

PAMPANGA BUS COMPANY, INC., OPPOSITOR AND APPELLANT, VS. FERNANDO ENRIQUEZ, APPLICANT AND APPELLEE.

G.R. No. 46040. November 29, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

These are two appeals taken by the oppositor, Pampanga Bus Company, Inc., from the decision of the Public Service Commission, rendered in cases Nos. 48802 (G. R. No. 46040) and 48795 (G. R. No. 46041), wherein Fernando Enriquez and Marcelo Diaz are the applicants, respectively, which were jointly heard, the pertinent dispositive part of which reads:

"In view of the foregoing facts, and considering: that the public convenience will be subserved, the commission hereby overrules all the oppositions and proceeds to grant, as it hereby grants the lifting of the restrictions as prayed for in these applications. * * *"

In support of its appeal in case No. 48802, the appellant assigns the following errors allegedly committed by the Public Service Commission, to wit:

"1. The Public Service Commission erred in ignoring and not giving any consideration, force or effect to the agreement of November 9, 1929, existing between the parties.

"2. The Public Service Commission erred in failing to hold that the matter involved is res adjudicata, or to give any force and effect to the previous decision of the Public Service Commission affirmed by the Supreme Court on exactly the same question between the same parties, and in failing to grant opposition's motion to dismiss the case on this ground.

"3. The Public Service Commission erred in granting the application and lifting the restrictions in applicant's certificate.

"4 The Public Service Commission erred in changing the hours of the applicant and putting them immediately before those of the Pampanga Bus Company, Inc., without any notice, hearing, discussion by evidence on this point."

And in case No. 48795, the same appellant assigns this sole error allegedly committed by the said commission, namely:

"The Public Service Commission erred in granting the application and lifting or removing the restrictions in the certificate of applicant."

The principal question to decide in the two appeals is whether the Public Service Commission erred in ignoring and not giving any consideration, force or effect to the agreement dated November 9, 1929, entered into between the parties, of the following tenor:

"Come now the undersigned attorneys and to this Honorable Commission respectfully state:

- "1. That Fernando Enriquez withdraws the three motions presented in the above-entitled case.
- "2. That Fernando Enriquez withdraws his application to operate in all points served by the Pampanga Bus Company and agrees not to present any application in the territory now occupied by the Pampanga Bus Company.
- "3. That the Pampanga Bus Company agrees to withdraw its opposition to the application of Fernando Enriquez for additional hours from Masantol to Manila with the right to pick up passengers in Macabebe and Apalit.
- "4. That the Pampanga Bus Company agrees to permit Fernando Enriquez to carry passengers between Masantol and Macabebe and Calumpit on his regular trips on Tuesdays only.
- "5. That the Pampanga Bus Company agrees not to establish a direct service between Masantol and Manila or Masantol and Calumpit on Tuesdays.
- "6. That Fernando Enriquez agrees not to acquire any competing line of the Pampanga Bus Company."

In its appeal in G. R. No. 38695, Pampanga Bus Company vs. Enriquez (58 Phil., 948), the herein oppositor and appellant raised the same legal question, and in passing thereon, this court said:

"We are of the opinion that such agreement cannot be interpreted as to deprive the Public Service Commission of the power conferred upon it by law to issue certificates of public convenience and to promulgate orders and regulations intended to supervise a public service the better to benefit and serve the public interests. To sustain the contention of the appellant would be to deprive the commission of said power. As we have said in the other case mentioned, the commission based the authority which it granted upon the necessity and convenience of many merchants who needed a fast and direct means of transportation permitting them to carry their goods to the public markets at the first hour in the morning. There is no good reason requiring us to reverse this finding as well as the appealed decision, just because in a former agreement the herein appellee had accepted his certificate of public convenience subject to the restrictions then imposed upon him. Beyond dispute is the power of the Public Service Commission to modify and alter its orders for the purpose of adapting the same to new situations and circumstances as long as the latter are reasonably supported by the evidence presented."

There is another reason not to give any force and legal effect to the said agreement, namely, that the certificates which the Public Service Commission issues to public service land transportation companies in order to carry out their business and styled "public need and convenience", are of the public interest because the purpose of their issuance is to promote the social and economic life of the people by enabling, their activities in these fields to be carried out with utmost convenience, economy and promptness possible. It is of course the right of every land transportation operator to whom a certificate of public need and convenience has been issued, to establish his authorized transportation lines for his personal gain and benefit; but this right carries with it the corresponding duty to serve the public adequately and conveniently, by laying before the said commission what is necessary to comply with the said duty, should the means which he is authorized to utilize are no longer sufficient to serve commodiously, adequately and conveniently, the increasing number of passengers, and by applying for the necessary authority to improve his equipment, to extend his lines and to increase the hours of trip of his vehicles. The right which, under the law, the certificate of public need and convenience confers upon an operator of a public service land transportation company is so intimately connected with the public interest that its exercise, according as it is adequate or not, may contribute to the social and economic welfare of the community or cause mischief. As a general rule, the rights granted by law are waivable, unless such waiver is against public interest (art. 4, Civil Code), in which case it cannot be done, and if done, will be void. The waiver made by Fernando Enriquez, in the aforesaid agreement, of his right to ask for the lifting of the restrictions imposed in his certificates of public need and convenience is illegal and void because contrary to public interest.

The Public Service Commission, therefore, did not commit any error of law in not giving force and effect to the aforesaid agreement.

With respect to the other assignments of error, this court has already repeatedly held that when there is evidence of record reasonably supporting the findings of fact made by the Public Service Commission in its decision, this court will not interfere with and alter the same. (Javellana vs. La Paz Ice Plant and Cold Storage Co., 35 Off. Gaz., 1756; Aleosan Transportation Co. vs. Public Service Commission, 35 Off. Gaz., 2080; Ampil vs. Public Service Commission, 59 Phil., 556; Manila Electric Company vs. Balagtas, 58 Phil., 429; Calabia vs. Orlanes & Banaag Transportation Co., 55 Phil., 659; San Miguel Brewery vs. Lapid, 53 Phil., 539; Philippine Shipowners' Association vs. Public Utility Commission, 51 Phil., 957; Philippine Shipowners' Association vs. Public Utility Commissioner and Board of Appeal, 43 Phil., 328; Gilles vs. Halili and Public Service Commission, 38 Off. Gaz., 1988; G. R. No. 45398; Bulacan Bus Company vs. Enriquez, G. R. Nos. 46085 and 46086, promulgated on November 4, 1938.)

In view of the foregoing considerations, we are of the opinion and so hold that an agreement, entered into by the operator of a public land transportation service with a rival in the same business, whereby the former binds himself not to apply for the lifting of the restrictions imposed on his certificates of public need and convenience, is illegal and void, because it constitutes a waiver against public interest of a right granted by law, and does not bind the Public Service Commission.

Wherefore, finding no error in the appealed decision, the same is affirmed in all respects, with the costs to the appellant. So ordered.

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

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