

**SANTIAGO SAMBRANO, PETITIONER, VS. NORTHERN LUZON
TRANSPORTATION CO., INC., RESPONDENT.***G.R. No. 45573. July 26, 1938*

Ponente: CONCEPCION, J.

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Clemente Ruiz held a certificate of public convenience for the operation of a transportation service between Laoag and Baduang via Bangui on a fixed schedule. By reason of his abandonment of said service, the Public Service Commission revoked and cancelled his certificate. Without loss of time, the Northern Luzon Transportation Co., Inc., which operated other lines in the same province, applied for permission to take over the service abandoned by Ruiz. The commission, after considering that it would be for the public interest, granted the applicant a provisional permit to renew the service between Laoag and Baduang via Bangui, with the same schedule as that which had been fixed for Ruiz.' Thereafter the application was set for hearing and, on the date fixed therefor, three oppositors appeared to contest the same. One of the latter was the appellant herein, Santiago Sambrano who, among other grounds for his opposition, alleged that the law does not empower the commission to take cognizance of cases of this nature. Hearing was, however, not held on the date appointed, and this case has undergone various postponements due, no doubt, to the fact that the Public Service Commission has been twice reorganized. In the meanwhile Sambrano prayed for the cancellation of the provisional permit granted the Northern Luzon Transportation Co., Inc., to continue operating the service which Ruiz had abandoned, alleging that said permit was against the established policy of the commission and a recent decision of this court. Said petition was not acted upon by the commission for the reason that the Northern Luzon Transportation Co., Inc., had not been given notice thereof. One year and two months thereafter the petitioner renewed his petition for the cancellation of the aforesaid permit granted the Northern Luzon Transportation Co., Inc., upon the ground that the operation by said corporation under a special permit was in violation of law because it had not previously obtained a certificate of public convenience from the commission. This time the commission resolved, by order of October 17, 1936, to leave the motion pending until the case was decided on its own merits, considering that the suspension of operation in the line served by respondent under the temporary permit, would be against the interest of the public convenience. Petitioner Sambrano did not except to said order, nor did he avail himself of any other legal remedy against it. A second hearing on the petition was held, inasmuch as in the first hearing petitioner did not appear. The case was decided in favor of the Northern Luzon Transportation Co., Inc., but on motion of the same oppositor it was reopened and the hearing thereof set for April 5, 1937. On March 18, 1937 or before the date set for hearing, Sambrano filed a motion praying for the dismissal of the application of the Northern Luzon Transportation Co., Inc., inasmuch as the instant case is exactly similar to that commenced by the herein oppositor for the taking over of the line operated by Calixto Paz whose certificate had been cancelled, and the commission having dismissed his application in that case, the application of the Northern Luzon Transportation Co., Inc., should be likewise dismissed. Sambrano not having appeared on the day fixed by him for the hearing of his motion, the commission, after considering the same to be without merit, denied it on March 31, 1937. At the hearing of the application Sambrano also did not appear notwithstanding that he had been notified thereof. For

this reason, after the presentation of the evidence for the Northern Luzon Transportation Co., Inc., the judgment under review was rendered on April 5, 1937, definitely approving the provisional permit granted said applicant. On the 20th of the same month of April, Sambrano filed a motion for reconsideration of the resolution denying his motion for dismissal and filed another motion for reconsideration on the 26th, alleging that it was only on the 8th that he received notice of the resolution of the commission upon his motion for dismissal and that he did not appear on the day set for the hearing, or on April 5th, because he had been waiting for said resolution of the commission and because on April 2d he had filed a motion for postponement of the hearing. Both motions were denied by the commission.

We believe that the fact that the oppositor did not receive notice of the resolution of the commission upon his motion for dismissal can not be considered a valid excuse for his failure to appear on the day of the hearing. The motion for postponement would constitute a sufficient excuse if the same had been filed on time. It is not true, however, that said oppositor filed his motion for postponement on April 2d, for upon examination of said motion it will be seen that, according to the official stamp of the commission, the same was filed on April 6th, that is, one day after the date set for the hearing. The commission, therefore, did not commit any error in proceeding to hold the hearing and render its decision.

It is contended, as one of the errors alleged by petitioner to have been committed by the commission, that the latter had no jurisdiction to grant as it did, by its order of April 15, 1932 without previous hearing, a temporary permit to the Northern Luzon Transportation Co., Inc., to continue the service which Clemente Ruiz had abandoned. In support of his contention he cites the decisions of this court in the cases of Barredo vs. Public Service Commission (58 Phil., 79); Manila Yellow Taxicab Co. and Aero Taxicab Co. vs. Public Service Commission and Vesnan (G. R. No. 38908 [58 Phil., 899]); Manila Electric Co. vs. Trias (G. R. Nos. 41126-41128 [60 Phil., 1018]). Although it appears to us that the instant case differs from those just cited in that those cases dealt with applications for certificate of public convenience and the commission, without previous hearing, had granted special permits to the applicants to operate in the lines by them applied for, whereas this case involves only the substitution of one operator for the other inasmuch as the former operator had abandoned the service for which he had been granted a certificate of public convenience, it must be presumed, after hearing, which certificate was cancelled by the commission; we do not, however, base this decision upon the aforesaid difference but upon the ground that petitioner's contention is untenable, for the following reasons:

First. Because the oppositor Sambrano did not avail himself of any legal remedy against the aforesaid order of April 13, 1932. When he appeared on October 15, 1934 to oppose the application of the Northern Luzon Transportation Co., Inc., or when, before that date, he had learned of the order above-mentioned for the first time, he should then have applied to this court by petition for certiorari for the annulment of said order if he believed that the commission had abused or exceeded its jurisdiction in issuing the same. This he failed to do.

Second. Not only did said oppositor fail to avail himself of any remedy, under the law, against the order of April 13, 1932 aforementioned, but also failed to except to, or make use of any adequate remedy to annul, the resolution of the commission of October 17, 1936 leaving unacted upon his motion for the cancellation of the special permit granted the Northern Luzon Transportation Co., Inc., to take over the line abandoned by Clemente Ruiz. Neither did he except to, nor take any appeal from, the order of the commission of March 31, 1937 denying his motion for dismissal of the application of the Northern Luzon Transportation Co., Inc.

Third. The oppositor having neglected to make use of the corresponding legal remedy to set aside the aforesaid order of April 13, 1932, it is now too late to question the authority of the commission to issue it. On the other hand, any resolution of this court setting aside said order would be of no practical effect whatever for it is now an accomplished fact which cannot be disregarded, that the Northern Luzon Transportation Co., Inc., has been

serving the line Laoag-Baduang via Bangui for the period of more than five years, without any complaint on the part of the public from the time that the temporary permit in question was granted.

One other error assigned by oppositor-appellant in his brief is that the commission found in its decision that the continuation of the present service in the Baduang-Laoag line will serve the public interest. Concerning this it is enough to refer ourselves to the evidence, which we find sufficient to sustain the conclusion made by the commission and assailed by petitioner. It was furthermore proved that the cancellation of the permit issued to the applicant for the operation of the service abandoned by the former operator Clemente Ruiz would gravely affect the public interest because the Northern Luzon Transportation Co., Inc., is the sole operator of the line in question, Baduang-Laoag, and because said line serves as a connection with another line of said corporation, that of Bangui-Pamplona.

The decision under review is affirmed with costs against the petitioner. So ordered.

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

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