

THE AUCAL AUTOCALESA CO., INC., PETITIONER AND APPELLANT, VS. ISABEL ABLAZA AND NATIVIDAD Z. DE CASTRO, RESPONDENTS AND APPELLEES.

G.R. Nos. 45660, 45661. July 25, 1938

Ponente: DIAZ, J.

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DIAZ, J.:

This being a question in which petitioners in cases Nos. 40763 and 41323 of the Public Service Commission were equally interested, said commission jointly decided the petitions of said two petitioners. It granted and approved that of Natividad Z. de Castro and Isabel Ablaza and denied that of the Aucal Autocalesa Co., Inc., which appealed from the decision. We, therefore, have now before us the two cases aforementioned which are respectively known by the registration numbers indicated in the title of this decision.

In the first case (No. 40763 of the P. S. C; G. R. No. 45660 of the S. C.) it appears that Natividad Z. de Castro and Isabel Ablaza applied for the approval by the Public Service Commission of the sale and transfer made by the latter to the former on May 29, 1934, of the certificate of public convenience which had been issued in her favor in case No. 35318 of the Public Service Commission, for the establishment and maintenance of an autocalesa transportation service. Their petition was filed on June 9, 1934.

In the second case (No. 41323 of the P. S. C.; G. R. No. 45661 of the S. C), it appears, on the other hand, that the Aucal Autocalesa Co., Inc., having acquired all rights, interest and participation of Isabel Ablaza in her aforesaid autocalesa business by means of a sale at a public auction, it prayed, in turn, on the 23d of the same month and year, that the sale of the said business thus made in its favor be approved by the commission.

In support of its appeal the Aucal Autocalesa Co., Inc., now alleges that the commission committed the following errors:

- "1. In finding that the certificate of public convenience in favor of Isabel Ablaza had long become the property of Natividad Z. de Castro prior to being attached and sold to it at public auction;
- "2. In applying the principle of public convenience instead of that of the better right;
- "3. In taking into account the prior filing of the petition of the two respondents; and
- "4. In adjudicating the ownership of the certificate of public convenience in question to Natividad Z. de Castro, instead of to the appellant."

As the Public Service Commission has well said in its decision appealed from which, in truth, is what appears from the evidence of record, the sale or transfer made on May 29, 1934 by Isabel Ablaza of her certificate of public convenience to Natividad Z. de Castro, took place much prior not only to the sale at public auction of said certificate carried out by the sheriff on August 9, of the same year, in which appellant was the highest bidder, but also to the attachment which was effected only on the 28th of the previous month. This, however, is not important

for the purposes of the decision of the real question. What is important, as the commission likewise declared, relying on the evidence, is that Natividad Z. de Castro offered to put in the business acquired by her, if she has not already done so, the sum of P20,000 to place said business in better conditions; while appellant confined itself to saying that should its petition be granted, it would draw money from its present business to invest the same in the maintenance of what it has bought in the manner already set forth.

Section 16, subsection (h), of Act No. 3108 as amended by section 20, subsection (g), of Commonwealth Act No. 146, empowers the Public Service Commission to approve or disapprove the transfers or sales which may be made of a certificate, privileges or rights for the purpose of carrying on the business of a common carrier. Such sales or transfers may be made without the prior approval required by law from the commission. Construing the scope of the legal provision aforementioned, this court said that if the approval takes place after the sale or transfer, the effect thereof is or may be retroactive (*Zamboanga Transportation Co. vs. Public Utility Commission*, 50 Phil., 237; *Zamboanga Transportation Company vs. Bachrach Motor Company*, 52 Phil., 244). The consideration that should guide the commission in these cases of sale or transfer, in the exercise of its power to approve or disapprove them, is whether the public will be prejudiced thereby, or whether the service sold will fail to operate or function better for the public convenience. Priority in the case of two sales of the same certificate of public convenience is of secondary importance. A sale which combines the requisites that it makes the service which may be rendered the public by virtue of said certificate more stable or certain and more satisfactory, is to that extent superior to another. As may be deduced from the established facts, these are precisely the considerations which guided the commission in deciding the question raised as it did, and, of course, its act merits approval.

Wherefore, the decision appealed from is affirmed with costs against the appellant. So ordered

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

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