clearly admitted by the petitioner himself when he alleged in paragraph 3 of his petition for a writ of certiorari that he sought "authorization" to increase his equipment. In other words, the petitioner admits that he cannot increase his equipment without being previously "authorized" to do so by the respondent commission, as expressly provided in his certificate of public convenience. The phrase "any other form of authorization" used in Article XIII, section 8, of the Constitution is comprehensive enough to include the "authorization" sought by the petitioner.

The Constitution provides for the nationalization not only of the natural resources and of all forces of potential energy, but also of all public services or utilities, except only those rights that might have been acquired prior to the adoption thereof. This was one of the avowed purposes of the framers of that fundamental law, as declared in its preamble. This court cannot agree to the suggestion that, as the petitioner is the lawful holder of a certificate of public convenience to operate a Ford automobile in the Province of Davao, he has a vested right to be authorized to increase his equipment by the addition of one or more oars thereto. The respondent commission's order in question is in accordance with the letter and spirit of the Constitution and must be upheld.

The petition is denied, with the costs to the petitioner.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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