

**CEBU AUTOBUS COMPANY, PETITIONER AND APPELLANT, VS.
SOLEDAD VIUDA DE LOZANO, RESPONDENT AND APPELLEE.***G.R. Nos. 45690 and 45691. July 30, 1938*

Ponente: VILLA-REAL, J.

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The Cebu Autobus Company appeals to this court to review the decision of the Public Service Commission, rendered on May 5, 1937, in cases Nos. 48193 and 48503, confirming two orders thereof, the first of which, that of January 20, 1937, authorized the respondent Soledad Viuda de Lozano to register five new autotrucks, and the second, that of February 24, 1937, allowed her to increase her equipment by five autotrucks.

In support of its appeal, the petitioner assigns as sole error, allegedly committed by the Public Service Commission, the fact that the latter confirmed its two aforesaid orders in the two cases now before us.

Pelagio Lozano during his lifetime held as owner three certificates of public convenience, issued in his favor in cases Nos. 17510, 16741 and 16180 of the Public Service Commission. Upon his death he was succeeded in the possession of said certificates by his intestate, represented by his surviving spouse, the herein respondent Soledad Viuda de Lozano, as special administratrix, who continued to manage the public service land transportation business of her deceased husband under the aforesaid certificates of public convenience. As such special administratrix, Soledad Viuda de Lozano applied for and obtained from the Court of First Instance of Cebu, which took cognizance of the intestate of her deceased husband, authority to sell the said transportation business known as the Lozano Transportation. Pedro M. Velez acquired it by purchase, which was approved by the said court, and later conveyed his rights to the Filipino Bus Company, which, in turn, transferred them to the herein petitioner Cebu Autobus Company.

Subsequently, the minor children of the deceased Pelagio Lozano asked for and obtained from the Court of First Instance of Cebu the annulment of the order authorizing the aforesaid sale in favor of Pedro M. Velez.

The herein petitioner Cebu Autobus Company, holder of the aforementioned certificates of public convenience of the Lozano Transportation, appealed from the decision of the Court of First Instance of Cebu to the Court of Appeals (Special Proceeding No. 1275, C. A., No. 1206). This appeal is still pending.

In the meantime, the said minor children of Pelagio Lozano filed in cases Nos. 27271, 38326, 41585, 42779 and 43059 of the Public Service Commission, a motion dated August 19, 1936, wherein they asked (1) that the Cebu Autobus Company be declared without legal title to operate the autotruck business of the intestate of Pelagio Lozano because it has not been authorized by the commission; (2) that the Filipino Bus Company be also declared not to have acquired any legal title over the said business because the commission has not approved its transfer of said company made by Pedro M. Velez; (3) that the fusion—provisionally approved by the commission—of the Filipino Bus Company and the Cebu Autobus Company (Case No. 41585), be definitely denied, because it is contrary to laws prohibiting monopoly, to the Public Service Law and to the Constitution of the Philippines; (4) that the approval of the sale of the Lozano Transportation business made by the widow of Lozano to Pedro M.

Velez, approved provisionally by the commission (Case No. 27271), be definitely denied; (5) that the approval of the conveyance of the same business, made by Pedro M. Velez in favor of the Filipino Bus Company (Case No. 43059) be definitely denied; and (6) that the Cebu Autobus Company, the Filipino Bus Company and Pedro M. Velez be prohibited from operating the business of the Lozano Transportation and the administratrix of the intestate of Pelagio Lozano be authorized to operate said business under the certificates of public convenience issued in favor of the deceased Pelagio Lozano.

In its decision of November 3, 1936, rendered in the aforecited five cases, which were jointly heard, the Public Service Commission (1) definitely disapproved the conveyance of the Lozano Transportation business in favor of Pedro M. Velez; (2) held that the conveyances of said business from Velez to the Filipino Bus Company and from the latter to the Cebu Autobus Company were made without the approval of the Public Service Commission; and (3) also held that the Cebu Autobus Company is without right to operate said business under the aforesaid certificates of public convenience, ordering at the same time that its decision become effective and executory from the date of its promulgation.

The Cebu Autobus Company asked this court, in its petition of December 9, 1936, to review the decision last mentioned (G. R. Nos. 45393, 45394 and 45395).

While the application to review the said decision of November 3, 1936, was pending decision, the respondent Soledad Viuda de Lozano, in her capacity as special administratrix of the estate of her deceased husband, Pelagio Lozano, filed two applications with the Public Service Commission, registered as cases Nos. 48193 and 43503, respectively, in the first of which she asked the commission for authority to register five new autotrucks, and in the second, to increase her equipment by five autotrucks, basing her right to do so on the same certificates of public convenience, issued in cases Nos. 17515, 16741 and 16180, the validity of the conveyance of which is the question raised by the aforesaid minors in their said motion of August 19, 1936, and is the same one discussed in the petition for review filed in cases G. R. Nos. 45393, 45394 and 45395 referred to above.

Passing upon the aforesaid applications, the commission issued on January 20, 1937, in case No. 48193, an order wherein it acceded to the application of the respondent to register five new autotrucks, and another in case No. 48503, dated February 24, 1937, wherein it authorized the respondent to increase her equipment by five autotrucks.

On being informed of the issuance of the aforesaid orders, the Cebu Autobus Company filed a separate protest and a motion to revoke the same, which protests and motions to revoke were jointly set for trial. Once set for trial and the parties having submitted their evidence, the commission, in a decision of May 5, 1937, copy of which was received by the petitioner on May 12, 1937, confirmed its two former orders of January 20 and February 24, 1937, respectively, in said cases Nos. 48193 and 48503.

In a decision dated June 27, 1938, rendered in cases G. R. Nos. 45393, 45394 and 45395, this court affirmed the decision of the Public Service Commission of November 3, 1936, rendered in the five cases Nos. 27271, 38326, 41585, 42779 and 43059 of the aforesaid commission which were jointly tried.

The only question to be decided in this application for review is whether the Public Service Commission erred in confirming its two orders of January 20 and February 24, 1937, respectively, issued in cases Nos. 48193 and 43503, in the first of which it authorized the respondent Soledad Viuda de Lozano to register five autotrucks, and in the second of which it authorized the increase of her equipment by the addition of five autotrucks.

Section 16, paragraph (h), of Act No. 3108, provides, as follows:

"Sec. 16. No public utility as herein defined shall:

* * * * *

(h) Without the approval of the Public Utility Commission, first had, sell, alienate, mortgage, encumber, or lease its property franchises, privileges or rights, or any part thereof; nor merge or consolidate its property, franchises, privileges or rights, or any part thereof, with that of any other public utility as herein defined. The approval herein required shall be given, after notice to the public and after hearing the persons interested at a public hearing, if it be shown that there are just and reasonable grounds for making the sale, alienation, mortgage, or encumbrance for liabilities of more than one year maturity, lease, merger, or consolidation to be approved, and that the same are not detrimental to the public interest, and in case of a sale, the date on which the same is to be consummated shall be fixed in the order of approval: Provided, however, That the sale, alienation, mortgage or encumbrance, and lease of the property of public utilities which, on account of the nature and conditions of their business, are, in the judgment of the Commission, of little importance to the public interest, shall be exempt from the requisite of the approval of the Commission; but the public utilities shall in every case give notice of these transactions to the Commission. Any sale, alienation, mortgage or encumbrance, lease, fusion or consolidation made without the approval herein required shall be null and void: Provided, further, That nothing herein contained shall be construed to prevent the sale, alienation, or lease by any public utility of any of its property in the ordinary course of its business."

Interpreting the aforequoted legal provision in the case of *Zamboanga Transportation Co. vs. Public Utility Commission* (50 Phil., 237, 239), this court said:

"It will be seen that the legal provision above quoted prohibits a public utility, as defined by said law, from mortgaging its properties, franchises or rights, or any part thereof, without first obtaining the approval of the Public Utility Commission and provides that any mortgage or lien created without said approval, shall be null and void."

In the case before us, the Public Service Commission, after provisionally approving the sale made in favor of Pedro M. Velez of the three certificates of public convenience, issued in favor of Pelagio Lozano, by his surviving spouse, Soledad Viuda de Lozano, in her capacity as special administratrix of the properties left by her deceased husband, with the court's approval, disapproved it upon motion of the minor children of said deceased, represented by their guardian ad litem, and the herein petitioner, who had acquired the rights of the Filipino Bus Company, who in turn had acquired the same from Pedro M. Velez, appealed to and sought a review from this court. In its decision of June 27, 1938, this court affirmed¹ the order sought to be reviewed.

By substituting the word "mortgage" in lieu of the word "sale" in the case of *Zamboanga Transportation Co. vs. Public Utility Commission*, supra, we can say, in accordance with the decision rendered therein, that the sale of a certificate of public convenience cannot be made without the previous approval of the Public Service Commission, and that the sale made without said approval is void and without effect. The provisional approval of the sale here in question gave thereto also provisional validity; but having been definitely disapproved thereafter, the aforesaid sale became void and without value, as did the legal effect which had been provisionally produced by the conveyance to Pedro M. Velez of the rights of Pelagio Lozano in the three certificates of public convenience issued in the latter's favor while living, the said three certificates of public convenience regaining their former juridical status before their conveyance; and the respondent, Soledad Viuda de Lozano, in her capacity as special administratrix of the properties left by her deceased husband, could continue the operation of the business under the style Lozano Transportation, and the Public Service Commission could issue the orders which it should deem convenient in the interest of the public relative to said certificates, pursuant to the procedure marked out by law.

The Public Service Commission has not, therefore, erred in authorizing the respondent, Soledad Viuda de Lozano, to register five new autotrucks and to increase her equipment by another five.

In view of the foregoing considerations, we are of the opinion and so hold that the sale of a certificate of public convenience to establish and operate a land transportation business has no legal effect without the approval of the Public Service Commission; and its provisional approval only gives it provisional validity, and once definitely disapproved, said sale becomes void and without value or effect.

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

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

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