

**EPITACIO SAN PABLO, (SUBSTITUTED BY HEIRS OF E. SAN PABLO),
PETITIONERS, VS. PANTRANCO SOUTH EXPRESS, INC., RESPONDENT.
CARDINAL SHIPPING CORPORATION, PETITIONER, VS. HONORABLE
...**

G.R. Nos. 61461 & 61501. August 21, 1987

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The question that is posed in these petitions for review is whether the sea can be considered as a continuation of the highway. The corollary issue is whether a land transportation company can be authorized to operate a ferry service or coastwise or interisland shipping service along its authorized route as an incident to its franchise without the need of filing a separate application for the same.

The Pantranco South Express, Inc., hereinafter referred to as PANTRANCO is a domestic corporation engaged in the land transportation business with PUB service for passengers and freight and various certificates for public conveniences (CPC) to operate passenger buses from Metro Manila to Bicol Region and Eastern Samar. On March 27, 1980 PANTRANCO through its counsel wrote to Maritime Industry Authority (MARINA) requesting authority to lease/purchase a vessel named M/V "Black Double" to be used for its project to operate a ferryboat service from Matnog, Sorsogon and Allen, Samar that will provide service to company buses and freight trucks that have to cross San Bernardo Strait.[1] In a reply of April 29, 1981 PANTRANCO was informed by MARINA that it cannot give due course to the request on the basis of the following observations:

"1.The Matnog-Allen run is adequately serviced by Cardinal Shipping Corp. and Epitacio San Pablo; MARINA policies on inter-island shipping restrict the entry of new operators to Liner trade routes where these are adequately serviced by existing/authorized operators.

2. Market conditions in the proposed route cannot support the entry of additional tonnage; vessel acquisitions intended for operations therein are necessarily limited to those intended for replacement purposes only."[2]

PANTRANCO nevertheless acquired the vessel M/V "Black Double" on May 27, 1981 for P3Million pesos. It wrote the Chairman of the Board of Transportation (BOT) through its counsel, that it proposes to operate a ferry service to carry its passenger buses and freight trucks between Allen and Matnog in connection with its trips to Tacloban City invoking the case of Javellana vs. Public Service Commission.[3] PANTRANCO claims that it can operate a ferry service in connection with its franchise for bus operation in the highway from Pasay City to Tacloban City "for the purpose of continuing the highway, which is interrupted by a small body of water, the said proposed ferry operation is merely a necessary and incidental service to its main service and obligation of transporting its passengers from Pasay City to Tacloban City. Such being the case x x x there is no need x x x to obtain a separate certificate for public convenience to operate a ferry service between Allen and Matnog to cater exclusively to its passenger buses and freight trucks.[4]

Without awaiting action on its request PANTRANCO started to operate said ferry service. Acting Chairman Jose

C. Campos, Jr. of BOT ordered PANTRANCO not to operate its vessel until the application for hearing on Oct. 1, 1981 at 10:00 A.M.[5] In another order BOT enjoined PANTRANCO from operating the M/V "Black Double" otherwise it will be cited to show cause why its CPC should not be suspended or the pending application denied.[6]

Epitacio San Pablo (now represented by his heirs) and Cardinal Shipping Corporation who are franchise holders of the ferry service in this area interposed their opposition. They claim they adequately service the PANTRANCO by ferrying its buses, trucks and passengers. BOT then asked the legal opinion from the Minister of Justice whether or not a bus company with an existing CPC between Pasay City and Tacloban City may still be required to secure another certificate in order to operate a ferry service between two terminals of a small body of water. On October 20, 1981 then Minister of Justice Ricardo Puno rendered an opinion to the effect that there is no need for bus operators to secure a separate CPC to operate a ferryboat service holding as follows:

"Further, a common carrier which has been granted a certificate of public convenience is expected to provide efficient, convenient and adequate service to the riding public. (Hocking Valley Railroad Co. vs. Public Utilities Commission, 110 NE 521; Louisville and N.R. Co. vs. Railroad Commissioners, 58 SO 543) It is the right of the public which has accepted the service of a public utility operator to demand that the service should be conducted with reasonable efficiency. (Almario, supra, citing 73 C. J. S. 990-991) Thus, when the bus company in the case at bar proposes to add a ferry service to its Pasay-Tacloban route, it merely does so in the discharge of its duty under its current certificate of public convenience to provide adequate and convenient service to its riders. Requiring said bus company to obtain another certificate to operate such ferry service when it merely forms a part - and constitutes an improvement - of its existing transportation service would simply be duplicitous and superfluous." [7]

Thus on October 23, 1981 the BOT rendered its decision holding that the ferryboat service is part of its CPC to operate from Pasay to Samar/Leyte by amending PANTRANCO's CPC so as to reflect the same in this wise:

"Let the original Certificate of public convenience granted to Pantranco South Express Co., Inc. be amended to embody the grant of authority to operate a private ferryboat service as one of the conditions for the grant of the certificate subject to the condition that the ferryboat shall be for the exclusive use of Pantranco buses, its passengers and freight trucks, and should it offer itself to the public for hire other than its own passengers, it must apply for a separate certificate of public convenience as a public ferryboat service, separate and distinct from its land transport systems." [8]

Cardinal Shipping Corporation and the heirs of San Pablo filed separate motions for reconsideration of said decision and San Pablo filed a supplemental motion for reconsideration that were denied by the BOT on July 21, 1981.[9]

Hence, San Pablo filed the herein petition for review on certiorari with prayer for preliminary injunction [10] seeking the revocation of said decision, and pending consideration of the petition, the issuance of a restraining order or preliminary injunction against the operation by PANTRANCO of said ferry service. San Pablo raised the following issues:

"A. DID THE RESPONDENT BOARD VIOLATE PETITIONERS' RIGHT TO DUE PROCESS, THE RULES OF PROCEDURE AND SECTION 16 (m) OF THE PUBLIC SERVICE ACT, WHEN IT ISSUED IN A COMPLAINT CASE THE DECISION DATED OCTOBER 23, 1981 WHICH MOTU PROPIO AMENDED RESPONDENT PANTRANCO'S PUB CERTIFICATE TO INCLUDE AND AUTHORIZE OPERATION OF A SHIPPING SERVICE ON THE ROUTE MATNOG, SORSOGON-ALLEN, SAMAR - - - EVEN AS THERE MUST BE A FORMAL APPLICATION FOR AMENDMENT AND SEPARATE PROCEEDINGS HELD THEREFOR, ASSUMING AMENDMENT IS PROPER?

B. DID THE RESPONDENT BOARD ERR IN FINDING IN ITS DECISION OF OCTOBER 23, 1981, THAT THE SEA FROM THE PORT OF MATNOG, SORSOGON, LUZON ISLAND TO THE PORT OF ALLEN, SAMAR ISLAND, OR FROM LUZON ISLAND TO SAMAR ISLAND IS A MERE FERRY OR CONTINUATION OF THE HIGHWAY- - IT BEING 23 KILOMETERS OF ROUGH AND OPEN SEA AND ABOUT 2 HOURS TRAVEL TIME REQUIRING BIG INTER-ISLAND VESSELS, NOT MERE BARGES, RAFTS OR SMALL BOATS UTILIZED IN FERRY SERVICE?

C. DID THE RESPONDENT BOARD ERR WHEN IT RULED THAT RESPONDENT PANTRANCO'S VESSEL M/V BLACK DOUBLE IS MERELY A PRIVATE CARRIER, NOT A PUBLIC FERRY OPERATING FOR PUBLIC SERVICE (ASSUMING THAT THE MATNOG-ALLEN SEA ROUTE IS A MERE FERRY OR CONTINUATION OF HIGHWAY) EVEN IF SAID VESSEL IS FOR HIRE AND COLLECTS SEPARATE FARES AND CATERS TO THE PUBLIC EVEN FOR A LIMITED CLIENTELE?

D. DID THE RESPONDENT BOARD ERR WHEN IT GRANTED RESPONDENT PANTRANCO AUTHORITY TO OPERATE A SHIPPING SERVICE IN THE FACE OF THE LATTER'S CONTENTION AS AN AFTERTHOUGHT THAT IT NEED NOT APPLY THEREFOR, AND IN SPITE OF ITS FAILURE TO SECURE THE PRE-REQUISITE MARITIME INDUSTRY AUTHORITY (MARINA) APPROVAL TO ACQUIRE A VESSEL UNDER ITS MEMO-RANDUM CIRCULAR NO. 8-A AS WELL AS ITS PRIOR FAVORABLE ENDORSEMENT BEFORE ANY SHIPPING AUTHORIZATION MAY BE GRANTED UNDER BOT-MARINA AGREEMENT OF AUGUST 10, 1976 AND FEBRUARY 26, 1982?

E. DID RESPONDENT BOARD ERR WHEN IT GRANTED RESPONDENT PANTRANCO AUTHORITY TO OPERATE A SHIPPING SERVICE ON A ROUTE ADEQUATELY SERVICED IF NOT ALREADY 'SATURATED' WITH THE SERVICES OF TWO (2) EXISTING OPERATORS (PETITIONERS AND CARDINAL SHIPPING CORP.) IN VIOLATION OF THE PRINCIPLE OF 'PRIOR OPERATOR RULE'?"[11]

By the same token Cardinal Shipping Corporation filed a separate petition raising similar issues, namely:

"a. the decision did not conform to the procedures laid down by law for an amendment of the original certificate of public convenience, and the authority to operate a private ferry boat service to PANTRANCO was issued without ascertaining the established essential requisites for such grant, hence, violative of due process requirements;

b. the grant to PANTRANCO of authority to operate a ferryboat service as a private carrier on said route contravenes exist-ing government policies relative to the rationalization of operations of all water transport utilities;

c. it contravenes the memorandum of agreement between MARINA and the Board of Transportation;

d. the grant of authority to operate a ferry service as a private carrier is not feasible; it lessens PANTRANCO's liability to passengers and cargo to a degree less than extraordinary diligence;

e. PANTRANCO is not a private carrier when it operates its ferry service;

f. it runs counter to the 'old operator' doctrine; and

g. the operation by PANTRANCO of the ferry service constitutes undue competition.

The foregoing considerations constitutes the substantial errors committed by the respondent Board which would more than amply justify a review of the questioned decision by this Honorable Court."[12]

Both cases were consolidated and as now submitted for decision.

The resolution of all said issues raised involves on the validity of the questioned BOT decision.

The BOT resolved the issue of whether a ferry service is an extension of the highway and thus is a part of the authority originally granted PANTRANCO in the following manner:

"A ferry service, in law, is treated as a continuation of the highway from one side of the water over which passes to the other side for transportation of passengers or of travellers with their teams vehicles and such other property as, they may carry or have with them. (U.S. vs. Pudget Sound Nev. Co. D.C. Washington, 24 F. Supp. 431). It maybe said to be a necessary service of a specially constructed boat to carry passengers and property across rivers or bodies of water from a place in one shore to a point conveniently opposite on the other shore and continuation of the highway making a connection with the thoroughfare at each terminal (U.S. vs. Canadian Pac, N.Y. Co. 4 P. Supp. 85). It comprises not merely the privilege of transportation but also the use for that purpose of the respective landings with outlets therefrom. (Nole vs. Record, 74 OKL. 77; 176 Pac. 756). A ferry service maybe a public ferry or a private ferry. A public ferry service is one which all the public have the right to resort to and for which a regular fare is established and the ferryman is a common carrier be inbound to take all who apply and bound to keep his ferry in operation and good repair. (Hudspeth V. Hall, 11 Oa. 510; 36 S.B. 770). A ferry (private) service is mainly for the use of the owner and though he may take pay for ferriage, he does not follow it as a business. His ferry is not open to the public at its demand and he may or may not keep it in operation (Hudspeth vs. Hall, supra, St. Paul Fire and Marine Ins. 696) Harrison, 140 Ark. 158; 215 S.W. 698).

The ferryboat service of Pantranco is a continuation of the highway traversed by its buses from Pasay City to Samar, Leyte passing through Matnog (Sorsogon) through San Bernardino Strait to Allen, (Samar). It is a private carrier because it will be used exclusively to transport its own buses, passengers and freight trucks traversing the said route. It will cater exclusively to the needs of its own clientele (passengers on board - Pantranco buses) and will not offer itself indiscriminately for hire or for compensation to the general public. Legally therefore, Pantranco has the right to operate the ferryboat M/V BLACK DOUBLE, along the route from Matnog (Sorsogon) to Allen (Samar) and vice versa for the exclusive use of its own buses, passengers and freight trucks without the need of applying for a separate certificate of public convenience or provisional authority. Since its operation is an integral part of its land transport system, its original certificate of public convenience should be amended to include the operation of such ferryboat for its own exclusive use."[13]

In Javellana[14] this Court recited the following definition of "ferry":

"The term 'ferry implied the continuation by means of boats, barges, or rafts, of a highway or the connection of highways located on the opposite banks of a stream or other body of water. The term necessarily implies transportation for a short distance, almost invariably between two points, which is unrelated to other transportation, (Oppositors' Italic.)

The term 'ferry' is often employed to denote the right or franchise granted by the state or its authorized mandatories to continue by means of boats, an interrupted land highway over the interrupting waters and to charge toll for the use thereof by the public. In this sense it has also been defined as a privilege, a liberty, to take tolls for transporting passengers and goods across a lake or stream, or some other body of water, with no essential difference from a bridge franchise except as to the mode of transportation. 22 Am. Jur. 553.

A 'ferry' has been defined by many courts as 'a public highway or thoroughfare across a stream of water or river by boat instead of a bridge.' (St. Clare Country v. Interstate Car and Sand Transfer Co., 192 U.S. 454, 48 L. ed. 518; etc.)

'The term ferry is often employed to denote the right or franchise granted by the state or its authorized mandatories to continue by means of boats, an interrupted land highway over the interrupting waters and to charge toll for the use thereof by the public.' (Vallejo Ferry Co. vs. Solano Aquatic Club, 165 Cal. 255, 131 P. 864, Ann. Cas. 1914C, 1179; etc.) (Oppositors' Italics.)

'Ferry' is service necessity for common good to reach point across a stream, lagoon, lake, or bay. (U.S. vs.

Canadian Pac. Ry. Co. D.C. Was., 4 Supp. 851, 853)'

'Ferry' properly means a place of trans-shipment across a river or arm of the sea, but in law it is treated as a franchise, and defined as the exclusive right to carry passengers across a river, or arm of the sea, from one village to another, or to connect a continuous line of road leading from township or village to another. (Canadian Pac. Ry. Co. vs. C.C.A. Wash., 73 F. 2d 831, 832)'

'Includes various waters: (1) But an arm of the sea may include various subordinate descriptions of waters, where the tide ebbs and flows. It may be a river, harbor, creek, basin, or bay; and it is sometimes used to designate very extensive reaches of waters within the projecting capes or points of a country. (See Rex. vs. Bruce, Deach, C.C. 1093). (2) In an early case the court said: 'The distinction between rivers navigable and not navigable, that is, where the sea does, or does not, ebb and flow, is very ancient. Rex. vs. Smith, 2 Dougl. 441, 99 Reprint 283. The former are called arms of the sea, while the latter pass under the denomination of private or inland rivers' Adams vs. Pease 2 Conn. 481, 484.'" (Underscoring supplied)

In the cases of *Cababa vs. Public Service Commission*,^[15] *Cababa vs. Remigio & Carillo*^[16] and *Municipality of Gattaran vs. Elizaga*^[17] this Court considered as ferry service such water service that crosses rivers.

However, in *Javellana* We made clear distinction between a ferry service and coastwise or interisland service by holding that:

"We are not unmindful of the reasons adduced by the Commission in considering the motorboat service between Calapan and Batangas as ferry; but from our consideration of the law as it stands, particularly Commonwealth Act No. 146, known as the Public Service Act and the provisions of the Revised Administrative Code regarding municipal ferries and those regarding the jurisdiction of the Bureau of Customs over documentation, registration, licensing, inspection, etc. of steamboats, motorboats or motor vessels, and the definition of ferry as above quoted, we have the impression and we are inclined to believe that the Legislature intended ferry to mean the service either by barges or rafts, even by motor or steam vessels, between the banks of a river or stream to continue the highway which is interrupted by the body of water, or in some cases, to connect two points on opposite shores of an arm of the sea such as bay or lake which does not involve too great a distance or too long a time to navigate. But where the line or service involves crossing the open sea like the body of water between the province of Batangas and the island of Mindoro which the oppositors describe thus "the intervening waters between Calapan and Batangas are wide and dangerous with big waves where small boat, barge or raft are not adapted to the service," then it is more reasonable to regard said line or service as more properly belonging to interisland or coastwise trade. According to the finding of the Commission itself the distance between Calapan and Batangas is about 24 nautical miles or about 44.5 kilometers. We do not believe that this is the short distance contemplated by the Legislature in referring to ferries whether within the jurisdiction of a single municipality or ferries between two municipalities or provinces. If we are to grant that water transportation between Calapan and Batangas is ferry service, then there would be no reason for not considering the same service between the different islands of the Philippines, such as Boac, Marinduque and Batangas; Roxas City of Capiz and Romblon; Cebu City, Cebu and Ormoc, Leyte; Guian, Samar and Surigao, Surigao; and Dumaguete, Negros Oriental and Oroquieta or Cagayan de Oro.

The Commission makes the distinction between ferry service and motorship in the coastwise trade, thus:

'A ferry service is distinguished from a motorship or motorboat service engaged in the coastwise trade in that the latter is intended for the transportation of passengers and/or freight for hire or compensation between ports or places in the Philippines without definite routes or lines of service.'

We cannot agree. The definiteness of the route of a boat is not the deciding factor. A boat of say the William Lines, Inc. goes from Manila to Davao via Cebu, Tagbilaran, Dumaguete, Zamboanga, every week. It has a definite route, and yet it may not for that reason be regarded as engaged in ferry service. Again, a vessel of the

Compañia Maritima makes the trip from Manila to Tacloban and back, twice a week. Certainly, it has a definite route. But that service is not ferry service, but rather interisland or coastwise trade.

We believe that it will be more in consonance with the spirit of the law to consider steamboat or motorboat service between the different islands, involving more or less great distance and over more or less turbulent and dangerous waters of the open sea, to be coastwise or inter-island service. Anyway, whether said service between the different islands is regarded as ferry service or coastwise trade service, as long as the water craft used are steamboats, motorboats or motor vessels, the result will be the same as far as the Commission is concerned."^[18] (Underscoring supplied)

This Court takes judicial notice of the fact, and as shown by an examination of the map of the Philippines, that Matnog which is on the southern tip of the island of Luzon and within the province of Sorsogon and Allen which is on the northeastern tip of the island of Samar, is traversed by the San Bernardino Strait which leads towards the Pacific Ocean. The parties admit that the distance between Matnog and Allen is about 23 kilometers which maybe negotiated by motorboat or vessel in about 1-1/2 hours as claimed by PANTRANCO to 2 hours according to petitioners, As the San Bernardino Strait which separates Matnog and Allen leads to the ocean it must at times be choppy and rough so that it will not be safe to navigate the same by small boats or barges but only by such steamboat or vessels as the M/V "Black Double".^[19]

Considering the environmental circumstances of the case, the conveyance of passengers, trucks and cargo from Matnog to Allen is certainly not a ferryboat service but a coastwise or interisland shipping service. Under no circumstance can the sea between Matnog and Allen be considered a continuation of the highway. While a ferryboat service has been considered as a continuation of the highway when crossing rivers or even lakes, which are small body of waters separating the land, however, when as in this case the two terminals, Matnog and Allen are separated by an open sea it can not be considered as a continuation of the highway. Respondent PANTRANCO should secure a separate CPC for the operation of an interisland or coastwise shipping service in accordance with the provisions of law. Its CVC as a bus transportation cannot be merely amended to include this water service under the guise that it is a mere private ferry service.

The contention of private respondent PANTRANCO that its ferry service operation is as a private carrier, not as a common carrier for its exclusive use in the ferrying of its passenger buses and cargo trucks is absurd. PANTRANCO does not deny that it charges its passengers separately from the charges for the bus trips and issues separate tickets whenever they board the M/V "Black Double" that crosses Matnog to Allen,^[20] PANTRANCO cannot pretend that in issuing tickets to its passengers it did so as a private carrier and not as a common carrier. The Court does not see any reason why inspite of its amended franchise to operate a private ferryboat service it cannot accept walk--in passengers just for the purpose of crossing the sea between Matnog and Allen. Indeed evidence to this effect has been submitted.^[21] What is even more difficult to comprehend is that while in one breath respondent PANTRANCO claims that it is a private carrier insofar as the ferryboat service is concerned, in another breath it states that it does not thereby abdicate from its obligation as a common carrier to observe extraordinary diligence and vigilance in the transportation of its passengers and goods. Nevertheless, considering that the authority granted to PANTRANCO is to operate a private ferry, it can still assert that it cannot be held to account as a common carrier towards its passengers and cargo. Such an anomalous situation that will jeopardize the safety and interests of its passengers and the cargo owners cannot be allowed.

What appears clear from the record is that at the beginning PANTRANCO planned to operate such ferryboat service between Matnog and Allen as a common carrier so it requested authority from MARINA to purchase the vessel M/V "Black Double"^[22] in accordance with the procedure provided for by law for such application for a certificate of public convenience.^[23] However when its request was denied as the said routes "are adequately

served by existing/authorized operators,"[24] it nevertheless purchased the vessel and started operating the same. Obviously to go about this obstacle to its operation, it then contrived a novel theory that what it proposes to operate is a private ferryboat service across a small body of water for the exclusive use of its buses, trucks and passengers as an incident to its franchise to convey passengers and cargo on land from Pasay City to Tacloban so that it believes it need not secure a separate certificate of public convenience.[25] Based on this representation, no less than the Secretary of Justice was led to render an affirmative opinion on October 20, 1981[26] followed a few days later by the questioned decision of public respondent of October 23, 1981.[27] Certainly the Court cannot give its imprimatur to such a situation.

Thus the Court holds that the water transport service between Matnog and Allen is not a ferryboat service but a coastwise or interisland shipping service. Before private respondent may be issued a franchise or CPC for the operation of the said service as a common carrier, it must comply with the usual requirements of filing an application, payment of the fees, publication, adducing evidence at a hearing and affording the oppositors the opportunity to be heard, among others, as provided by law.[28]

WHEREFORE, the petitions are hereby GRANTED and the Decision of the respondent Board of Transportation (BOT) of October 23, 1981 in BOT Case No. 81-348-C and its Order of July 21, 1982 in the same case denying the motions for reconsideration filed by petitioners are hereby Reversed and set aside and declared null and void. Respondent PANTRANCO is hereby permanently enjoined from operating the ferryboat service and/or coastwise/interisland services between Matnog and Allen until it shall have secured the appropriate Certificate of Public Convenience (CPC) in accordance with the requirements of the law, with costs against respondent PANTRANCO.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Paras, JJ., concur.

[1] Annex "C" to Petition of San Pablo, G.R. No. 61461.

[2] Annex "E" to Petition, Supra.

[3] 98 Phils. 964 (1956).

[4] Annex "H" to Petition, Supra.

[5] Annex "I" to Petition, Supra.

[6] Annex "1" to Comment of PANTRANCO.

[7] P. 142, Rollo, Annex "1" to Comment of PANTRANCO.

[8] Decision in BOT Case No. 81-348-C, Annex "K" Petition, Supra.

[9] Annex "O" Petition, San Pablo.

[10] Petition, San Pablo, G.R. No. 61461.

[11] Pp. 17-18, Rollo, Petition, San Pablo.

[12] Pp. 20-21, Rollo, Petition, Cardinal Shipping Corp.

[13] Decision, Pp. 85-86.

- [14] Supra, pp. 969-970.
- [15] 102 Phil. 1013.
- [16] 118 Phil. 56.
- [17] 91 Phil. 440.
- [18] 98 Phil. pp. 970-972.
- [19] P. 22, San Pablo, Petition.
- [20] Annex "N" to the Petition, San Pablo.
- [21] Annex "M" to Cardinal Shipping Petition.
- [22] Annex "G", San Pablo Petition.
- [23] .Annex "F", Supra.
- [24] Annex "E", Supra.
- [25] Annex "H", Supra.
- [26] P. 142, Rollo, San Pablo Petition, Annex "1" to PANTRANCO Comment.
- [27] Annex "K", Supra.
- [28] Olongapo Jeepney Operators Association vs. PSC, 13 SCRA 303.

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