

NICOLAS JAVIER, ET AL., PETITIONERS, VS. ENRIQUE DE LEON, ET AL., RESPONDENTS.*G.R. Nos. 12483 and 12896-97. October 22, 1960*

Ponente: BAUTISTA ANGELO, J.

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Enrique de Leon, one of the respondents herein, is. the holder of certificates of public convenience to operate forty(40) units on several lines distributed as follows: 13 units on the Baliuag-Manila line; 21 units on the Cabiao-Manila and Pulo (San Rafael)-Manila lines; and 6 units on the Lupao-Manila line.

On February 9, 1957, faced with the imminent forfeiture of the 34 trucks which he operated on the first three lines on account of his indebtedness to the Manila Trading & Supply Company, De Leon sold all his certificates of public convenience, together with the six auto-trucks he operated on the Lupao-Manila line, to Fortunato B. Cruz for which an application for the approval of the sale was filed with the Public Service Commission on February 11, 1957.

Due to the forfeiture of his 34 trucks by the Manila Trading & Supply Company, De Leon on February 14, 1957, abandoned the operation of his lines between Baliuag-Manila, Cabiao-Manila and Pulo (San Rafael)-Manila without authority from the Commission. Subsequently, Victoria Vda. de Tengco and the La Mallorca filed each an application for special permit to operate additional units on the lines abandoned by De Leon, but the Commission, in its order of March 6, 1957, denied the applications on the ground that the additional units were not necessary there being already 96 round trips operated daily between Baliuag and Manila by different operators which means that there was practically a trip every five minutes on said line aside from the buses coming from other provinces passing thru the same line thus making a total of 172 round trips. And on the Cabiao-Manila line, the Commission also found that there were enough trips being run therein, and so there was no pressing need for allowing additional trips.

Advised of such ruling, Nicolas Javier, et al., who are also holders of certificates of public convenience on the lines operated by De Leon, filed on April 4, 1957 a petition for the cancellation of the certificates of De Leon on the Baliuag-Manila, Cabiao-Manila and Pulo (San Rafael) -Manila lines which he abandoned completely on February 14, 1957. Pursuant thereto, the Commission, on April 25, 1957, issued an order requiring De Leon to show cause why his certificates on the abandoned lines should not be cancelled setting the petition for hearing on May 15, 1957. The hearing having been postponed to June 5, 1957, De Leon admitted that he had abandoned his lines since February 14, 1957 due to the forfeiture of his 34 trucks by the Manila Trading & Supply Company and their sale to the latter at a public auction held in March, 1957; that on February 9, 1957 he had already sold all his certificates of public convenience to Fortunato B. Cruz for the sum of P38,000.00; that he had to sell the same because he was not in a position to pay his creditors; and that he would not be able to resume the operation of his business because although he tried to obtain financial assistance from the Manila Trading & Supply Company and the Standard Vacuum Oil Co., these companies refused to accommodate him.

Fortunato B. Cruz, when placed on the witness stand, corroborated the testimony of De Leon that he tried to secure more trucks from the Manila Trading & Supply Company, the International Harvester Co., and the Northern Motors but his efforts were unsuccessful, and that because he (Cruz) had no assurance that he would also be able to get trucks from said companies to operate the business, he in turn had to sell the certificates to Eugenio Trinidad on May 25, 1957 in the amount of P50,000.00, filing with the Commission the necessary application for approval. On June 26, 1957, the Commission rendered decision from which we quote;

"We decide this matter, therefore, by ordering, as we hereby order the cancellation of the certificates and authorization of Enrique de Leon on the Baliuag-Manila line.

"As to the Cabiao-Manila line Enrique de Leon is ordered to resume service therein, by himself or thru authorized transferee of his certificates, within 60 days from notice hereof."

On July 1, 1957, petitioners filed with this Court a petition for review, which was docketed as G. R. No. L-12483, praying for the modification of the decision in the sense of ordering the cancellation of De Leon's certificates of public convenience on the Cabiao-Manila and Pulo (San Rafael)-Manila lines. Pending determination by this Court of the appeal, De Leon and the Goodrich International Rubber Company filed each with the Commission a motion to reconsider the decision, the former alleging that the partial cancellation of his certificate to operate the Baliuag-Manila line was too severe a penalty considering his investment, while the latter arguing that since it secured a writ of attachment placing in custodia legis the properties involved in said line which was served upon the Commission on March 2, 1957, and had purchased said properties in the resulting auction sale, the cancellation of De Leon's certificate on the aforesaid line without notice to the company was improper.

Both motions were heard jointly, after which, on August 30, 1957, the Commission issued an order dismissing the motion of the Goodrich International Rubber Company for being academic. As regards the motion of De Leon, the Commission modified its decision by reviving the cancelled Baliuag-Manila line and imposing upon him instead a fine in the amount of P1,000.00 which he was directed to pay within 30 days from receipt of the order. Commissioner Aspillera who heard the case and wrote the decision of June 26, 1957, dissented in a separate opinion. De Leon paid the fine of P1,000.00 on September 2, 1957, or two days after the above order was issued.

On September 3, 1957, petitioners filed a motion to reconsider the above order, but before taking action thereon, the Commission issued another order setting for hearing the petition for the provisional approval of the sale of De Leon's certificates to Cruz, as well as the sale made by the latter to Trinidad on September 16, 1957. This was objected to by petitioners on the following grounds: that there is a pending petition before the Supreme Court for the cancellation of the certificates of De Leon; that there is a pending motion for reconsideration filed by petitioners before the Commission; that the resale of the certificates by Cruz to Trinidad is prohibited by the memorandum order of the Commission dated March 8, 1957; that there are writs of attachment served upon the Commission that were issued prior to the sale of De Leon's certificates to Cruz and Trinidad; and that since the Goodrich International Rubber Company had bought the certificates of De Leon in an auction sale for which an application for approval had already been filed with the Commission, the petition for the approval of the sale in favor of Cruz and Trinidad should be held in abeyance until after the above issues had been first acted upon.

On September 24, 1957, Commissioners Galang and Prieto voted to approve the provisional sale of the certificates to Trinidad stating that, although the writs of attachment covering the certificates of De Leon had the effect of placing them in "custodia legis," the same cannot nullify the power of the Commission to control, supervise and dispose of certificates of public convenience to promote public interest; that the Commission has the power to grant any provisional remedy it may see fit whenever public interest so requires; and that since the sale was provisional in nature it will not prejudice the substantial rights of creditors who may still have the opportunity to be heard before the final disposition of the case on the merits.

Commissioner Aspillera again dissented in a separate opinion stating that since there is pending before the Commission a motion for reconsideration of its order of August 30, 1957, said motion should first be decided because if the Commission should later resolve after a hearing on the merits, that the sale should not be approved, then the investment of Trinidad would be totally wasted. He further stressed that, inasmuch as in the decision of June 26, 1957, in decreeing the cancellation of the line, the Commission unanimously stated "that on the Baliuag-Manila line there are many operators and the service is adequate," he saw no reason why the majority should now state "that public convenience will be promoted in a proper and suitable manner by the provisional approval of the petition" to operate the line in question.

Against the above order, a petition for certiorari with preliminary injunction was filed before this Court on September 30, 1958, which was considered as a petition for review and docketed as G. R. Nos. L-12896 and L-12897. And it appearing that the three cases (G. R. Nos. L-12483 and L-12896-97) refer to the same subject matter and emanate from the same proceedings instituted in the Commission, we deem it proper to render a consolidated decision.

Anent the main issue raised by petitioners, there can be no dispute that the law gives to the Commission ample power and discretion to decree the cancellation of a certificate of public convenience issued to an operator as long as there is evidence to support the same, as held by this Court in a long line of cases wherein it was even intimated that in matters of this nature so long as the action is justified this Court will not substitute its discretion for that of the Commission.^[1] Hence, when the Commission rendered its decision on June 26, 1957 cancelling the Baliuag-Manila line of De Leon as a disciplinary action taken against the latter for having abandoned his three lines without prior approval of the Commission, the action taken was justified. Likewise, the Commission acted within its power when, bearing in mind that the abandonment of the service by De Leon was due to the forfeiture of his 34 units wherein he made considerable investment, it merely decreed the cancellation of one line, sparing the other two, in order that his investment may not be completely ruined.

But it is contended that the Commission, after decreeing the cancellation of the Baliuag-Manila line of respondent De Leon on the ground that he abandoned the operation of said line since February 14, 1957 when his 34 trucks were forfeited by the Manila Trading and Supply Company without first obtaining permission from the Commission as required in his certificate, reconsidered its decision in the sense of allowing respondent to again operate the same line and imposing upon him merely a fine of P1,000.00 in order to enable him to realize something from the proceeds of the sale he made of his certificates to one Fortunato B. Cruz, which action, petitioners contend, is foreign to the functions of the Commission and runs counter to its avowed policy that when the convenience of an operator conflicts with public interest the latter shall be considered paramount. This action is now assigned as error.

We find, however, that the Commission reconsidered its original decision not merely on the basis of its desire to give respondent an opportunity to recover part of his investment out of the proceeds of the sale of his certificates to Fortunato B. Cruz but on the strength of other factors that have intervened which to the Commission appear sufficient to justify such action considering that respondent had acted on the matter to protect his investment without losing sight of the public interest. Thus, the Commission found that when respondent stopped the operation of the Baliuag-Manila line he had already sold his certificates to Fortunato B. Cruz because of the financial reverses he had encountered which made it impossible for him to continue with the business and that immediately thereafter he filed a petition for approval which the Commission already had before it when it acted on the motion for reconsideration. The Commission has also found that the reason why respondent could not continue with the operation of the line was not because of his fault or neglect or of his voluntary desistance but because his creditor, the Manila Trading and Supply Company, decided to forfeit the 34 trucks he was operating

in view of the nonpayment of his indebtedness, which situation the Commission found to be beyond his control because of the financial reverses he had encountered, and for this reason he pleaded for some mitigation of the action taken against him, which he finds quite severe, in order that the sale he had made may not be a complete nullity and his investment a total loss. And, then, the Commission made the following significant observation:

"Other important factors which the Commission should take into consideration in order to enable it to pronounce judgment in accordance with justice, is the fact that applicant Enrique de Leon was the original and regular operator in the Baliuag-Manila line. During the long time of his operation, he had been obeying diligently all his obligations towards the Commission and the riding public except for some minor infractions. In fact, the present case is his first serious violation which was surrounded by a chain of incidents beyond his control. The records of these cases also show that applicant De Leon, as public service operator, has become heavily indebted to several parties who are engaged in business connected with vehicular transportation. This proves that applicant had made substantial investments in order to improve his service for the promotion of public interests. Now that he has suffered serious financial difficulties which were the immediate cause for his failure to fulfill his obligations under his certificates, in justice to him, he should at least be entitled to a certain degree of protection for his investments by the Commission, * * *."

Indeed, the record shows that respondent sold his certificates to Fortunato B. Cruz on February 9, 1957 and filed a petition for approval of the sale on February 11, 1957, while it was only on February 14, 1957 that he stopped the operation of the line when his 34 trucks were forfeited by his creditor. Hence, the Commission found that he acted in good faith when he stopped operating and not because of a design to prejudice public interest. In the circumstances, we hold that the Commission did not commit any abuse of discretion in modifying its decision not only because it has ample power and authority to do so but also because it is justified by the following doctrine of this Court:

"* * * Certificates of public convenience involve investment of a big amount of capital, both in securing the certificate and in maintaining the operation of the line covered thereby, and mere failure to operate temporarily should not be a ground for cancellation, especially as when, in the case at bar, the suspension of the service was directly caused by circumstances beyond the operator's control, namely, the dearth of truck tire and spare parts" (Pangasinan Transportation Co. vs. F. F. Halili, et al., 95 Phil., 694.)

With regard to the contention that the Commission erred in refusing to cancel the Cabiao-Manila and Pulo (San Rafael)-Manila lines based on the excuse that if it would order the total cancellation of the certificates of De Leon he would be deprived completely of the money which the purchaser of his certificates agreed to pay him which he badly needs to alleviate his financial condition, we wish to state that such excuse is not the only reason invoked by the Commission in not ordering the total cancellation of De Leon's certificates. The Commission in decreeing merely a partial cancellation made also the following finding: "The lines involved are Baliuag-Manila for 13 trucks and Cabiao-Manila for 21 trucks. De Leon is the principal operator of the Cabiao-Manila line and a cancellation of the same would greatly prejudice the public, whereas on the Baliuag-Manila line there are many operators and the service is adequate. As a matter of fact, we refused to grant a provisional authority to Tengco and La Mallorca on this line because we found that there was enough service." (*Italics supplied.*) As may be seen, this is a question of fact which under the law and precedents on the matter cannot now be looked into in this appeal.

The remaining question raised refers to the action taken by the Commission in considering the petition for provisional approval of the sale of the certificates made by respondent to Cruz and that of the latter to Trinidad on September 16, 1957, when on that date there were then pending before the Commission the motion filed by petitioners to reconsider its order modifying its original decision and the several writs of attachments served upon it that were issued prior to said sales in other cases pending against respondent which have the effect of placing

the certificates in custodia legis, which premature action petitioners also assign now as an error. While it is true that the Commission acted favorably on the petition for provisional approval of said sales before acting on the motion for reconsideration filed by petitioners, the same is of no moment, for it is to be presumed that when the Commission acted as it did it must be upon the theory that it impliedly denied the motion for reconsideration, and this is so because such provisional approval can have no other implication than that the Commission intended to stand pat on its decision to revive the line for the benefit of respondent. With regard to the contention that said petition cannot be acted upon because there were then pending several writs of attachments covering the property which had the effect of placing it in custodia legis, we agree to the following comment of the Commission:

"* * * The power of the Commission to control, supervise and dispose of the certificates of public convenience of public service operators for the promotion of public interest even if they are under judicial attachments, is already universally recognized in a long line of decisions. Besides, the matter under consideration is not a trial on the merits of the amended application itself but merely the application for a provisional remedy pending final determination and we believe that whatever may be the action of the Commission taken in this regard will not prejudice the substantial rights and interests of creditors who shall always have the opportunity to be heard before the final disposition of the case on its merits."

Finally, we do not find importance in the contention that the Commission erred in approving the sale without benefit of publication and in violation of its own memorandum order it appearing that the requirement regarding publication only refers to an application for final approval of a deed of sale and not to an ex parte petition for provisional approval, and that said memorandum only refers to the sale of temporary certificates of 5 to 10 years life and not to those issued for a normal life of 25 years like the ones involved in the sale under consideration. At any rate, the requirement contained in said memorandum order is merely directory which can be waived by the Commission if it finds good reasons for doing so to promote public interest.

Wherefore, the decision appealed from insofar as it maintains the Cabiao-Manila and Pulo (San Rafael)-Manila lines, as well as the orders of the Commission dated August 30, 1957 and September 24, 1957, are hereby affirmed, without costs.

Paras, C. J., Bengzon, Padilla, Labrador, Reyes, J. B. L., Barrera, Gutierrez David, and Paredes, JJ., concur.

Decision affirmed.

[1]Santiago Ice Plant and Co. vs. Lahoz, 87 Phil., 221; 47 Off. Gaz.-(12th Sup.) 403; Raymundo Transportation Co. vs. Cedra, 99 Phil., 99; 52 Off. Gaz., 3580; A. L. Ammen Transportaion vs. Soriano L-12350, May 26, 1959; Manila Yellow Taxicab Co., Inc. vs. Castelo, 108 Phil., 394; 59 Off. Gaz., 694.

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