

PAZ MARQUEZ BENITEZ, PETITIONER, VS. AMADOR D. SANTOS, RESPONDENT. MABAIT C. LOPEZ, PETITIONER, VS. AMADOR D. SANTOS, RESPONDENT.*G.R. Nos. 12911-12 and 13073-74. February 29, 1960*

Ponente: PARAS, C.J.

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Prior to the last war, Nicolas F. Concepcion was granted a certificate of public convenience to establish, operate and maintain a taxicab service composed of 80 units. On account of the failure of Nicolas F. Concepcion to complete the registration of 80 units despite many extensions given to him, the Public Service Commission, in its order of April 13, 1949 in Case No. 1470, amended his certificate by reducing the number of taxicabs which he could operate to 59 units. Subsequently, Nicolas F. Concepcion sold his certificate to Francisco Benitez, Jr. The sale included the right to operate the 59 units. The Public Service Commission, however, approved the sale for only 27 units, because of the inability of Nicolas F. Concepcion to register 32 of the 59 units authorized in his certificate, as amended. The sale having been approved for 27 units only, several applicants, namely: Paz M. Benitez, Mabait C. Lopez and Amador Santos, separately sought authority to operate the 32 taxicabs units.

It is well to state at this point that these 32 units form part of the total number of taxicabs which the Public Service Commission has already found and declared necessary for operation in the City of Manila and suburbs, and the only question presented before the Commission was to whom of the applicants should the authority to operate the aforesaid 32 taxicabs units be awarded.

The records disclose that Paz M. Benitez filed her applications first, followed by Mabait C. Lopez, daughter of Nicolas F. Concepcion, about two months later, and then by Amador Santos about one year and five months afterwards. Each of the applicants has adduced evidence to establish their financial capacity to purchase and operate.

After going over the evidence, the Public Service Commission awarded the certificate of public convenience to operate the 32 taxicab units to Amador Santos because in its opinion he is the best qualified, considering that Santos is presently a taxicab operator of 87 units of the Mercedes-Benz Bantam type, that he has the experience and know-how in the operation of the taxicab business, and that he has available trained mechanics, drivers, personnel, tools, shop and equipment that would insure regular, continuous and dependable service.

Both applicants, Paz M. Benitez and Mabait C. Lopez have separately filed a petition for review of the decision of the Public Service Commission, which we jointly resolve in this decision.

While it may be true that respondent Santos already has experience in operating a taxicab business and owns a repair and maintenance shop, these considerations alone do not shift the preference in his favor. Experience and availability of garage facilities, although important, are not decisive in the instant case. Evidently, these two factors cannot be expected of new applicants to this business enterprise. The latter will acquire them when they are actually given an opportunity to do so. Moreover, the other two applicants are not entirely without substantial

experience in this particular kind of business. Petitioner Paz M. Benitez used to be a director and part owner of a taxicab company and petitioner Lopez gained her experience while employed in her father's taxicab business prior to the war.

The fact that prominently stands out is that all of the applicants have proven their financial capacity to operate the 32 taxicab units. And since petitioner Paz M. Benitez was the first applicant, we believe and so hold, that she should be awarded the certificate of public convenience to operate them. This is in line with the ruling laid down in *Batangas Transportation Co. and Eliseo Silva vs. Orlanes and Banaag Transportation Co.*, 55 Phil., 745, wherein we held:

"Priority in the filing of the application for a certificate of public convenience is, other conditions being equal, an important factor in determining the rights of the public service companies."

The further fact that respondent Santos already owns 87 taxicab units which he presently operates militates against his application, because giving the award to him would likely create a monopoly in his particular line of business. A monopolistic trend with its concomitant evils can only serve to prejudice public interest, stifling as it does enthusiasm and initiative on the part of those eager to learn. Prior experience, while itself useful, cannot create a vested right which would endanger the national economy.

Indeed, the unjustified and irregular grant of preference to an applicant who filed a petition one and a half years later than another, would obviously breed in the public's mind, a suspicion that favoritism, with all its sinister complications, play an important role in the award of public utility benefits. To put a premium on tardiness would be to encourage opportunities for underhand transactions that can only result in a miscarriage of justice.

Wherefore, the decision appealed from is hereby reversed. The Public Service Commission is hereby ordered to award the grant of public utility operation in the instant case to first applicant, Paz M. Benitez. So ordered without pronouncement as to costs.

Bengzon, Padilla, Bautista Angelo, Reyes, J. B. L., Endencia, and Gutierrez David, JJ., concur.

DISSENTING OPINION

MONTEMAYOR, J.:

It is with regret that I find myself unable to agree to the learned opinion of the majority, penned by no less than our distinguished Chief Justice. But said opinion, involving as it does not only an important but at the same time a new legal principle or rule governing public utilities, which actually and in effect would reverse and abandon fundamental doctrines hitherto laid down by this Tribunal in a long line of decisions, and faithfully followed by the Public Service Commission, I feel that I am in duty bound not only to voice my dissent, but also to state and adduce the reasons for my stand.

The statement of facts contained in the majority opinion is correct and is supported by the evidence. However, perhaps for a better understanding of these cases, and to set a sort of background, I am adding the narration of facts made by the Public Service Commission, which follows:

"By agreement of the parties, and because the petition of each of the three applicants treats of the same subject-matter, the above cases were heard jointly and are hereby jointly decided.

"Each of the applicants, to wit, Pas M. Benitez, Mabait C. Lopez and Amador Santos, asks the Commission to grant to him the right to operate 32 taxicab units in Manila, which units were originally authorized in the

certificate of public convenience granted to Nicolas F. Concepcion. Prior to the war Nicolas F. Concepcion had a certificate for 801 units which certificate was reconstituted after the war for the same number of units. By order of April 13, 1949 in Case No. 1470, and because of the failure of Nicolas F. Concepcion to complete the registration of the 80 units inspite of many extensions granted to him, the Commission amended his certificate by reducing to 59 the number of taxicab units which he could operate under his certificate. Subsequently, Nicolas F. Concepcion sold his certificate to Francisco Benitez, Jr., including in the sale the right to operate the 59 units, but the sale was approved for only 27 units, because again Nicolas F. Concepcion had failed to register 32 of the 59 units granted to him. The sale having been approved for 27 units only, which were the ones registered at the time of the sale, the balance of 32 units were considered as dropped from the 59 units authorized in Concepcion's certificate. It is the right to operate these 32 units which the applicants herein asks the Commission to grant him.

"It should be stated that these 32 units form part of the total number of units which the Commission has already declared as necessary for operation in the City of Manila and suburbs, and the authorization of these units to another party will not result in any increase in the total number of units which, the Commission has found as needed in Manila and suburbs. Each of the applicants has filed an opposition to the applications of the others, claiming to have a better right to the 32 units in question. Oppositions were likewise filed by other taxicab operators in Manila, but aside from the fact that these oppositors, with the exception of Antonio Heras and JD Taxi, did not appear at the hearing nor present any evidence, their oppositions are premised on the question of public convenience, but public convenience is not at issue here because, as already stated, these 32 units are part of the total number of taxicab units which the Commission has already declared as needed in Manila and suburbs. Antonio Heras and JD Taxi reserved the right to present a balance sheet to show that their taxicab business has not been profitable, but this balance sheet was not submitted. On the other hand, applicant Amador Santos, who actually operates a taxicab service, submitted a statement of income and expenses for the period January 1st to June 30, 1957, showing the result of the operation of his business.

This statement shows that from January thru June, 1957, applicant Santos has realized profits of from P1,350.00, to over P4,000.00 per month on his taxicab business." (Decision appended to appellants' brief).

It is true that Paz Marquez Benitez, later referred to as Benitez, filed her application ahead of the other two, Mabait C. Lopez and Amador D. Santos, later, referred to as Lopez and Santos, respectively, in fact as early as November, 1965, while that of Santos was filed in June, 1957. It would appear, however, that although Benitez filed her application in November, 1955, she evidently took no steps to follow up her application or to see to it that early action was taken on it, and that it was duly published, as required by law, and a date set for the hearing thereof. According to the record, it was only by order of July 3, 1957, that the Commission set it to be heard on July 15, 1957, at the same time order applicant to publish the order. On the other hand, Santos filed his application on June 24, 1957. He must have exercised diligence and followed it up because the Commission by order of June 28, 1957, set it for hearing on July 15, 1957 and directed him to have the order published. So did Lopez who filed her application about January 24, 1956 and the Commission by order of May 27, 1957, set it for hearing on June 28, 1957, and directed her to have the order published.

It is a matter of public knowledge that the Public Service Commission, with its limited personnel, is overburdened with numerous applications for certificates of public convenience, for increase of units, oppositions thereto, petitions, motions, complaints by public utility operators for violations of the terms and conditions of certificates of public convenience committed by other operators, complaints by the public against operators for inefficient or inadequate service, etc., and unless the applicant, movant, petitioner or complainant is diligent and follows up his application, motion, petition or complaint and have it set for hearing, or have notice of it published if necessary, the Commission is liable to overlook and fail to take action on the same. The same situation obtains in the ordinary courts of justice. How many cases, perhaps meritorious, have been dismissed for failure of plaintiffs to

prosecute! A party must be diligent and vigilant in the prosecution of his case before the courts and before the Public Service Commission.

The majority opinion would appear to attach undue importance and stress on the question of priority of application and, as a matter of fact, is deciding this case solely on that point, apparently overlooking and disregarding the more important factor of service to the public and the capacity of an applicant to render said service. Courts in the United States in numerous cases have had occasion to rule that priority of application of several public utility applicants for the same certificate of public convenience and necessity, although a factor, is by far, not the most important, because it is the service to the public—safe, adequate and reliable service that is of paramount importance.

"Where two or more applicants are equally qualified, controlling effect need not be given to priority of filing. (Application of National Freight Lines (Iowa), 40 N.W. 2d 612)" (Italics supplied).

"Mere priority in time of application for certificate of convenience and necessity will not of itself govern granting of certificate to carrier and does not determine who is the pioneer in the field." (Eagle Bus Lines vs. Illinois Commerce Commission, 119 N. E. "2d 915). (Italics supplied).

The Supreme Court of Illinois, in the following cases declared:

"Mere priority in time of application would not of itself govern granting of certificate of necessity and convenience between competing motor bus companies, but it is element to be considered in connection with all other elements and facts, in determining reasonableness of action of Public Utilities Commissioners." (Chicago Motor Bus Co. vs. Chicago Stage Co., 122 N.E. 477). (Italics supplied).

"If, in pursuance of policy of Public Utility Commission, it would not grant certificates of necessity and convenience to competing lines of motor buses, it would undoubtedly, when two corporations were asking certificate for same purpose, have authority to determine which was capable of serving public best." (Chicago Motor Bus Co. vs. Chicago Stage Co., supra). (Italics supplied),

"The object and purpose of granting certificates of convenience and necessity for the operation of motor bus lines is to subserve the convenience and necessities of the travelling public. While priority in the field is an element to be considered, it will not of itself govern, the granting of the certificate. Chicago Motorbus Co. vs. Chicago Stage Co. 287 Ill. 320, 122 N.E. 477. The proper consideration in a matter of this kind is, which applicant under the facts and circumstances shown by the evidence, will best serve the public interest? (Bartonville Bus Line vs. Eagle Motor Coach Line, 157 N.E. 175). (Italics supplied).

Considering that our legislation on Public Utilities has been patterned after that of the United States, particularly, that of New Jersey, this Tribunal has consistently followed American decisions on the subject. In the case of De los Santos vs. Pasay Transportation Co., 54 Phil., 357, 360, this Court stated:

"* * * Priority of application while an element to be considered, is not ordinarily of sufficient importance to control the granting of a certificate of public convenience. (Chicago Motor Bus Co. vs. Chicago Stage Co., 287 Ill. 320)." (Italics supplied).

This rule was restated in the case of Mindanao Bus Co. vs. Cagayan-Misamis Land Transportation Co., 55 Phil., 827, 829, thus:

"* * * priority of application in the granting of a certificate of public convenience, although to be considered, is not necessarily a controlling reason, for the issuance of the corresponding certificate to the prior applicant. It has been repeatedly held by public utility regulatory bodies that the question to be considered in cases where there are many applications over the same territory is, which applicant or applicants can render the best service, considering the whole territory to be developed and served by the kind of service under consideration

and the conditions and qualifications of the respective applicants to furnish the same. Priority in the making of application does not entitle the applicant to an absolute monopoly over the route or routes, traversed by it. The priority of application is a factor to be considered, but it does not necessarily control the granting of a certificate of convenience where there are various applications. (*De los Santos vs. Pasay Transportation Co.*, 54 Phil., 357). (Italics supplied).

In the unpublished case of *Mirasol vs. Negros Transportation Co., et al*, G. R. No. 36648, August 31, 1932 (cited in *Almario, Public Service Act Annotated*, p. 45), this Court stated:

"It is asserted that the Commission, as a general rule, passes upon the applications In the order in which they are filed, and the failure to do so is such error that this court must reverse the action of the Public Service Commission. With this contention we can not concur. Neither in the organic law, nor in the rules of the Commission, is such a doctrine laid down. With the innumerable applications, that are being filed by the large number of owners of bus lines now operating in the Philippines, it would well near be a practical impossibility always to follow such a rule. Legal niceties are not the primary purpose of the Public Service Commission. The interest of the public is the basic principle that guides their actions." (Italics supplied).

Said this Court in the case of *Red Line Transportation Co., Inc. vs. Taruc*, G. R. No. L-6179, November 29, 1954:

"We are satisfied,' according to Commissioner Paredes, 'that the evidence of the applicant in this regard reasonably supports the decision granting him the certificate of public convenience therefor, the Commission having in mind that the convenience of the public is of paramount consideration.' There is no pretense that this finding is not supported by the evidence, for in effect petitioner only disputes its sufficiency, and considering that this is a petition for review, or an appeal by certiorari, said finding cannot now be disturbed." (Italic supplied).

We should not lose sight of the fact that the field of public utilities, particularly that of land transportation, is quite unique. In other kinds of business, calling or industry, the important consideration is the profit or benefit to be derived by the owner or applicant, For instance, several persons apply for a particular parcel of public land in the form of homestead, sale or lease. Such applications are made for the exclusive benefit of the applicants themselves. The public is not affected and has no direct interest in the same. Naturally, priority in application is the decisive factor, provided of course, that the several applicants are equally qualified. The same thing would be true with applications for, say, fishery or lumber concession over the same body of water or portion of a public forest.

Not so with public utilities. The grant of a certificate of public convenience for, say, passenger and freight service over a certain line, or for taxicab service within the city implies that said bus or taxicab business not only will be for the benefit and profit of the grantee, but that the service be necessary, and above all, that its operation will redound to the convenience, welfare, accommodation and safety of the public that patronizes the public utility. Before granting the certificate of public convenience, specially when there are several applicants for the same, the Public Service Commission must satisfy itself not only with the capacity, financial standing, experience, training and ability of an applicant, but also that he or it has the facilities to operate the service efficiently, adequately and safely.

The regulations of the Commission require that a land transportation operator may not employ any person who has had a previous criminal record in driving. The operator may have in its employ only those who are courteous and of good moral character, this evidently to protect the public from acts of impudence, dishonesty, such as, theft of luggage, extortion such as charging more than the fare authorized, or abuse of passengers, specially females. One of the conditions imposed in the certificate of public convenience is:

"Applicant is hereby required to employ in the operation of his taxicab service, only chauffeurs, agents,

inspectors, auditors and other employees who are courteous and of good moral character, and in no case or occasion shall applicant employ persons as chauffeur who have been convicted of homicide or serious physical injuries thru reckless negligence. Applicant is also prohibited from employing student drivers in the operation of the taxicab service herein authorized,"

The grantee of a certificate of public convenience must be in a position to use landworthy vehicles equipped with modern safety devices, specially reliable brakes, steering wheels, and good tires to avoid blow-outs which in many cases prove fatal. The operator must be in a position to guarantee that a vehicle leaving its station or terminal would in all probability reach its destination safely, without any breakdown on the way due to old broken down or faulty equipment. This is necessary not only for the convenience of passengers, but also for their safety, because if a bus or taxicab suffers a breakdown or has engine trouble in an isolated place and is benighted, its passengers may be subject to holdups, robbery, or other kinds of outrage. Incidentally, it may be stated that the certificate of public convenience covering the 32 taxicab units involved in this case, authorizes the operation of said vehicles not only within the City of Manila and suburbs, but, also from any place therein to any point within the island of Luzon, meaning that they make long trips to the provinces.

The operator must be in a position to replace all vehicles with new ones. He must offer adequate and attractive salaries so as to get the best and most competent employees, specially among its drivers. The Commission even regulates and determines the rate of charges. All this shows the care and solicitude that the law takes for the safety, convenience, and economic welfare of the public that is served. No wonder that the courts in the United States and this Tribunal have laid down the doctrine that it is the service to the public in public utilities that is of controlling and paramount importance. Priority in the application is of relatively minor importance, to be considered only when other things are equal, which they are not, in the present case.

But I am afraid that the majority opinion would in effect, perhaps unwittingly, declare the business of public utilities as "free for all", "first come first served", regardless of the qualifications of the applicants, specially their ability to render service to the public, on the basis of their experience, training and success in actual operation, as shown by their existing facilities and past performance. The majority would in effect open the gates of the business of land transportation to anyone who being financially capacitated, thinks that he can operate land transportation service; and if he files his application first, regardless of other considerations, he obtains approval of the same. This theory might be permitted and perhaps will work out in the case of virgin territory where no operator has yet ventured or dared to venture, and an applicant is willing to take the bold venture and risk his capital. The public in said territory will welcome the establishment of the service line, seeing that they have not much choice in the matter, or expectation of a better qualified operator; and the Public Service Commission, most likely, would grant the certificate for lack of other applications in a better position to give more adequate and better service. But this cannot be and may not be allowed in a territory like the City of Manila where there are about 58 persons and entities already and actually operating taxicabs, rendering service which is adequate, efficient and safe because of their experience, training and facilities.

In the present case, the Commission after a study of the case and perhaps after its agents have checked the experience and training of the three applicants and the facilities at their disposal, has found as a matter of fact that Santos is by far the most qualified. Says the Commission in its decision:

"Since, on the one hand, none of the applicants has shown any legal right to the units claimed and, on the other, there is no question that public convenience requires that these 32 taxicab units be placed back in operation, the determination of which of the applicants should be granted the authority or certificate to operate the units must necessarily depend on the question of who is the best qualified to put up and operate the service. We do not incline to split the units because experience has shown that a taxicab service is best rendered by an operator with a reasonably large fleet and who, on account of the number of units he operates maintains complete

garage facilities and equipment necessary to keep all the vehicles continuously in good running condition, and is able, with the facilities available to him, to immediately repair defective vehicles and put them into service right away. Undoubtedly a small operator, to whom it does not pay to maintain these garage facilities because of the few units he has, in case of breakdown of vehicles, has to withdraw them from the service until such time as, with his limited facilities, he is able to place them back in operation and defective limits are out of service for days and days. The three applicants have adduced evidence to establish their financial capacity but we are convince that, of the three, applicant Santos is the best qualified of all. This applicant is presently a taxicab operator of 87 units of the bantam type, Mercedes-Benz make. Our records show that he has always registered on time all the units authorized under his certificates and that the units he has registered are all brand new. He has a garage fully equipped and tooled for the immediate servicing and repair of his taxicabs. It is established that he is in a financial position to immediately acquire and register the units applied for. As to experience and know-how in the operation of a taxicab business, there is no doubt that applicant Santos has a decided advantage over the other two applicants who, according to the evidence, have never operated a taxicab business. A person with experience in and knowledge of the taxicab business undoubtedly can tender a better service and thus promote further the convenience of the public than one who ventures into it for the first time. His familiarity with the business and the ways of operating the service efficiently, the fact that he already has trained mechanics, drivers, personnel and needed shop equipment, insures the rendering to the public of a regular, continuous and dependable service. As between applicants even of identical financial capacity, we consider' that the one who is actually operating and with proven experience, competence, facilities and personnel is entitled to preference."

The above finding of the Commission is a question of fact amply supported by the evidence. On the basis of that finding of fact, exercising its discretion, the Commission selected Santos as the most deserving and the best qualified among the applicants. Are we authorized to overrule said finding and valid exercise of discretion? The question is answered in the negative, by a long line of cases, American and Philippine. The Supreme Court of Ohio, speaking—

"This Court has repeatedly declared that the Motor Transportation Act has for its object the securing of necessary and convenient, motor transportation service to the public, and that the rights conferred upon the recipient of a certificate of convenience and necessity are only such as are incident to the accomplishing of such object, and are granted for the benefit of the public, and not for the benefit of the recipient of the certificate. Where, therefore, the Public Utilities Commission has made a selection between two or more persons, either or all of whom are qualified to efficiently serve the public, and has not abused its discretion in making such selection, its finding and order in that respect is neither unreasonable nor unlawful." (*Johnson vs. Public Utilities Commission of Ohio*, June 8, 1927, 157 N.E. 475). (Italics supplied).

On the same subject matter, said the Court of Appeals of Tennessee, Middle Section:

"The court will not substitute Us views and discretion for the views and discretion of the commission on questions of fact where there is material evidence to support the conclusions of fact reached by the commission." (*Tennessee Cnt Ry. Co. vs. Pharr* 108 S.W. 2d 289). (Italics supplied).

Then the Supreme Court of Wisconsin has the following to say:

"Whether the granting of the franchise or amendment sought is in the public interest presents a matter for the exercise of legislative discretion by the commission. It cannot be answered by the application of a proposition of law. It is clear therefore that a trial court must have compelling reasons for reversal where the final conclusion, of the agency is based upon a determination which is not only highly discretionary but rests upon the agency's finding as to what is necessary and convenient in the public interest, two terms of indefinite and varying content," (*Gateway Trans. Co. vs. Public Service Commission*, 34 N.W. 238). (Italics supplied).

"A pure question of fact is to be determined by the commission, rather than by the review court; the court will

not substitute its judgment or opinion, for that of the commission on a question of fact, unless the order of the commission is clearly against the weight of the evidence and is unlawful or unreasonable; and it will not review the commission's determination of a question of fact or examine the facts further than to determine whether there is substantial evidence to sustain the determination." (73 C. J. S. 1164). (Italics supplied).

In the case of Batangas Transportation Co. vs. Laguna Transportation, 104 Phil., 994; citing the case of Inchausti Steamship Co. vs. Public Utility Commission, 41 Phil, 363; and Raymundo Transportation Co. vs. Cervo, 91 Phil., 313; Manila Yellow Taxicab Co., et al. vs. Canon, 58 Phil, 75; and Padua vs. Ocampo et al., G. R. No. L-7579, September 17, 1955, we said that this Court will refrain from substituting its discretion on the weight of the evidence for the discretion of the Public Service Commission on questions of fact. In the case of Banaag vs. Intestate Estate of Sisenando Enriquez, G. R. No. L-4266, Feb. 29, 1952, we held that so long as there is evidence for the Public Service Commission reasonably supporting its order and there is no clear abuse of powers, the Supreme Court will not interfere. The same thing was said in the case of Joson vs. Santos, 79 Phil., 381; 45 Off. Gaz., 1740. Again, we said in the case of Santiago Ice Plant and Co. vs. Lahoz, 87 Phil., 221; 47 Off. Gaz. (12) 403, that "this Court will not substitute its discretion for that of the Commission on questions of fact and will not interfere in the latter's decision unless it clearly appears that there is no evidence to support it." And in the case of Halili vs. Floro, G. R. No. L-3465, Oct. 25, 1951, we said that, "We are not at liberty to substitute our own findings of fact for those of the Commission reasonably supported by evidence even if we have some plausible ground to make the modification." To the same effect was our ruling in the case of Ice and Cold Storage Industries of the Philippines vs. Valero, 58 Phil., 7, where we said that "the Court is not authorized to weigh the conflicting evidence and substitute its conclusion for that of the Commission." And in the case of Pangasinan Transportation Co. vs. Tambot, 95 Phil., 661, again we said that:

"This Court even went to the extent of holding that it 'will refrain from substituting their discretion on the weight of 'the evidence for the discretion of the Public Service Commission on question of fact and will only reverse or modify such orders of the Public Service Commission when it really appears that the evidence is insufficient to support their conclusions.' (Manila Yellow Taxicab Co. & Aero Taxicab Co. us. Danon, 58 Phil., 75)."

In the case of Halili vs. De la Cruz, 88 Phil., 699, we said:

"En varias decisiones este Tribunal declaro que no ha imponer su criterio en sustitucion del de la Comision del Servicio Publico que ha tenido oportunidad de pesar debidamente las pruebas presentadas por las partes; ni ha de revocar la decision apelada si hay pruebas razonables que la apoyan."

And in the case of Zamboanga Transportation Co. vs. Fargas, 91 Phil., 65, we also said:

"Estas conclusiones de hecho de la Comision estan bien fundadas: No hay nada en autos que justifique su revocacion. En asuntos de esta naturaleza 'este Tribunal no esta llamada a examinar las pruebas de nuevo y determinar por si mismo si la preponderancia de las pruebas justifica o no la orden apelada.' (San Miguel Brewery contra Lapid, 53 Jur. Fil. 574.) 'Todo el tenor y alcance de la legislacion moderna es investir la Comisionado de Utilidad Publica con facultades para reglamentar y controlar la explotacion de las utilidades publicas, bajo normas razonables y reglamentos que sirvan el interes del publico. Eso fue al proposito de la enmienda. Aqui, como en todos partes, la Comision esta investida de facultades administrativas amplias y discrecionales, y, por regla general, los tribunales no se interpondran en el ejercicio de dicha discrecion cuando la misma sea razonable. * * * Inchausti Steamship Co. contra Com. de Utilidad Publica, 44 Jur. Fil. 383)."

In connection with this finding of the Commission that Santos as compared to the other applicants, Paz Marquez Benitez and Mabait C. Lopez, is the best qualified, it will be remembered that Lopez in support of her claim for experience and training in the operation of taxicab business said that being the daughter of Concepcion, who in Case No. 1740 was authorized to operate 80 taxicab units, which certificate was eventually sold to Santos, she had

occasion and opportunity to observe how to run a taxicab business and she believes that she herself can do so on her account, and Paz Marquez Benitez in her turn, being a co-owner and director of the Redi Taxicab which engaged in the taxicab business after the war, believes that she is also in a position to operate taxicab service on her own account. The trouble with these claims of capacity to operate is that the Commission is in no position to verify and check them. Being the daughter of a taxicab operator or being a part owner and director of a taxicab company is no guaranty that claimants can render the service, reliable, adequate and safe, that the Commission by granting the certificate indirectly guarantees to the public. In the case of Santos, not only was he a pre-war operator and a successful one, but he also operated after the war and in fact expanded his operation by buying the certificate of Concepcion. The Commission through its agents and experts, had the opportunity to examine and check his facilities, such as, garages, repair shop, etc., and his mechanics, employees, particularly, his drivers and workers. On the other hand, the Commission had no opportunity to check similar facilities and employees of Lopez and Benitez because they had none. True, during the hearing, the son of Benitez, named Francisco Benitez, Jr., who is operating a taxicab service (Redi Taxi Company), said that if a certificate is given to his mother, he would operate the 32 taxicab units in question. Inasmuch as the Redi Taxi Company was not an applicant in this case, the Commission had no reason, opportunity or occasion to check its facilities and its employees, specially its drivers and their record for safe driving. All that we know of Francisco Benitez, Jr. is that according to him, he began operating taxicab after the war by buying certificates of public convenience of other companies engaged in the business. He bought the certificate of public convenience of Concepcion, including 59 units, but because Concepcion failed to register 32 of these units, the same were dropped from the certificate and so only 27 units were included in the sale to him. If Francisco Benitez, Jr. was a successful taxicab operator, and was financially capable, it is not explained why he did not immediately register these 32 units, either in his name or in that of Concepcion, so that they could have been included in the certificate which was sold to him. The certificate for the 27 units that he bought was mortgaged to the R.F.C. Francisco Benitez, Jr. either neglected or failed to pay the loan and redeem the mortgage and so it was foreclosed and the certificate was sold. He did not buy the certificate at the auction sale, why, it was not explained. It was Santos who bought said certificate for 27 units. That hardly speaks well for Francisco Benitez, Jr. as a successful and capable taxicab operator. Furthermore, Paz Marquez Benitez did not state in her application that if given the certificate, she would indorse it to her son to operate in connection with the Redi Taxi Company. She merely stated therein that:

"The applicant proposes to appropriate the authority to operate, the 32 taxicabs which were not registered, either by Nicolas F. Concepcion, Francisco Benitez, Jr. or the Redi Taxi, Inc."

There is another point which may not be out of place to mention. One of the reasons given by Santos in claiming preference to the 32 taxicab units is that they originally formed part of the certificate of public convenience granted to Concepcion which, through failure or neglect to register, were dropped from the certificate. Santos contends and urges that being part (originally) of the certificate which he bought at the foreclosure sale, it is more logical that they be given to him or be restored to the said certificate of public convenience instead of separating them from the certificate, and giving them to another applicant and issuing a new and separate certificate of public convenience. We have to admit that there is some logic to his contention.

It seems that the majority is in part influenced in its conclusion that to grant the present application of Santos who already owns 87 taxicab units may lead to a monopoly in the taxicab business in the City of Manila, as reflected by the following portion of the majority opinion:

"The further fact that respondent Santos already owns 87 taxicab units which he presently operates militates against his application, because giving the award to him would likely create a monopoly in this particular line of business. A monopolistic trend with its concomitant evils can only serve to prejudice public interest, stifling as it does enthusiasm and initiative on the part of those eager to learn. Prior experience, while itself useful,

cannot create a vested right which would endanger the national, economy."

To allay the fears of the majority about the danger of monopoly, it may be stated that according to the record of this case, when the application of Paz Marquez Benitez, Mabait C. Lopez and Amador D. Santos were filed, following established procedure, they were each required not only to have the application published but to also personally notify all the taxicab operators in the city of Manila and suburbs according to the list furnished by the Commission. According to said list, there are about 57 taxicab operators in Manila and suburbs, some operating through companies or corporations like the Admiral Taxicab Co., Champion Taxicab Co., Halili Taxicab Co., Redi Taxi Co., Aero Taxicab Co., Santos Taxicab Co., General Taxicab Co., Manila Yellow Taxicab Co., Antipolo Taxicab Co., La Mallorca Taxicab Co., etc. and others thru private individuals like Antonio Antico, Aurelia Gonzales, Maximo Katigbak, Jose F. Zamora, Alfredo Zamora, F. G. Monserrat, Carlos Dimayuga, etc. if in the opinion of the majority, granting the application of Santos and giving him the 32 taxicab units might create a monopoly, which surely would not happen because of the existence of about 57 other taxicab operators, how about giving the same 32 units to Benitez, so that they will be operated by her son, Francisco Benitez, Jr., in connection with the Redi Taxi Co. which he is now operating? According to the theory of the majority, would not that also pave the way to a monopoly? There is nothing in the record indicating how many taxicabs are being operated by the Redi Taxi Co., whether they are more or they are less in number than those operated by Santos.

In conclusion, I hold that although Benitez and Lopez have filed their applications before that of Santos, the latter has preference despite his comparative delay in filing his application because in the opinion of the Commission, which opinion we are not authorized under the circumstances to set aside and substitute our own, he is by far the party most capable, prepared to render the service demanded by the public by reason of his experience, training, financial capacity and success in the business even before the war and up to the present time.

We have ruled in numerous cases, only some of which I could cite for lack of space, a ruling which finds full support in American decisions, that priority in application in public utilities may be considered when all things and circumstances are equal, but that ability and capacity, to render service to the public is of paramount importance and is the controlling factor, and that when this service to the public clearly preponderates in the case of one of several applicants, the question of priority of application is relegated to a minor and secondary importance. Also, that when the Public Service Commission, after studying the evidence and not excluding its own records concerning public utility operators and the reports of its agents and experts, finds as a fact that an applicant as compared to other applicants, is by far the most qualified to render the service involved in an application for the operation of the units, in this case, taxicab units, and consequently, in its opinion should and will be granted the certificate to operate, and that finding and opinion are supported not only in part but amply and fully, in my opinion, by the evidence, we according to our own rulings, may not set aside said finding and opinion and substitute our own. These rulings and doctrines laid down by us in so many cases over a period of many years, which find support in American jurisprudence on public utilities, have stood the test of time and the successful operation of public utilities here and in the United States. They are wise, sound and wholesome principles, referring particularly to land transportation, which we should not depart from or abandon, much less reverse, or set aside, except for powerful and valid reasons. The Public Service Commission having implicit belief and confidence in those rules we laid down, faithfully followed them and decided this case in favor of Santos. Shall we now tell the Commission that we are reversing its decision because it was wrong and acted incorrectly in following the doctrine laid down by this Tribunal? This whole case, in my opinion, boils down to that proposition.

For the foregoing reasons, I dissent.

Concepcion, and Labrador, JJ., concur.

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