

TRANSPORT CONTRACTORS, INC., PETITIONER, VS. PUBLIC SERVICE COMMISSION AND DELGADO BROTHERS, INC., RESPONDENTS.

G.R. No. L-7116. August 31, 1954

Ponente: REYES, A., J.

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REYES, A., J.:

On July 17, 1953, Delgado Brothers, Inc., or delbros, a Philippine corporation, filed an application with the Public Service Commission for a certificate of public convenience to operate a TH freight truck service within the municipality of Angeles, Pampanga, and from there to all points in the island of Luzon accessible to motor vehicles. Acting on the application, the Commission issued an order setting it for hearing on July 29, 1953 and directing the publication of the order ten days prior to the day of hearing. Pending hearing and final determination of the application, the Commission, at the instance of the applicant, gave it a provisional permit to operate, with authority to register, under proper denomination, the necessary vehicles for the purpose. But the permit was made subject to the outcome of the basic application for a permanent certificate as well as to cancellation, modification, and revocation at any time. On learning of the issuance of the provisional permit, Transport Contractors, Inc., or TRANSCON, a transportation company with a certificate of public "convenience for the operation of a TH freight truck service in the city of Manila and from there to all points in the island of Luzon accessible to motor vehicles, asked the Commission to reconsider its action and revoke the permit, and on this motion being denied, came to this Court with a petition for certiorari to have the said permit cancelled, alleging that the same was issued without legal authority and with abuse of discretion and without previous notice and hearing.

Answering the petition, the respondent Commission alleges that the provisional permit in question was issued "in view of the haulage contract entered into by respondent Delgado Brothers, Inc., with the U. S. Air Force, under the terms of which the Delgado Brothers, Inc. was to transport materials, equipment and all kinds of supplies belonging to the U. S. Air Force from Clark Air Force-Base in Angeles, Pampanga, to the U. S. Military base in Manila and vice versa"; that the transportation service which DELBROS was called upon to render under said contract "was of an urgent and present character considering, that the delay in the rendering of the service would jeopardize, and adversely affect the military operations of the U. S. Air Force"; and that the urgency of the service and the need for permitting delbros to render it immediately "so as to extend the maximum possible" cooperation to the U. S. Air Force and the U. S. Government" was, certified to by the Office of the President of the Philippines. And the answer also alleges that the permit was issued "on the basis of the investigations made by the Commission" to ascertain whether delbros had really been awarded the contract to render the service aforementioned and "as to whether other TH operators render such service, as well as the certification of the Executive Secretary regarding the need for such service."

It would appear from these allegations, whose veracity has not been put in issue, that the provisional permit which petitioner seeks to annul has been issued in response to urgent public need and that the Commission, before: issuing the permit, made investigations to satisfy itself that such need really existed.

This Court has time and again ruled that the Public Service Commission has power to grant a provisional

revocable permit for the operation of a public utility when the purpose of such permit is to meet an urgent public need. (*Javellana vs. La Paz Ice Plant & Cold Storage Co.*, 64 Phil, 893; *Ablaza Trans. Co. vs. Ocampo*, 88 Phil., 412; *Eliseo Silva vs. Feliciano Ocampo et al.*, 91 Phil 109) In; the present case it appears that the permit was issued for such purpose, so; that it cannot be said that the Commission has acted without authority And it also appears that the permit was issued after an investigation.

The petitioner complains that the permit was granted without previous notice to other TH operators. But who in particular are the other th operators entitled to such notice? Herein petitioner, though also a TH operator, has its center of operation in Manila, and the record fails to show that there is any TH operator in Angeles think this matter is satisfactorily explained in the answer of the Commission where it says:

" * * * notice of the granting of the provisional permit was-Hot given to the petitioner for the reason that, considering the nature of the service rendered, such a notice was not necessary. A TH Service is one confined to the haulage of cargo not between any specific lines or routes but from a given town to any point accessible by motor vehicles. The provisional permit granted: to Delgado Brothers was to operate cargo trucks from Angeles to1 any point in Luzon.; Petitioner operates cargo trucks with terminal in Manila and with authority to operate from Manila to any point in Luzon it can not be claimed that two TH operators have concurrent routes because each is authorized to operate over a large territory without specification of the routes or lines where its trucks shall operates a TH service is totally different and distinct from a TPU bus service for carrying passengers wherein specific routes are provided. In this particular case the terminal of operation granted to the Delgado Brothers, Inc. was from Angeles, Pampanga, whereas the terminal of the petitioner is Manila. The cargo, which the respondent, Delgado Brothers hauls under the provisional permit it not a cargo which petitioner would haul even if the provisional permit had not been granted to the Delgado Brothers because the contract for the haulage of said cargo was granted to the latter and said contract excludes all other TH operators including petitioner herein. It is obvious that the granting of the permit did not and can not prejudice the petitioner because the cargo of the U.S. Air Force can not possibly be transported by trucks of the petitioner because the contract for said haulage has been awarded to the Delgado Brothers, Inc. In other words, the nature of a TH service did not require that notice be given to the petitioner before the issuance by respondent Commission of a provisional permit to operate a TH service in favor of respondent Delgado Brothers, Inc."

We may add that the cargo to be transported by delbros is not of the kind that may be entrusted to any TH operator, but only to those in whom the U. S. Army has placed its confidence.

Finally, paragraph VI of the answer of the Commission deserves special consideration. It says:

"That the application of respondent Delgado Brothers, Inc. for a certificate of public convenience to operate a TH service is being heard by respondent Commission, notice having been given to the petitioner, and evidence has been presented by the applicant to prove the necessity for the proposed service and the hearing has not been concluded due to various postponements asked by the petitioner. At any rate the permit granted is provisional in nature and it is expressly provided that the same shall be subject to whatever final decision respondent Commission may render in the case after the hearing is concluded. A denial of the provisional permit would have deprived the U. S. Air Force and the U. S. Government of a transportation service which was and is urgently needed and which, at any rate, only the Delgado Brothers, Inc., and not the petitioner herein could have rendered and petitioner would have succeeded in delaying that service for as long as it was able to delay the filial disposition of the application of the Delgado Brothers, Inc.;" (Italics supplied.)

In view of the foregoing, the petition for certiorari is denied, with costs against the petitioner.

Paras, C. J., Bengzon, Padilla, Montemayor, Jugo, Bautista Angelo, Concepcion and Reyes, J. B. L., JJ., concur.

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