

**RUFINO MATIENZO, GODOFREDO ESPIRITU, DIOSCORRO FRANCO,
AND LA SUERTE TRANSPORTATION CORPORATION, PETITIONERS,
VS. HON. LEOPOLDO M. ABELLERA, ACTING CHAIRMAN OF THE
BOARD OF TRAN...**

G.R. No. L-45839. June 01, 1988

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari and prohibition, with application for preliminary injunction, seeking the annulment and inhibition of the grant or award of provisional permits or special authority by the respondent Board of Transportation (BOT) to respondent taxicab operators, for the operation and legalization of "excess taxicab units" under certain provisions of Presidential Decree No. 101 "despite the lapse of the power to do so thereunder," and "in violation of other provisions of the Decree, Letter of Instructions No. 379 and other relevant rules of the BOT."

The petitioners and private respondents are all authorized taxicab operators in Metro Manila. The respondents, however, admittedly operate "colorum" or "kabit" taxicab units. On or about the second week of February, 1977, private respondents filed their petitions with the respondent Board for the legalization of their unauthorized "excess" taxicab units citing Presidential Decree No. 101, promulgated on January 17, 1973, "to eradicate the harmful and unlawful trade of clandestine operators, by replacing or allowing them to become legitimate and responsible operators." Within a matter of days, the respondent Board promulgated its orders setting the applications for hearing and granting applicants provisional authority to operate their "excess taxicab units" for which legalization was sought. Thus, the present petition.

Opposing the applications and seeking to restrain the grant of provisional permits or authority, as well as the annulment of permits already granted under PD 101, the petitioners allege that the BOT acted without jurisdiction in taking cognizance of the petitions for legalization and awarding special permits to the private respondents.

Presidential Decree No. 101 vested in the Board of Transportation the power, among others "To grant special permits of limited term for the operation of public utility motor vehicles as may, in the judgment of the Board, be necessary to replace or convert clandestine operators into legitimate and responsible operators." (Section 1, PD 101)

Citing, however, Section 4 of the Decree which provides:

"SEC. 4. Transitory Provision. — Six months after the promulgation of this Decree, the Board of Transportation, the Bureau of Transportation, The Philippine Constabulary, the city and municipal forces, and the provincial and city fiscals shall wage a concerted and relentless drive towards the total elimination and punishment of all clandestine and unlawful operators of public utility motor vehicles."

the petitioners argue that neither the Board of Transportation chairman nor any member thereof had the power, at

the time the petitions were filed (i.e. in 1977). to legitimize clandestine operations under PD 101 as such power had been limited to a period of six (6) months from and after the promulgation of the Decree on January 17, 1973. They state that, thereafter, the power lapses and becomes functus officio.

To reinforce their stand, the petitioners refer to certain provisions of the Rules and Regulations implementing PD 101 issued by respondent Board, Letter of Instructions No. 379, and BOT Memorandum Circular No. 76-25 (a). In summary, these rules provide inter alia that (1) only applications for special permits for "colorum" or "kabit" operators filed before July 17, 1973 shall be accepted and processed (Sees. 3 and 16 (c), BOT-LTC-HPG Joint Regulations Implementing PD 101, pp. 33 and 47, Rollo); (2) Every provisional authority given to any taxi operator shall be cancelled immediately and no provisional authority shall thereafter be issued (par. 6, Letter of Instructions No. 379, issued March 10, 1976, p. 58, Rollo); (3) Effective immediately, no provisional authorities on applications for certificates of public convenience shall be granted or existing provisional authorities on new applications extended to, among others, taxi denominations in Metro Manila (BOT Memorandum Circular No. 75-25 (a), August 30, 1976, p. 64, Rollo); (4) All taxis authorized to operate within Metro Manila shall obtain new special permits from the BOT, which permits shall be the only ones recognized within the area (par. 8, LOI No. 379, supra); and (5) No bonafide applicant may apply for special permit to operate, among others, new taxicab services, and, no application for such new service shall be accepted for filing or processed by any LTC agency or granted under these regulations by any LTC Regional Office until after it shall have announced its program of development for these types of public motor vehicles (Sec. 16d, BOT-LTC-HPG Joint Regulations, p. 47, Rollo).

The petitioners raise the following issues:

I.

WIIHTIIHR OR NOT THE BOARD OF TRANSPORTATION HAS THE POWER TO GRANT PROVISIONAL PERMITS TO OPERATE DESPITE THE BAN THEREON UNDER LETTER OF INSTRUCTIONS NO. 379;

II.

WHETHER OR NOT THE BOARD OF TRANSPORTATION HAS Tin; POWER TO LEGALIZE, AT THIS TIME, CLANDESTINE AND UNLAWFUL TAXICAB OPERATIONS UNDER SECTION 1, P.D. 101; AND

"III.

WHETHER OR NOT THE PROCEDURE BEING FOLLOWED BY THE BOARD IN THE CASES IN QUESTION SATISFIES THE PROCEDURAL DUE PROCESS REQUIREMENTS." (p. 119, Rollo)

We need not pass upon the first issue raised anent the grant of provisional authority to respondents. Considering that the effectivity of the provisional permits issued to the respondents was expressly limited to June 30, 1977, as evidenced by the BOT orders granting the same (Annexes G, H, I and J among others) and Memorandum Circular No. 77-4 dated January 20, 1977 (p. 151, Rollo), implementing paragraph 6 of LOI 379 (ordering immediate cancellation of all provisional authorities issued to taxicab operators, supra), which provides:

"5. After June 30, 1977, all provisional authorities are deemed cancelled, even if hearings on the main application have not been terminated."

the issue is MOOT and ACADEMIC. Only the issue on legalization remains under consideration.

Justifying its action on private respondent's applications, the respondent Board emphasizes public need as the overriding concern. It is argued that under PD 101, it is the fixed policy of the State "to eradicate the harmful and unlawful trade of clandestine operators by replacing or allowing them to become legitimate and responsible ones" (Whereas clause, PD 101). In view thereof, it is maintained that respondent Board may continue to grant to "colorum" operators the benefits of legalization under PD 101, despite the lapse of its power, after six (6) months, to do so, without taking punitive measures against the said operators.

Indeed, a reading of Section 1, PD 101, shows a grant of powers to the respondent Board to issue provisional permits as a step towards the legalization of colorum taxicab operations without the alleged time limitation. There is nothing in Section 4, cited by the petitioners, to suggest the expiration of such powers six (6) months after promulgation of the Decree. Rather, it merely provides for the withdrawal of the State's waiver of its right to punish said colorum operators for their illegal acts. In other words, the cited section declares when the period of moratorium suspending the relentless drive to eliminate illegal operators shall end. Clearly, there is no impediment to the Board's exercise of jurisdiction under its broad powers under the Public Service Act to issue certificates of public convenience to achieve the avowed purpose of PD 101 (Sec. 16a, Public Service Act, Nov. 7, 1936).

It is a settled principle of law that in determining whether a board or commission has a certain power, the authority given should be liberally construed in the light of the purposes for which it was created, and that which is incidentally necessary to a full implementation of the legislative intent should be upheld as being germane to the law. Necessarily, too, where the end is required, the appropriate means are deemed given (Martin, Administrative Law, 1979, p. 46). Thus, as averred by the respondents:

"x x x [A]ll things considered, the question is what is the best for the interest of the public. Whether PD 101 has lost its effectiveness or not, will in no way prevent this Board from resolving the question in the same candor and spirit that P.D. 101 and LOI 379 were issued to cope with the multifarious ills that plague our transport system, x x x" (Italics ours) (pp. 91-92, Rollo)

This, the private respondents appreciate, as they make reference to PD 101, merely to cite the compassion with which colorum operators were dealt with under the law. They state that it is "in the same vein and spirit that this Honorable Board has extended the Decree of legalization to the operatives of the various PUI and PUB services along legislative methods," that respondents pray for authorization of their colorum units in actual operation in Metro Manila (Petitions for Legalization, Annexes E & F, par. 7, pp. 65-79, Rollo).

Anent the petitioners' reliance on the BOT Rules and Regulations Implementing PD 101 as well as its Memorandum Circular No. 76-25(a), the BOT itself has declared:

"In line with its duty to rationalize the transport industry, the Board shall, from time to time, re-study the public need for public utilities in any area in the Philippines for the purpose of re-evaluating the policies." (p. 64, Rollo)

Thus, the respondents correctly argue that "as the need of the public changes and oscillates with the trends of modern life, so must the Memo Orders issued by respondent jibe with the dynamic and flexible standards of public needs, x x x Respondent Board is not supposed to 'tie its hands' on its issued Memo Orders should public interest demand otherwise" (Answer of private respondents, p. 121, Rollo).

The fate of the private respondents' petitions is initially for the Board to determine. From the records of the case, acceptance of the respondents' applications appears to be a question correctly within the discretion of the respondent Board to decide. As a rule, where the jurisdiction of the BOT to take cognizance of an application for legalization is settled, the Court enjoins the exercise thereof only when there is fraud, abuse of discretion or error

of law. Furthermore, the court does not interfere, as a rule, with administrative action prior to its completion or finality. It is only after judicial review is no longer premature that we ascertain in proper cases whether the administrative findings are not in violation of law, whether they are free from fraud or imposition and whether they find substantial support from the evidence.

Finally, with respect to the last issue raised by the petitioners alleging the denial of due process by respondent Board in granting the provisional permits to the private respondents and in taking cognizance of their applications for legalization without notice and hearing, suffice it to say that PD 101 does not require such notice or hearing for the grant of temporary authority. The provisional nature of the authority and the fact that the primary application shall be given a full hearing are the safeguards against its abuse. As to the applications for legalization themselves, the Public Service Act does enjoin the Board to give notice and hearing before exercising any of its powers under Sec. 16 thereof. However, the allegations that due process has been denied are negated by the hearings set by the Board on the applications as expressed in its orders resolving the petitions for special permits (Annexes G. H. I. pp. 80-102, Rollo).

The Board stated:

"The grounds involved in the petition are of first impression. It cannot resolve the issue ex-parte. It needs to hear the views of other parties who may have an interest, or whose interest may be affected by any decision that this Board may take.

"The Board therefore, decides to set the petition for hearing.

xxx

As to the required notice, it is impossible for the respondent Board to give personal notice to all parties who may be interested in the matter, which parties are unknown to it. Its aforementioned order substantially complies with the requirement. The petitioners having been able to timely oppose the petitions in question, any lack of notice is deemed cured.

WHEREFORE, the petition is hereby DISMISSED for lack of merit. The questioned orders of the then Board of Transportation are AFFIRMED.

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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