

BELSTAR TRANSPORTATION, INC., PETITIONER, VS. BOARD OF TRANSPORTATION, BALIWAG TRANSIT, INC., AND PANTRANCO NORTH EXPRESS, INC., RESPONDENTS.

G.R. No. L-47663. January 22, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a petition for review of the orders of the Board of Transportation (Board for short) dated September 29, 1977 and December 21, 1977 denying the application for the issuance of a certificate of public convenience in favor of petitioner and revoking the provisional authority extended to it.

On February 9, 1976, petitioner filed with respondent Board an application for the issuance of a certificate of public convenience to operate a public utility bus (PUB) service from Cabanatuan City to Cubao, Quezon City, via Caloocan City and vice versa. After petitioner's application was set for hearing and heard by the Board en banc three (3) times wherein petitioner presented evidence to show the existence of the public need as regards the line applied for, upon motion of petitioner, respondent Board issued an order dated August 4, 1977 granting petitioner provisional authority to operate sixteen (16) ready units.

Petitioner started operating its PUB service on the line applied for. In the meanwhile petitioner's application was again scheduled for hearing. On the scheduled hearing of September 8, 1977, Atty. Jose del Castillo, counsel for petitioner, sent his associate, Atty. Facundo Bautista to inform the Board that he could not attend the hearing due to illness and that he had authority from del Castillo to bind him as to the date of the continuance of the hearing and to its intransferability. Thus the respondent Board re-set the hearing for September 22, 1977, the date set being intransferable in character. Three (3) days before the scheduled date petitioner's counsel filed an urgent motion for postponement on the ground that he had a hearing on the same date and time in another court. The motion was opposed by private respondent Baliwag Transit, Inc., (Baliwag for short), an oppositor to the application, asserting that petitioner's counsel had asked for no less than seven postponements in the case and that as of that time, he has not presented evidence on the financial capacity of petitioner.

Respondent Board dismissed the application of petitioner and cancelled its provisional authority to operate in its order dated September 29, 1977. A motion for reconsideration of said order filed by petitioner was denied by respondent Board on December 21, 1977. Hence, this petition.

Petitioner alleges that the motion for postponement of the hearing on September 22, 1977 that was filed by petitioner's counsel was justifiable as in a much earlier date he had a case before the Court of First Instance of Rizal that was re-set on the same date and time; that petitioner is ready with its evidence in support of its application and all that is left to be proved is its financial capacity; that public interest is involved in the application so that petitioner should be given the opportunity to present evidence as to its financial capacity; that petitioner is already operating the PUB service on the line applied for and had invested and incurred a considerable amount to meet the demands of the riding public so that the procedural rules should be liberally

construed for the purpose of serving the public; and that the oppositors would not be prejudiced had petitioner's motion been granted.

On the other hand, private respondent Baliwag in its brief stressed that a reading of the order of the respondent Board dated September 29, 1977 dismissing petitioner's application shows that it is not based only on the failure of petitioner to appear on the scheduled hearing on September 22, 1977 but on three (3) grounds, namely:

"(1) The records do not show how many units applicant actually registered and operated under its provisional authority, but reports made to this Board showed that applicant operated only two (2) or three (3) units.

(2) In the meantime, the hearing of this application was set for no less than four (4) times and in all these occasions applicant's counsel failed to appear.

(3) Further, oppositor alleged that Atty. del Castillo had asked for no less than seven (7) other postponements in this case, and that up to now it has not presented any evidence on financial capacity." [1]

Moreover, it is also pointed out that there are strong indications that the alleged purchase by petitioner of thirty (30) buses from Victory Liner is a mere scheme devised by petitioner and Victory Liner to deceive the respondent Board, the oppositors and other persons. Baliwag specified the matters supporting these indications presented to the respondent Board, as follows:

"(1) The document entitled Deed of Absolute Sale With Chattel Mortgage, Annex A of the application, appears to have been executed between EUGENIO D. TRINIDAD, President and General Manager of Victory Liner, Inc. and ROMULO R. TRINIDAD, General Manager of applicant BELSTAR TRANSPORTATION, INC. Both of them are demonstrably close blood relatives.

(2) Although the sale thus represented in the document ANNEX A of the application, is in the total sum of P1,693,572, without any down payment and payable merely at the daily rate of P1,350, the so-called chattel mortgage constituted therein supposedly to secure payment is not even valid and enforceable against third persons. This is because it does not have an affidavit of good faith required by the Chattel Mortgage Law for validity, registrability and enforceability of a chattel mortgage with respect to third persons. (Sec. 4 Act 1508, as amended, Chattel Mortgage Law; Phil. Refining Co. vs. Jarque, 61 Phil. 229).

(3) As adverted to above, despite the fact that the sale in the large sum of P1,693,572, without any down payment, and payable on installment at P1,350 per day starting March 1, 1976 until fully paid, such credit arrangement was extended by Victory Liner, Inc. to applicant corporation even as applicant has only P500,000.00 authorized capital and P25,000 in paid subscription, as shown in applicant's articles of incorporation, appended to this Reply as ANNEX 1.

(4) Applicant alleges in paragraph 4 of the Application that by virtue of the deed, ANNEX A of the application, "applicant acquired ownership and possession of the aforesaid THIRTY (30) UNITS ISUZU BUS". On Page 2 of its opposition to our Motion To Suspend Hearing of the Application applicant through counsel referred to consummation of the sale between Victory Liner and applicant Belstar Transportation, Inc. Such pretensions of acquisition of "ownership and possession" and consummation of the sale" are highly incredible, to say the least, not only because of the circumstances stated above, but when it is further considered that although applicant petitioned for a provisional permit, applicant failed to submit any BOT order to show that the 30 PUB buses purportedly bought from Victory Liner, Inc. had been properly withdrawn from public service, and applicant failed to bring said buses to the Honorable Board for inspection, contrary to what is usual in proceedings for the provisional authorization of buses." [2]

After careful deliberation, the Court finds that the petition should be denied. The well-known rule is that the matter of postponement of a hearing is addressed to the sound discretion of the court or quasi judicial body concerned as the respondent Board in this case and unless there is a grave abuse of discretion in the exercise

thereof, the same should not be disturbed on review. In this case, petitioner does not deny having asked for postponement of the hearings of the application on seven (7) occasions. On the last date of hearing on September 8, 1977, counsel for petitioner failed to appear and sent his associate who asked for a postponement anew. Said associate agreed and represented that he was duly authorized to ask for re-setting of the hearing. The same was postponed to September 22, 1977 which was to be intransferable in character. Respondent Board did not commit any reversible error in disallowing the postponement sought and in dismissing the application.

Moreover, as observed by private respondent Baliwag, there is evidence adduced before the respondent Board that tends to put into question the financial capacity of petitioner to operate under a certificate of public convenience. It failed to adduce evidence on this aspect despite all the opportunity afforded to it.

Finally, this petition for review was filed late. In fact, this petition was denied by this Court on April 5, 1978. Although in a resolution dated November 3, 1989 this Court reconsidered the denial and gave due course to the petition, such reconsideration was without prejudice to the Court considering the issue of petitioner's alleged tardiness in filing the petition.

WHEREFORE, the petition is DENIED with costs against petitioner.

SO ORDERED.

Narvasa, (Chairman), Cruz, Griño-Aquino, and Medialdea, JJ., concur.

[1] Page 136, et seq., Rollo.

[2] Ibid.

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