

PHILIPPINE AIR LINES, INC. PETITIONER, VS. CIVIL AERONAUTICS BOARD, AND JACOB S. LIM, RESPONDENTS.

G.R. No. L-24321. July 21, 1967

Ponente: FERNANDO, J.

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FERNANDO, J.:

Petition for certiorari by Philippine Air Lines (hereinafter referred to as PAL) to set aside and declare void a resolution of February 4, 1965 of respondent Civil Aeronautics Board (hereinafter referred to as CAB) approving the application of Jacob S. Lim, the other respondent, operator of the Southern Air Lines, for a provisional permit to operate four (4) DC-3 aircrafts effective from the date of the receipt of such resolution up to the time the decision by the CAB of his application.

It was alleged by PAL and admitted by both respondents, that on or about February 18, 1963, respondent Lim filed with respondent CAB an application to increase his equipment by four (4) additional DC-3 aircrafts; that said application was referred to a CAB Hearing Examiner for reception of evidence; that within the reglementary period, petitioner PAL entered its appearance and manifested its opposition to the application with respect to necessity, mode, form, and procedure; that on April 10, 1964, respondent Lim filed an Amended Application; that on April 20, 1964, petitioner PAL filed its Manifestation and Opposition to Amended Application; that again on June 25, 1964, respondent Lim filed a Second Amended Application; and that while the hearings before the Hearing Examiner were still being conducted, respondent Lim on September 8, 1964 filed an Application for a provisional authority to operate his proposed additional four (4) DC-3 aircrafts. (Pars. 2 to 8, Petition).

It was alleged that the aforesaid application for provisional authority was opposed by petitioner PAL (par. 9, Petition), but both respondents while admitting the fact of such opposition stressed that it was made verbally during the hearing of the application before the respondent board (par. 2, Answer of Lim; par. 2, Answer of CAB). PAL further claimed that its opposition to the application appears "well-founded" because the report dated October 27, 1964 of the hearing Examiner recommended deferment of decision until the same was submitted for final decision. Respondent CAB answered that the report of the Hearing Examiner was "a conclusion devoid of proper premises" and unduly giving "weight or validity to petitioner's opposition which was made only verbally" no grounds being specified (par. 3, Answer of CAB). Respondent Lim on the other hand characterized said "verbal opposition" as having been "merely interposed as a sham, as demonstrated by the fact that petitioner, having had the opportunity, never bothered to file a formal opposition or memorandum setting forth specifically the grounds of its objections." (par. 6, Answer of Lim).

There is likewise admission by both respondents that in a CAB letter dated January 27, 1965, reference was made to CAB resolution of January 22, 1965 deferring action on Lim's Application and requiring him to confer with the CAB staff concerning its computation showing a loss of Ninety-Three Thousand (P93,000.00) Pesos for his operation of four (4) DC-3 aircrafts. (par. 11, Petition). The allegation of the petition that not long thereafter, respondent CAB under its Resolution of February 4, 1965, approved Lim's application for provisional authority, was admitted by respondent CAB with the further averment that before such issuance, the matter was heard by it

on October 29, 1964, on January 22, 1965 and February 4, 1965 (par. 5, Answer of CAB).

Such averment received a more extended treatment with documentary support in the Answer of Lim to the effect that at the hearing on October 29, 1964, the CAB decided to defer action on respondent's application for provisional authority until after the submission of a Project Study for the development of rural services, a notarized contractual undertaking by a James L. Chiongbian definitely showing a commitment to extend a loan of P1,000,000.00 for the acquisition of the additional equipment of respondent and a Project Study for the operation of four (4) DC-3 aircrafts for scheduled domestic services; that on November 20, 1964, such revised Project Study for the operation of four (4) DC-3 aircrafts on a non-scheduled basis, together with a program for the development of a rural service, and a notarized undertaking of Chiongbian showing a definite commitment to extend a loan in the amount of P1,000,000.00 to finance the acquisition of the additional equipment were submitted; that on January 22, 1965, at the hearing of his application for provisional authority, it was re-solved to defer action on the application, its technical staff being directed to confer with respondent Lim to as-certain the correctness of the computation of the Hearing Examiner as to the estimated loss of P93,000.00 monthly, the extent of the proposed service to be devoted to the development of rural areas and the proposed operation of such DC-3 service on a scheduled basis; that pursuant to said resolution, the technical staff of the CAB upon prior notice to all existing airlines, including the petitioner PAL, convened a conference on February 2, 1965, to thresh out the three above points, PAL however not sending any representative to such conference; that on February 3, 1965, a memorandum was submitted by Lim to the CAB disproving the computation of the Hearing Examiner that there would be a loss of P93,000.00 a month and showing the extent of his proposed rural service, as well as the feasibility of operating on scheduled basis; that on February 4, 1965, his application for provisional permit to operate was heard by the CAB "at which the profitability of respondent's proposed DC-3 service, the extent of his proposed rural service, and the feasibility of operating the proposed service on a scheduled basis were thoroughly discussed and debated by the technical staff and herein petitioner PAL on one hand and the herein respondent on the other"; and that at the said meeting of the CAB on February 4, 1965. The CAB approved a resolution granting said permit to operate his additional equipment consisting of four (4) DC-3 aircrafts. (par. 5, Answer of Lim).

Thereafter on February 17, 1965, petitioner PAL filed a Motion for Reconsideration of the CAB Resolution of February 4, 1965. Lim filed his Opposition, the Motion for Reconsideration being denied by CAB in its Resolution of March 4, 1965. (pars. 13-15, Petition).

Petitioner would thus have this Court declare void such CAB grant of provisional authority to operate alleging denial of due process, assigning as alleged errors of CAB the failure to hear the evidence which it could offer; the absence of any factual basis for the affirmative action on the part of CAB, the findings of the Hearing Examiner being in fact opposed to the grant of provisional authority; the absence of the reason for said grant; the absence of any finding of the public need, urgent or otherwise, calling for said grant of authority and the failure to disclose to it the documents or evidence which support the legality of the grant of the provisional authority to operate. Tersely put, *Ang Tibay v. Court* (69 Phil. 635), a 1940 landmark decision on the "fundamental and essential requirements of due process in trial and investigations of an administrative character" is invoked to show that CAB exceeded its jurisdiction or at the very least acted with grave abuse of discretion.

That is the main issue before us. Before reaching it however, respondents would have us avoid passing on the matter by setting a procedural obstacle. Both respondents speak of the interlocutory character of the challenged resolution and for that reason, characterize it as non-appealable. Such objection need not detain us long. It calls only for a summary disposition to clear the path for the pivotal issue that calls for our determination. This is not a petition for review under the Civil Aeronautics Act of the Philippines.[1] Instead what we have here is the special civil action of certiorari enabling a person aggrieved to complain against any tribunal, board, or officer

exercising functions judicial in character, acting without or in excess of jurisdiction or with grave abuse of discretion.[2] The availability of such remedy against administrative agencies is now beyond dispute. (*Guiting v. Director of Lands*, L-12906, Sept. 29, 1960; *NDC v. Collector of Customs*, L-19180, October 31, 1960; *Taylor v. Gimenez*, L-17656, May 30, 1962; *Sambrano v. Public Service Commission*, L-18459, Sept. 29, 1962; *Filipino Pipe and Foundry Corp. v. WCC*, L-20381, Dec. 24, 1963; *Phil. Rabbit Bus Line v. WCC*, L-20614, May 25, 1964; *Malabon Restaurant v. Hearing Officer*, L-22199, Jan. 31, 1966; *Batangas Laguna Tayabas Bus Co., v. PSC*, L-25994, Aug. 31, 1966).

Even in the absence of such decided cases, to name only a few, impressive for their number and unanimity, and this were considered a question of first impression, the same conclusion is unavoidable. The stage has been reached which in the current terminology of Administrative Law is referred to as ripeness for judicial action, a matter in the language of an authority to be determined not "by formula but by seasoned balancing of certain typical and relevant factors for and against the assumption of jurisdiction." [3] Why it should be thus is explained in this wise: "Now that the judiciary is no longer generally hostile to the administrative process and has established and accepted for itself a limited role, it need no longer operate in the gingerly self-deprecating manner of a guilt-conscious, barely tolerated intruder. It need only ask how, given its limited role, it can provide efficiently, with due regard for limited competence, the service which it is duty bound to give to those who have a legitimate interest in the legality of the challenged action." [4]

Once assume that the problems posed by administrative action "are real and present or imminent" not merely "abstract or hypothetical or remote" there is justification for the invocation of the judicial machinery. [5]

The procedural hurdle out of the way, we are faced with our real problem. If the fundamental canon of fairness embodied in the due process guaranty and required by the leading *Ang Tibay* decision invariably followed subsequently (*La Magalona & Co. v. The Workmen's Compensation Commission and Pedro Geronca*, L-10338, April 30, 1957; *Dominador Danan, et al., v. Aspillera, et al.*, L-17305, November 28, 1962; *National Development Co., et al., v. Collector of Customs, Manila*, L-19180, October 31, 1963; *Vigan Electric & Light Co., Inc. v. Public Service Commission*, L-19850, January 30, 1964; *Commissioner of Immigration v. Hon. F. Fernandez, et al.*, L-22696; May 29, 1964; *Manila Electric Co., v. Public Service Commission*, L-13638-40, June 30, 1964; *Borja v. Morena*, L-16487, July 31, 1964; *Manila Electric Co. v. Public Service Commission*, L-24406, June 29, 1965; and *Aboitiz Shipping Corp. v. Pepito, et al.*, L-21335, Dec. 17, 1966) were set at naught and disregarded, petitioner is entitled to the remedy prayed for. If such be the case, then the force of the above decisions calls for the setting aside of the challenged resolution.

Such is not the case however. The above recital of the circumstances under which the provisional grant of authority to respondent Lim, a prior grantee of a certificate of public convenience and necessity to increase his equipment by four (4) DC-3 aircrafts for the operation of the domestic non-scheduled services, negates the imputation of arbitrariness on the part of respondent CAB. It is undisputed that the CAB was not precipitate in approving such application for provisional authority. It required a submission of a project study for the operation of the increased equipment together with a program for the development of a rural service and a notarized undertaking by a principal who would extend a loan in the sizeable amount of P1,000,000.00 to finance the project. Moreover, there was a conference with prior notice to existing airlines to consider the above points, PAL being notified but not sending any representative.

Nor should it be overlooked that respondent Lim asserted that before the resolution granting such provisional permit to operate was granted by the CAB on February 4, 1965, there was a hearing at which the profitability of Lim's proposed DC-3 service and the feasibility of such operation on a scheduled basis were discussed and debated by the technical staff of the CAB as well as those of PAL and respondent Lim. There was no express

denial of such on assertion by PAL in its Brief. Considering moreover that under the Civil Aeronautics Act, the CAB has the specific power "to issue, deny, amend, revise, alter, modify, cancel, suspend, or revoke, in whole or in part, upon petition or complaint or upon its own initiative any temporary operating permit",^[6] the invocation by PAL of *Ang Tibay v. Court* is futile and un-availing.

There is thus no reason to sustain petitioner's plea. The statute aside, it bears repeating that the burden of showing essential unfairness must be shouldered by him who claims such injustice. In this instance, the task proved too much for petitioner. The action taken by the CAB in granting such provisional authority did not offend against procedural due process. Tested then either under the controlling statute or the applicable judicial doctrines, the resolution of the CAB cannot be set at naught and stigmatized as void.

WHEREFORE, this petition for certiorari is denied. Without costs.

Reyes, JBL, Acting C.J., Makalintal, Bengzon, Zaldivar, Sanchez, Ruiz Castro and Angeles, JJ., concur.
Concepcion, C.J., and Dizon, JJ., on official leave.

[1] Sec. 49, Republic Act No. 776.

[2] Rule 65, Sec. 1.

[3] Jaffe, *Judicial Control of Administrative Action* (1965), at p. 396.

[4] Jaffe, *op. cit.*, at p. 404.

[5] 3 Davis, *Administrative Law Treatise* (1958), at p. 116.

[6] Sec. 10 (C) (1) Republic Act No. 776.

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