

MERCEDES CLEMENTE, MANDBUSCO, INC., MANDALUYONG BUS CO., INC., TAGUIG-PATEROS TRANSPORTATION CO., INC., PETITIONERS, VS. JOVITO BONIFACIO, RESPONDENT. VALLE BROS. INC., DOLORES ...

G.R. Nos. 14998 & 15151. September 30, 1964

Ponente: PAREDES, J.

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PAREDES, J.:

Jovito S. Bonifacio applied for a certificate of public convenience to operate 10 TPU buses from Pasig (Rizal) to Plaza Sta. Cruz (Manila) via Highway 54 and Makati.

Oppositions to the application were filed by Mandbusco Inc. and Mercedes Clemente, Mandaluyong Bus Co. Inc.; Dolores M. Rivera, Rafael Jusi, et al.; Saint Transit, Inc.; Gervasio Valle and Valle Bros. Inc.; Regina Mercado, Primitivo Resurreccion and Mariano Serrano; Prima Donna Inc. and Azicate Trans. Co. Inc.

The Mandbusco Inc., Mercedes Clemente and Mandaluyong Bus Co. opposed the application on the ground that they were operators on the line Pasig-Manila via Mandaluyong; that their service was more than adequate for the needs of the people traveling between Pasig and Manila, that there were sufficient buses already authorized by the Commission for service between Pasig and Manila; that there was no traffic to serve on the line from Pasig to Manila via Highway 54 and Makati and that public convenience did not require the proposed operation.

Gervasio Valle and Valle Bros. Inc. and the other oppositors objected to the application on the ground that they were authorized operators of jitneys or buses from Makati or Guadalupe up to Manila; that their service concurred with that proposed by the applicant from Makati to Sta. Cruz; that they were rendering adequate and sufficient service to people traveling from Guadalupe and Makati to Manila; that there were no passengers coming from Pasig who had to go to Manila via Makati and that the proposed service if authorized, would only duplicate the service which they were rendering.

Oppositors plying on the line Pasig-Manila via Mandaluyong presented as witnesses Filomeno Cortado, Domingo Pineda, Emilio Moral, Marcelo Pascual, Arturo Clemente and Simeon Eugenio. Oppositors plying between Guadalupe and Makati presented as their witness Commission agent Santayana. Cortado testified as to the frequency with which buses operate in the Pasig-Manila via Mandaluyong line, stating that there was continuous flow of buses and most of them carried very few passengers and that as an inspector of the Mandbusco, he traveled on portions of the line and his observations were personal. Moral and Pineda declared that they undertook checkings of passengers as agents of the Commission on the line Pasig-Manila via Mandaluyong to determine the traffic existing therein. Pascual said that as manager of the Taguig-Pateros Trans. Co., he knew that trucks of the Company made plenty of trips between Taguig and Pateros and Manila via Mandaluyong or via Highway 54 but those trucks did not pass Pasig. Clemente testified as to the operators authorized on the line Pasig-Manila via Mandaluyong and other companies which had services from points beyond Pasig but whose buses also passed Pasig and Mandaluyong on the way to Manila. Eugenio of the Mandaluyong Bus Co. testified that his company

operated on the line Pasig-Quiapo and Pasig City Hall via Reina Regente and Cubao-Pasay via Highway 54 and that its buses with Quiapo or City Hall as terminal, operated via Mandaluyong and not via Makati. And Santayana declared that according to his observations, there were plenty of jeeps and buses operating to Manila coming from Makati and Guadalupe.

The applicant himself testified and presented Samuel Reyes, Bienvenido Ople, Jose Miguel, Jr. and Delfin Sanchez. Reyes averred that he was a resident of Pasig and an employee in the Department of Agriculture, in the Finance Bldg., near Taft Avenue; that everyday, he traveled from Pasig to his office and had to avail of buses which went via Mandaluyong, Sta. Mesa and Legarda; that there were many people in Pasig who worked or studied in offices or schools south of the Pasig River to whom a service via Makati and Paco would be very convenient, as it would save them the trouble and delay, resulting from the long route via Mandaluyong and Sta. Mesa; that it takes much less time to travel to his office via Paco than via Sta. Mesa and that there are many schools and offices south of the Pasig River to which residents of Pasig go and who would be benefited by the proposed service. Ople, an employee of the Bureau of Mines, in Herran Street, testified to the advantages of the service to Pasig residents studying or working in schools or offices south of the Pasig River for they would be provided with a faster and more direct transportation service. Miguel, Jr. an employee of a bakery, in Herran Street, explained the advantage of a service via Paco instead of Sta. Mesa and Quiapo. Sanchez declared that he made extensive observations and investigations on the proposed line and found that it would be highly beneficial to Pasig residents who study or work in places south of the Pasig River; that many employees, students and laborers need such service; that the route via Mandaluyong, entails much delay and requires one or two transfers by passengers from one bus to another and that the service will also benefit residents between Pasig and Makati, and residents of Makati who need transportation to points south of the Pasig River. Applicant Bonifacio said he made observations and investigations on the proposed line and expressed his financial capacity to operate the proposed service, if authorized.

Predicated upon the above evidence, on September 18, 1958 Commissioner Antonio Aspillera awarded a certificate of public convenience in favor of applicant Jovito S. Bonifacio, to operate 8 buses under the conditions set forth in his decision, in which he said, inter alia, the following:

* * * It will be seen that not one of the oppositors operates on the line as proposed by the applicant which it from Pasig then along Pasig Boulevard, Highway 54, Makati Road, Tejeron, Herran, General Luna, Perez; Marquez de Comiltaa, Concepcion, Arroceros and P. Burgos up to Plaza Sta. Cruz. As to oppositors with line from Pasig via Mandaluyong and Sta. Mesa, it is true that the service might in a way affect them because those passengers going south of the Pasig River instead of availing of their buses would take those of the applicant which would transport them via Paco, Herran and General Luna up to a point nearest to their place of destination. As to the Guadalupe and Makati operators, they would be affected in the sense that passengers who now take their jitneys or buses might avail of applicant's service. But the proposed service is intended principally to transport Pontiff residents going to points south of the Pasig River to save them the inconvenience of having to travel via the congested areas of Sta. Mesa, Legarda, Azcarraga and Quiapo. It is established by the evidence that under the present available manner of travel a passenger desiring to go to a point south of the Pasig River has to transfer to another bus at Quiapo or Azcarraga so as to be transported to his point of destination, and even if the bus from Pasig operates up to City Hall or Concepcion St. it would still be necessary for him to take another bus if his destination is a point farther south. The proposed service is over a route which will enable a passenger to get off at places which would be reasonably near the principal offices, business establishments and schools located along Taft Avenue, Herran, Isaac Peral, Gral. Luna and the area of the Legislative Building. We find that the preponderance of the evidence establishes that there is a very large number of Pasig residents who travel daily and at all hours to points in the area between Ayala Boulevard and Herran Street and who actually do not have any means of transportation from Pasig except the service via Mandaluyong, Sta. Mesa and Quiapo, which is a circuitous way of travel and requires much time, and that the

convenience of these people will be greatly promoted by the authorization of a direct service via Makati and Paco as proposed by applicant. There is no operator now rendering a similar service. Actually, if a passenger from Pasig desires to go to places south of the Pasig River via Paco the only means by which he could do so is by taking a bus at Pasig and transfer at the intersection of Shaw Boulevard and Highway 54 and get another bus or jitney up to Makati and here take another jitney that would take him to Gral. Luna or Taft Avenue. This is undoubtedly a very inconvenient way of travelling. It is not possible either to go via Sta. Ana because according to the evidence there are only units operating via that route. There was a time when the Halili Transit was operating 10 buses over the proposed line but the service stopped several years ago and a similar authority has not been granted to anybody else. The report of checkings by Agents Moral and Pineda we consider as not pertinent to this case because they refer to buses operating over Mandaluyong route which is totally different from the route proposed by applicant. We believe that, as in the present case, where the convenience of a great number of people will be promoted by authorizing a new line, we should issue the authority even if the grant of new line might partially affect other operators whose lines concur in some portions with the new line. The contention of the oppositors that the application is prohibited by the Memorandum Order of March 12, 1958 is not correct because the length of the line over the proposed route which we consider reasonable is more than 15 kilometers. We believe, however, on the basis of the evidence presented, that applicant should only be authorized eight (8) buses or units for operation on the proposed line.

After a careful consideration of the evidence presented by applicant and oppositors, and the Commission being of the opinion that the said evidence establishes that public interests and convenience will be promoted in a proper and suitable manner by allowing applicant to operate eight (8) buses on the line Pasig-Sta. Cruz via Makati and Paco and vice-versa, and the applicant is legally and financially qualified to commence and undertake the proposed service, and a certificate of public convenience to operate in the line Barrio San Joaquin (Pasig) to Plaza Sta. Cruz in Manila via Pasig Boulevard, Highway 51, Makati road, Tejeron, Herran, Gral. Luna, Perez, Marquez de Camillas, Concepcion; Arroceros, P. Burgos St. up to Plaza Sta. Cruz in Manila is hereby granted to applicant, Jovito Bonifacio, this certificate to be subject to the following * * *. (Italics Ours)

Chairman, Commissioner Alejandro A. Galang dissented. He found that from barrio San Joaquin (Pasig), where 87 buses start and go to Manila and vice-versa daily, only about 250 persons went to Manila in one week or only about 36 persons in one day; that from the intermediate points of Guadalupe and Makati, there were then about a hundred big buses and many small TPU jeepneys, duly authorized to operate to Manila and vice-versa, aside from the numerous auto calesas that served different portions of the territory; that the granting of the respondent's application might produce unnecessary and wasteful competition; and that it is the theory and policy in public service cases that the main concern of an operator in serving his line, is to accommodate those coming from the starting points, because the intermediate points are to be taken care of by the other operators authorized to start from there. Commissioner Galang also believed that the granting of the respondent's application is a violation of the Commission's Memorandum Order of March 8, 1957 as amended by Memorandum Order of March 12, 1958, because the starting point of the line applied for, is within the radius of 15 kilometers distance from the Luneta. He ended his dissent, by stating that the testimony of the applicant and his witnesses do not deserve more weight than the evidence for the oppositors.

Commissioner Gabriel Prieto expressed a partial dissent. While he agreed with the necessity of the proposed line because "es mas corta y mas conveniente para el publico que las otras lineas autorizadas a los actuales operadores; y que la aprobacion de la presente solicitud eliminaria los trasbordos en los viajes en dichas lineas, que causan graves perjuicios e incomodidades a los pasajeros"; he, nevertheless, believed that the application breached the aforementioned memorandum orders, because the distance from San Joaquin (Pasig) to the Luneta (Manila), by the shortest route, was 13 1/2 kilometers.

Upon a motion for reconsideration of the opinions expressed by Commissioners Galang and Prieto, Commissioner

Galang reaffirmed his stand; while Commissioner Prieto reconsidered his opinion, as to the applicability of the memorandum on the question of distances, and finally concurred in toto with Commissioner Aspillera in granting applicant Jovito S. Bonifacio a certificate of public convenience. Acting upon second motions for reconsideration of the respective orders of the Commissioners, the majority maintained its stand, while Commissioner Galang stood adamant in his dissent.

Oppositors appealed, and in their briefs submitted, that the Public Service Commission erred:

- (a) In granting the certificate of public convenience in favor of respondent, there being no evidence to support its decision;
- (b) In accepting and hearing respondent's application in 1957 and 1958 notwithstanding its memorandum-order of March 8, 1957 and even as amended by memorandum order of March 12, 1958;
- (c) In not upholding the dissenting opinion of Commissioner Galang.

The dominant question which arises, in view of the assigned errors, is the public necessity and convenience of the service or line proposed by applicant Jovito Bonifacio which is: from barrio San Joaquin, Pasig (the barrio is some 2 kilometers from Pasig), then along Pasig Boulevard, Highway 54, Makati Road, Tejeron, Herran, Gral. Luna, Perez, Marquez de Comillas, Concepcion, Arroceros and P. Burgos up to Plaza Sta. Cruz. Not one of the oppositors-petitioners operated on the proposed line. There was no operator then rendering a similar service, although there was a time when the Halili Transit was granted permit to operate 10 buses over the said line, but the service stopped several years ago, and a similar, authority had not been granted to any one else since then.

Petitioners in G. R. No. L-14998, Mercedes Clemente, Mandbusco, Mandaluyong Bus all start from Pasig town proper, while the. Taguig-Pateros Trans, Co. Inc. only pass Pasig town proper, coming from Taguig, Rizal. All their buses pass Mandaluyong, Sta. Mesa, Azcarraga and go either to Quiapo or Divisoria. Petitioners in G. R. No. L-15151 operate between Makati-Quiapo and/or from Guadalupe to Quiapo. The line of petitioners in G. R. No. L-14998 concur with that granted the respondent, but only up to Shaw Boulevard from the poblacion of Pasig, a distance of not more than two kilometers. All their buses pass Sta. Mesa and terminate either at Quiapo or Divisoria. The line of petitioners in G. R. No. L-15151, concur with that of respondent either from Makati or Guadalupe up to Herran, Paco, Manila, passing Taft Ave. to Quiapo. Their certificates are temporary or provisional, the lifetime of which would have expired in 1961. Respondent's buses have as their terminal Plaza Sta. Cruz.

The above being the routes followed by the parties involved in this case, it would seem that the proposed service would be the shortest and most convenient to the Pasig residents who may want to reach any point south of the Pasig River. There is a great disparity in the time consumed to complete the trips, between the lines operated by the petitioners and the proposed line of respondent. While it takes only from 30 to 40 minutes for passengers from Pasig to reach points on the south of the Pasig River, passing the Sta. Ana route, it takes from 1 hour to 1 1/2 hours, for buses passing the Sta. Mesa, Legarda route, because the latter has to encounter the traffic tie-ups along the Sta. Mesa-Legarda-Azcarraga portion. And passengers taking the buses of the petitioners who go south of the Pasig River in Manila, have to get off at either Azcarraga or Legarda and from there take another vehicle to cross the Pasig River to points south of the river, which naturally entails extra expense and inconvenience of making the transfer. There is no gainsaying the fact that the proposed service being a direct one, via Makati and Paco to reach Plaza Sta. Cruz, is more beneficial and convenient to passengers than a circuitous route which petitioners have been operating (Pasay Trans, vs. Manila Electric, G. R. No. 45234 & 45235). One should not lose sight of the fact that the service authorized to respondent is nothing but a replacement of the service of the Halili Transportation which slopped operating, and the replenishment of the void left by the Meralco whose electric cars were being

operated before the war between Pasig and Manila, passing exactly over the same route authorized to respondent. In this connection, it is alleged that the Commission erred in not considering the reports of agents Moral and Pineda. We visualize no such error. These agents have been assigned at Bagong Ilog, Pasig and not at Shaw Boulevard, at the expense of some of the petitioners, to take down the volume of passengers riding and getting off on the Sta. Mesa route, and on several occasions had left their posts and allowed other persons to make entries on their checkbooks. They are, therefore, biased and unreliable. Moreover, as the Commission itself found, the reports of their checkings (which entered only one way trips) were considered not pertinent to the case at bar, "because they refer to buses operating over the Mandaluyong route, which is totally different from the proposed route by the applicant". As to agent Santayana, he merely testified from memory.

The fact that the new line might partially affect the lines of the petitioners, which, concur in some portions with the new line, is of no moment. The proposed service is intended principally to transport Pasig residents going to points south of the Pasig River, to save them the trouble of having to travel via the congested areas of Sta. Mesa, Legarda, Azcarraga and Quiapo. In a network of lines of competing operators in a City, it is almost inevitable that the lines should come together at certain points and cover same route for short distances (*Manila Electric Co. vs. Pasay Trans. Co.*, G. R. No. 37887, Feb. 13, 1933). And while duplication of service is a factor to be taken, the determination of that question is a proposition wholly within the jurisdiction of the Commission (*Pasay Trans. Co. vs. Manila Electric Co.*, G. R. No. 45234 & 45235).

It is finally contended that the Commission erred in accepting and giving due course to respondent's application.

In the amendatory memorandum order of the Commission of March 12, 1958, it was provided:

- Pending completion by the Commission of its studies on existing TPU services within Manila and its environs (15-kilometers distance), as well as AC services in Manila, Pasay City, Quezon City, Navotas, Malabon, Mandaluyong, Pasig, Pateros, San Juan del Monte, Marikina, Paranaque, Makati, Obando, Polo and Caloocan, no application for any such services shall be accepted. Applications for TPU service within Manila and its environs shall not be set for hearing during the year 1958.

The petitioners claim that the order was violated because the proposed route of respondent is less than 15 kilometers. Even Commissioner Prieto, in his concurring and dissenting opinion, stated that the distance was 13 1/2 kms. only, basing his information from a map used by the Division of Transportation of the Commission. Commissioner Galang said that because Pasig was specifically mentioned in the memorandum as one of the towns included in the prohibition, the line Pasig-Manila was within the 15 km. radius. The respondent, however, relied upon the certifications of the Bureau of Public Highways and the office of the Highway District Engineer of Pasig, Rizal, regarding the distance between Pasig and Manila. The Bureau made the following certifications:

Manila, Km. 0.000 (Luneta) to the Municipal Plaza of Pasig, Rizal, following the Manila east road via Sta. Mesa and Shaw Blvd., is 15.1 kms.

Manila, Km. 0.000 (Luneta) to the Municipal Plaza of Pasig, Via Makati, along Hy. 54 thru Shaw Blvd., is 19.083 kms. (Via Concepcion, Juan Luna, Oregon, Herran Sts.).

In another certification of September 30, 1958, the said Bureau stated:

Manila, Km. 0 000 (Luneta) to the Pasig Municipal Plaza, passing thru San Luis, M. H. del Pilar, Herran, Tejeron, Makati, Hy. 54 and Shaw Blvd., is 18.038.

The District Engineer certified that:

"Manila (Rizal Monument, Luneta) to Barrio San Joaquin, Pasig, Rizal, is more than 16.00 kilometers via Shaw Boulevard."

which covers 2 main routes from Manila to Pasig, Rizal, the route via Sta. Mesa being the shorter one; although the line applied for by respondent is longer. Plaza Rizal to Barrio San Joaquin via Malinao is 1.16 km. Plaza Rizal to Barrio San Joaquin via S. Jose St., Lopez Jaena, Garcia St., Bambang is 1.826 kms. And because of these official data, given by the pertinent and competent offices of the government, Commissioner Prieto reconsidered his stand and concurred in toto with Commissioner Aspillera, both in the question of public convenience and necessity, the distance, and the non-applicability of the amendatory memorandum order to the present case, saying—

* * * Se alega en la mocion que en dicha linea el actual servicio de transportacion ya es suficiente para remediar las neesidades del publico, y que la concesion de un servicio adicional daría lugar a una competencia ruinosa. Desde el comienzo ya he emitido mi opinion sobro este punto, concurriendo con las conclusiones de hecho del Comisionado Aspillera sobre la necesidad de mas medios de transportacion en la linea en cuestion, y no encuentro razón alguna para cambiar dicha opinion. Tambien se alega en la mocion quo las certificaciones del Bureau of Public Highways presentadas por el solicitante no deben ser admitidas ni tenidas en cuenta en la decision de esta causa, por no haberse present ado, como prueba, durante el juicio. Esta alegacion carece de fundamento, por cuanto "the Public Service Commission in the exercise of its quasi-judicial and administrative functions has the power to take into consideration the result of its own observations and investigation of the matter submitted to it for consideration and decision in connection with other evidence presented at the hearing of the case." (Manila Yellow Taxicab vs. Araullo, 60 Phil. 833). Se alega, por ultimo, que el servicio de transportacion que en esta causa se solicita esta dentro del radio de 15 kilometros de la Luneta, y, por tanto, su concesion constituiria una infraccion de Memorandum-Order de esta Comision del 8 de Marzo de 1957, tal como ha sido enmendado, que prohíbe nuevo servicio dentro de dicho radio, presentado, en su apoyo, la certificacion del District Highway Engineer que se unido a la mocion como Exhibito "A". Interpretádo literalmente el referido Memorandum Order y tomando por linear determinaute de los 15 kilometros de la Pateros, Mckinley a Makati esta alogacion es correcta; pero no lo es, si se toma a la misma linea solicitada. Hay divergencia de opiniones sobre cual de estas lineas se debe tener en cuenta en la determinacion del referido radio. Despues de una estudio detenido del asunto y de las decisiones de la Corte Suprema relacionadas con el mismo, creo innecesario resolver esta cucstion, considerando que el citado Memorandum Order es meramente una directiva de caracter temporal que se ha dictado, conio en el mismo se dice, "to enable the Commission to study and determine whether with the number of TPU vehicles now in operation, it is still necessary to authorize additional TPU units." Siendo esto asi, ia aplicabilidad de dicho Memorandum no puede prevalecer, sino debe estar subordinada a la existencia de to necesidad y existencia publica, que son "la consideration primordial quo debe guiar a la Comision en la expedicion de los certificados de conveniencia publica" (A. L. Ammen Transp. Co. vs. De Margallo, 51 Phil. 570; Carmolo & Oriol vs. Monserrat, 55 Phil. 644 y otros muchos). Y medidas de esta naturaleza no pueden impedir; ni siquiera provisionalmente la tramitacion o resolucion de una causa sobre certificado de conveniencia publica, segun doctrina:

"The Commission is not by practice or by law authorized to suspend the trial of the case and to dismiss it, although provisionally, just because there was under study a plan or policy which the government Intended to adopt with respect to the granting of new certificate for the TPU autotrucks ... as public services." (Sambrano vs. Northern Luzon Trans. Co, Inc., 66 Phil. 33).

POR ESTAS CONSIDERACIONES, voto por la denegacion de la mocion de reconsideracion presentada por los opositores en esta causa.

Little need be added to the above observations, except to state that they are well taken; that above all legal niceties, is the paramount public interest, necessity and convenience (Cebu Ice Plant, et al. vs. Velez, 57 Phil. 309); Mirasol vs. Negros Trans. G. R. No. 36648, Aug. 1932) that the Commission should not tie her hands by the memorandum order in question, which it has the power to interpret, and which was merely directory and

temporary in nature and not mandatory (*Mateo vs. Manila Electric Co.* G. R. No. 37287), as shown by the fact that said memorandum order was only a means to enable the Commission to study and determine, whether it was still necessary to authorize additional units. Any endeavor, therefore, to uphold the opposition of the petitioners to respondent's application, would be a disservice, and an undeserved punishment to the fast growing population of a sprawling metropolis and its environs.

PREMISES CONSIDERED, the decision appealed from is affirmed, with proportional costs to the two sets of petitioners.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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