

**SOICHI FURUGEN TRANSPORTATION, PETITIONER AND APPELLANT,
VS. THE PUBLIC SERVICE COMMISSION, RESPONDENT AND
APPELLEE.***G.R. No. 45834. August 10, 1938*

Ponente: IMPERIAL, J.

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On June 1, 1937, Soichi Furugen, a Japanese subject, representing Soichi Furugen Transportation, the commercial name adopted by him, filed an application in case No. 49447 of the Public Service Commission praying for the approval of the attached schedule of freight and passenger rates of the launches Tatraco 7 and Kentucky which were being operated by him in the Province of Davao. The application was set for hearing on August 19th of said year but as the applicant failed to appear or prove that the necessary publications had been made, it was postponed to the 30th of the following September. Neither did the applicant appear on the latter date for which reason the commission, in an order of October 5, 1937, dismissed the application, declared that the launches should not be operated as public services and requested the Collector of Customs of Davao to suspend the operation thereof as public services until he should receive a contrary order from said commission. The applicant filed a motion for reconsideration wherein he explained satisfactorily his failure to appear, and in the order of October 30, 1937, the commission set aside the order of dismissal, again set the application for hearing on November 1st of said year and required the applicant to file an amended application. On the day of the hearing the applicant filed the amended application and offered as evidence Exhibits A, B, C, D, and E. Exhibit A is a certificate of the Collector of Customs of Davao to the effect that the motor launch Tatraco 7 is registered as belonging to the applicant, registration having been made in the Port of Davao on September 20, 1934. Exhibit B is a contract of charter party dated October 15, 1937, entered into between the Ohta Development Co. and the applicant for the lease of the launch Kentucky at P100 a month, from the month of October 1937. Exhibit C contains the original contract of charter party, in Japanese, entered into by said parties, dated October 1, 1935; the translation thereof into English and the certificate of the Japanese consul to the effect that the English translation is correct. Exhibit D is another certificate of the Collector of Customs of Davao stating that the motor launch Kentucky is registered as belonging to the Ohta Development Co., Inc., and that the registration thereof was made in the Port of Davao on May 20, 1926. Exhibit E is the schedule freight and passenger rates submitted by the applicant. No opposition to the application was filed and after the hearing the commission rendered decision, dated November 2, 1937, dismissing the application and suspending the operation of the launches Tatraco 7 and Kentucky as public services. From this decision the applicant appealed by means of a petition for review filed by him on November 6, 1937.

The applicant claims that the commission erred in finding that he is not entitled to a certificate or any other form of authorization to operate his launches in view of the fact that he is an alien; in not finding that he has a vested right to operate said launches, having been operating them before the Constitution of the Philippines and Commonwealth Act No. 146 took effect; in not finding that the commission has no jurisdiction to look into the

personality of the applicant; in dismissing his application for the approval of the schedule freight and passenger rates submitted by him, and in ordering the suspension of the operation of said launches.

The questions raised in the applicant's five assignments of error may be reduced to whether or not the commission has the power to suspend the operation of the launches and whether or not the applicant is entitled to continue operating them, in which affirmative case the commission must decide whether or not the rates are reasonable and just.

- Article XIII, section 8, of the Constitution of the Philippines, provides:

"Sec. 8. 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, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the National Assembly when the public interest so requires."

Chapter II, section 13, of Commonwealth Act No. 146, reads as follows:

"Sec. 13. Except as otherwise provided herein, the commission shall have general supervision and regulation of, jurisdiction and control over, all public services, and also over their property, property rights, equipment, facilities, and franchises so far as may be necessary for the purpose of carrying out the provisions of this Act, and in the exercise of its authority it shall have the necessary powers and the aid of the public force: Provided, however, That the commission shall have no control or jurisdiction over ice plants, cold storage plants, or any public services operated by the Government of the United States in the Philippines exclusively for its own use and not to serve private persons for pay or compensation, nor over municipal warehouses nor animal-drawn vehicles: Provided, further, That the commission shall not exercise any control or supervision over air craft in the Philippines, except with regard to the fixing of maximum passenger and freight rates, nor over the Manila Railroad Company until the same shall be controlled by the Government of the Philippines, nor over radio companies or concerns except as regards the fixing of rates: Provided, further, That the control and jurisdiction of the commission over ships shall be limited to the fixing of freight and passenger rates."

Chapter III, section 1166, of the Revised Administrative Code, provides:

"Sec. 1166. Registration and documentation of vessels.—The Bureau of Customs is vested with exclusive authority over the registration and documentation of Philippine vessels. By it shall be kept and preserved the records of registration and of transfers and incumbrances of vessels; and by it shall be issued all certificates, licenses, or other documents incident to registration and documentation, or otherwise requisite for Philippine vessels."

Under section 13 of Commonwealth Act No. 146, the jurisdiction of the Public Service Commission over ships is limited to the fixing of freight and passenger rates, and according to section 1166 of the Revised Administrative Code, it is the Bureau of Customs which is vested with exclusive authority over registration and documentation of vessels. From the foregoing provisions it is inferred and so held that the Public Service Commission has no jurisdiction nor authority to order or suspend the operation or navigation of a vessel in Philippine waters even if it were engaged in the public service, its jurisdiction being limited to the fixing of freight and passenger rates. Consequently the commission exceeded its jurisdiction in ordering in its appealed decision the suspension of the operation or navigation of the applicant's launches.

- According to the evidence presented by the applicant, it has not been shown that he is entitled to continue operating the launches as public services, the reason being his failure to prove that said launches had been

operated or had navigated as such public services before the Constitution of the Philippines took effect, which was on November 15, 1935. Exhibits A and D are evidence of the ownership of the launches but they do not prove that they had been operated or had navigated in Philippine waters before the Constitution took effect. If said launches had been operated or had navigated in Philippine waters as public services before November 15, 1935, the prohibition of Article XIII, section 8, of the Constitution does not extend to the applicant and he would be entitled to ask the commission to act upon the freight and passenger rates presented by him, approving them if they are reasonable and just. On the other hand, if the launches had not been operated as public services prior to November 15, 1935, the commission should limit itself to disapproving the rates submitted and dismissing the application.

For the foregoing reasons the appealed decision is reversed and the commission is ordered to set the amended application again for hearing to enable the applicant to present additional evidence he may have and later to render the proper decision pursuant to the doctrine laid down herein, without special pronouncement as to the costs of this instance. So ordered.

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

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