

CEBU AUTOBUS COMPANY, PETITIONER AND APPELLANT, VS. BISAYA LAND TRANSPORTATION CO., RESPONDENT AND APPELLEE.

G.R. No. 45845. August 01, 1938

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

Appellant and appellee are both public service operators under certificates of public convenience issued by the Public Service Commission before the present controversy between them arose. They have been and are now engaged in the transportation of passengers and freight between various municipalities in the Province of Cebu. Up to May 1937, appellant had been carrying mail over six mail routes in that province, known in the records of the Bureau of Posts as mail routes Nos. 806, 807, 808, 811, 817 and 825. On May 13, 1937, the carriage of mail over these same routes was advertised for bids, and both appellant and appellee submitted their bids. The contract for the carriage of mail was later awarded to the appellee as the successful bidder.

On June 17, 1937, appellee filed an application with the Public Service Commission, the pertinent part of which reads as follows:

"1. That the applicant corporation is a public service operator under Certificate of Public Convenience granted in case No. 45425; and by virtue of the provisional authority granted in case No. 45426, it is also operating under Certificate of Public Convenience granted in case No. 3191.

"2. That the mail service between Cebu and Santander and intermediate municipalities, between Cebu and Tuburan and intermediate municipalities, between Cebu and Aloguinsan and intermediate municipalities, and between Cebu and Samboan and intermediate municipalities, is so poor as to necessitate other transportation company to carry the mails in order to give a better mail service in the territories just mentioned.

"3. That due to the deficient mail service in said territories, the Bureau of Posts has advertised for the presentation of bids for the performance of said service, and has decided to award to the herein applicant, as the lowest bidder, the contract to carry the mails and has requested the herein applicant to start the service as soon as possible and apply to this commission for authority to make the trips necessary therefor, as may be seen in the letter of said bureau attached hereto.

"4. That it would be highly for the convenience and interest of the public that the applicant be authorized to make the trips proposed herein.

"5. That the applicant proposes to make daily trips for the purpose of carrying P. I. Mails between Cebu and Santander under Schedule No. 1 of Appendix A, between Cebu and Tuburan under Schedule 2 of Appendix A, between Cebu and Aloguinsan under Schedule 3 of Appendix, A, and between Cebu and Samboan under Schedule 4 of Appendix A, subject to modification or alteration which this Hon. Commission may deem proper to make.

"6. That Schedule No. 1 in Appendix A is only an extension of the applicant's time schedule granted in Case No. 45425.

"7. That the applicant agrees that the authority to make daily trips under the schedules contained in Appendix A hereto attached shall only continue in force as long as the applicant has a contract with the Bureau of Posts to carry mails to said municipalities and intermediate points.

"8. That aside from carrying the mails the applicant should be granted to carry such passengers and freight as may be offered by the public in the trips herein solicited for, and to collect the passenger's fare and freight charges authorized in its certificate of public convenience.

"Wherefore, this Honorable Commission is respectfully prayed to enter an order authorizing the applicant to make daily trips in the territories covered by schedules proposed in Appendix A, for the purpose of carrying the P. I. Mails, with the privilege of accepting such passengers and freight as may be offered by the public."

This application was opposed by the appellant and the Philippine Railway Company for the reasons stated in their written oppositions. Hearings on the application were held, and upon the evidence submitted by the parties, the commission granted the same upon the conditions set forth in its decision of October 14, 1937.

In support of his petition for review, counsel for the appellant contends that the decision of the commission is contrary to law, not reasonably supported by the evidence of record, and should therefore be reversed and set aside.

In his brief counsel for the appellant raises the question of the sufficiency of both the allegations contained in the application filed by the appellee, and the evidence presented in support thereof. He maintains that the application does not contain sufficient allegation as to the existence of public convenience and necessity to warrant the action taken by the commission in granting the application. This contention is without merit. A cursory reading of the application, particularly paragraphs 4 and 8 thereof, will suffice to set this point at rest. But even if the allegations were defective, the defect was cured by the evidence presented in support thereof.

The contention of counsel for the appellant that there is no evidence reasonably to support the challenged decision is based on the proposition that the "mere possession of a contract to carry mail is not proof of public convenience and necessity for the operation of motor vehicles for the transportation of either persons or property." His argument upon this branch of the case hinges mainly on this proposition. The American cases cited by him also bear directly on this point. Both his argument and the authorities relied upon by him are inapposite. The issue involved in the instant case is far more comprehensive; and the evidence introduced in support of the application was not limited to the question of whether the mere possession of a contract to carry mail is proof of public convenience and necessity for the operation of motor vehicles for the transportation of either persons or property. As stated in the decision of the commission:

"Declararon, en síntesis que con la concesion de la presente solicitud se fomentaria el trafico de pasajeros y carga, favoreceria el comercio, pues en las horas solicitadas se encuentran pasajeros y comerciantes que guardan algun medio de transportation y no lo encuentran; que los comerciantes que viajan de un sitio a otro llevan consigo mercancias y productos; de que los buses de la Cebu Autobus Company viajan siempre llenos de pasajeros; que el intervalo entre viaje y viaje de dicha opositora Cebu Autobus Company es de hora en hora y en muchas ocasiones el intervalo es mucho mayor; que ocurre que a los pasajeros que toman buses de otros operadores y que han querido trasbordar a los buses de la opositora, para ir a puntos no servidos por aquellos han sido rechazados a modo de castigo a los susodichos pasajeros que pudiendo haber tornado los buses de la Cebu Autobus Company desde su punto de origen no lo han hecho asi."

In the final analysis, the determination of the question as to the sufficiency of the evidence to support the decision of the commission turns on the credibility of the witnesses who testified before it. The jurisdiction of this court to set aside a decision of the commission is limited to cases where it clearly appears that there was no evidence to support reasonably such decision, or that the same is contrary to law, or that it was without the jurisdiction of the

commission. We are unable to conclude that any of such grounds exists in the present case.

It results that the decision under review must be affirmed, with costs against the appellant. So ordered.

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

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