

PASAY TRANSPORTATION CO., INC., PETITIONER AND APPELLANT, VS. TOLEDO TRANSPORTATION CO., INC., RESPONDENT AND APPELLEE.

G.R. No. 45396. June 30, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

Pasay Transportation Co., Inc., prays for the review of the decision of the Public Service Commission absolving the respondent, Toledo Transportation Company, Inc., from the complaints filed against the latter by the petitioner in which the respondent is charged with having violated the conditions of its certificate of public convenience to the great detriment of the said petitioner, Pasay Transportation Co., Inc.

In support of its petition for review the said petitioner assigns the following errors alleged to have been committed by the Public Service Commission in its decision:

"1. The Public Service Commission erred in holding that the restrictions in question were intended for the protection of the Manila Railroad Company and that the enforcement of the same had already been abandoned.

"2. The Public Service Commission erred in absolving respondent from the complaint and in not holding that the admitted picking and dropping of passengers at respondent's station is a violation of its certificate of public convenience.

"3. The Public Service Commission erred in not granting the motion for reconsideration and new trial. "

Simon Toledo had filed an application for the issuance in his favor of a certificate of public convenience for the establishment of a land transportation service of freight and passengers by means of auto-trucks between the municipality of Malabon, Province of Cavite, and Manila, passing through the municipalities of Noveleta, Kawit, Bacoar, and other intermediate points. The Manila Railroad Company opposed said application. In view of said opposition, the applicant amended his application by stating that his trucks would not receive freight or passengers from any point along the line which he proposed to establish and which was served by the railroad, to any other point along the same line. This amendment having been made, the oppositor withdrew its opposition. On August 19, 1920 the Public Service Commission rendered a decision granting the application of Simon Toledo and ordering that a certificate of public convenience be issued in his favor as operator of a land transportation service making irregular trips under the condition that "the applicant shall not take in said auto-trucks passengers or freight from any of the points of the Noveleta-Manila line and vise-versa, which includes the said line of Malabon (now General Trias) to Manila, with destination to any other point thereof. " (Exhibit 3.)

On August 14, 1928 a certificate of public convenience for the establishment of a land transportation service in the territory between General Trias and Manila was granted to Aquilino Angkiko in case No. 13176, subject to the condition that he would not take or discharge passengers or freight between Kawit (Cavite) and Manila, Kawit, being the last town after Noveleta on the way to Manila. On September 19, 1929 the certificate of public

convenience issued in favor of Aquilino Angkiko was transferred by the latter to Simon Toledo in case No. 2703. On February 6, 1930, Simon Toledo conveyed the certificate of public convenience which he had acquired from Aquilino Angkiko to the herein respondent Toledo Transportation Co., Inc., in case No. 21320.

In case No. 16113 the irregular trips which had been authorized in the certificate of public convenience issued in favor of Simon Toledo were made regular, without eliminating the restriction contained in his aforesaid original certificate.

Simon Toledo also transferred to the herein respondent and appellee, Toledo Transportation Co., Inc., his certificate of public convenience.

From its acquisition of the certificate of Simon Toledo and that of Aquilino Angkiko to the present, Toledo Transportation Co., Inc., has had a waiting station in the barrio of Salcedo, municipality of Noveleta, on the Manila-Cavite line at which it picks up and discharges freight and passengers. This waiting station has been maintained by the said company long before the Pasay Transportation Co., Inc., began to operate in the Province of Cavite.

The Manila Railroad Company also keeps a waiting station located at about 100 meters from the intersection of the line of the company and the main Cavite-Manila line, in the same barrio of Salcedo, which waiting station is only a few hundred yards from the waiting station of Toledo Transportation Co., Inc.

For sixteen years, Toledo Transportation Co., Inc., has been picking up and discharging passengers and freight at said waiting station in the barrio of Salcedo, during which time the Manila Railroad Company has never filed a complaint or protest against it. Pasay Transportation Co., Inc., filed this complaint before us only after it has silently stood by for five years observing the use by the Toledo Transportation Co., Inc., of the aforesaid waiting station.

The foregoing evidence shows that the imposition of the restriction in the certificate of public convenience issued in favor of Simon Toledo was due to the opposition of the Manila Railroad Company which said Simon Toledo doubtless believed to be reasonable because he immediately amended his application and the Manila Railroad Company withdrew its opposition. At that time the petitioner Pasay Transportation Co., Inc., still had no land transportation service in Cavite which might compete with that which Simon Toledo wanted to establish; consequently, it can not be said that said restriction was also made in its favor. The Manila Railroad Company for whose benefit the said restriction was imposed, has never complained against the respondent Toledo Transportation Co., Inc., for taking freight and passengers in its waiting station in the barrio of Salcedo, municipality of Noveleta. Although the toleration by a land transportation company of the violation of a condition beneficial to it does not justify said violation, nevertheless, there having been no complaint on the part of the company thus benefited by such restriction, thereby giving the impression that it is not prejudiced by said violation, the Public Service Commission acted justifiably and equitably in absolving, as it did, the offender from the complaint made by another land transportation company for whose benefit the condition violated was not made.

Furthermore, the Toledo Transportation Co., Inc., had also acquired the certificate of public utility and convenience issued in favor of Aquilino Angkiko, which certificate does not contain any restriction on the loading and unloading of passengers and freight from Noveleta to Manila and vice-versa, the restriction imposed upon him being confined to the Kawit-Manila line and vice-versa. As Kawit follows Noveleta on the way to Manila, the Toledo Transportation Co., Inc., which has acquired the certificate of Aquilino Angkiko and with it the rights of the latter as a common carrier, has not violated the conditions of said certificate in picking up and discharging freight and passengers in its waiting station in the barrio of Salcedo, municipality of Noveleta, Province of Cavite.

The decision of the Public Service Commission sought to be reviewed, being in accordance with the evidence, equity and justice, the same is hereby affirmed in all its parts, with costs against the petitioner. So ordered.

Avanceña, C.J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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