

PHILIPPINE AIR LINES, INC., PETITIONER, VS. CIVIL AERONAUTICS BOARD, AND FILIPINAS ORIENT AIRWAYS, INC., RESPONDENTS.*G.R. No. L-24219. June 13, 1968*

Ponente: CONCEPCION, C.J.

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Original petition for certiorari, to set aside and annul a resolution of the Civil Aeronautics Board - hereinafter referred to as CAB - granting respondent Filipinas Orient Airways, Inc. - hereinafter referred to as Fairways - "provisional authority to operate scheduled and non-scheduled domestic air services with the use of DC-3 aircraft", subject to specified conditions.

Pursuant to Republic Act No. 4147, granting thereto "a franchise to establish, operate and maintain transport services for the carriage of passengers, mail, industrial flights and cargo by air in and between any and all points and places throughout the Philippines and other countries", on September 16, 1964, Fairways filed with CAB the corresponding application for a "certificate of public convenience and necessity", which was Docketed as economic proceedings (EP) No. 625, and was objected to by herein petitioner, Philippine Air Lines, Inc., hereinafter referred to as PAL. Subsequently, a CAB hearing officer began to receive evidence on said application. After several hearings before said officer, on December 14, 1964, Fairways filed an "urgent petition for provisional authority to operate" under a detailed "program of implementation" attached to said petition, and for the approval of its bond therefor, as well as the provisional approval of its "tariff regulations and the conditions of carriage to be printed at the back of the passenger tickets." Despite PAL's opposition thereto, in a resolution issued on January 5, 1965, CAB granted said urgent petition of Fairways. The pertinent part of said resolution provides:

"Filipinas Orient Airways, Inc., (FAIRWAYS) having presented to the Board evidence showing prima facie its fitness, willingness and ability to operate the services applied for and the public need for more air transportation service, and to encourage and develop commercial air transportation, RESOLVED, to grant, as the Board hereby grants, the said Filipinas Orient Airways, Inc., provisional authority to operate scheduled and non-scheduled domestic air services with the use of DC-3 aircraft, subject to the following conditions:

1. The term of the provisional authority herein granted shall be until such time as the main application for a certificate of public convenience and necessity is finally decided or for such period as the Board may at any time determine;

x x x x x x x x x x"

A reconsideration of this resolution having been denied, PAL filed the present civil action alleging that, in issuing said resolution, CAB had acted illegally and in excess of its jurisdiction or with grave abuse of discretion, because:

(1) CAB is not empowered to grant any provisional authority to operate, prior to the submission for decision of the main application for a certificate of public convenience and necessity;

(2) CAB had no evidence before it that could have justified the granting of the provisional authority complained of;

(3) PAL was denied due process when CAB granted said authority before the presentation of its evidence on Fairways' main application; and

(4) In granting said provisional authority, the CAB had prejudged the merits of said application.

The first ground is devoid of merit. Section 10-C (1) of Republic Act No. 776, reading:

"(C) The Board shall have the following specific powers and duties:

(1) In accordance with the provisions of Chapter IV of this Act, to issue, deny, amend, re-vise, alter, modify, cancel, suspend or revoke, in whole or in part, upon petitioner complaint, or upon its own initiative, any temporary operating permit or Certificate of Public Convenience and Necessity; Provided, however, That in the case of foreign air carriers, the permit shall be issued with the approval of the President of the Republic of the Philippines x x x".

explicitly authorizes CAB to issue a "temporary operating permit," and nothing contained, either in said section, or in Chapter IV of Republic Act No. 776, negates the power to issue said "permit", before the completion of the applicant's evidence and that of the oppositor thereto on the main petition. Indeed, the CAB's authority to grant a temporary permit "upon its own initiative," strongly suggests the power to exercise said authority, even before the presentation of said evidence has begun.

Moreover, we perceive no cogent reason to depart, in connection with the commercial air transport service, from the policy of our public service law, which sanctions the issuance of temporary or provisional permits or certificates of public convenience and necessity, before the submission of a case for decision on the merits.[1] The overriding considerations in both instances are the same, namely, that the service be required by public convenience and necessity, and, that the applicant is fit, as well as willing and able to render such service properly, in conformity with law and the pertinent rules, regulations and requirements.[2]

As regards PAL's second contention, we have no more than PAL's assertion and conclusion regarding the absence of substantial evidence in support of the finding, in the order complained of, to the effect that Fairways' evidence had established "prima facie" its fitness, willingness and ability to operate the services applied for and the public need for more transportation service x x x". x Apart from PAL's assertion being contradicted by the tenor of said order, there is the legal presumption that official duty has been duly performed.

Such presumption is particularly strong as regards administrative agencies, like the CAB, vested with powers said to be quasi-judicial in nature, in connection with the enforcement of laws affecting particular fields of activity, the proper regulation and/or promotion of which requires a technical or special training, aside from a good knowledge and grasp of the overall conditions, relevant to said field, obtaining in the nation.[3] The consequent policy and practice underlying our Administrative Law is that courts of justice should respect the findings of fact of said administrative agencies, unless there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial.[4] This, in turn, is but a recognition of the necessity of permitting the executive department to adjust law enforcement to changing conditions, without being unduly hampered by the rigidity and the delays often attending ordinary court proceedings or the enactment of new or amendatory legislations. In the case at bar, petitioner has not satisfactorily shown that the aforementioned findings of the CAB are lacking in the necessary evidentiary support.

Needless to say, the case of *Ang Tibay vs. C.I.R.*[5] on which petitioner relies, is not in point. Said case refers to the conditions essential to a valid decision on the merits, from the viewpoint of due process, whereas, in the case

at bar, we are concerned with an interlocutory order prior to the rendition of said decision. In fact, interlocutory orders may sometimes be issued ex parte, particularly, in administrative proceedings, without previous notice and hearing, consistently with due process.[6] Again the constitutional provision to the effect that "no decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based",[7] applies, not to such interlocutory orders, but to the determination of the case on the merits.[8]

Lastly, the provisional nature of the permit granted to Fairways refutes the assertion that it prejudices the merits of Fairways' application and PAL's opposition thereto. As stated in the questioned order, CAB's findings therein made reflect its view merely on the prima facie effect of the evidence so far introduced and do not connote a pro-nouncement or an advanced expression of opinion on the merits of the case.

WHEREFORE, the petition herein should be, as it is hereby dismissed, and the writ prayed for denied, with costs against petitioner, Philippine Air Lines, Inc.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro and Angeles, JJ., concur.
Fernando, J., took no part.

[1] Javellana v. La Paz Ice Plant & Cold Storage Co., 66 Phil. 893; Ablaza v. Transportation Co., 88 Phil. 412.

[2] Section 21, Republic Act No. 776; Act No. 3108, Section (1); Batangas Transportation v. Orlanes, 55 Phil. 659; Manila Electric v. Pasay Transportation, 57 Phil. 825.

[3] Pangasinan Transportation v. Public Utility Commission, 70 Phil. 221.

[4] Heacock v. National Labor Union, 95 Phil. 553.

[5] 60 Phil. 635.

[6] Cornejo v. Gabriel, 41 Phil. 188.

[7] Article VIII, Section 12, Constitution of the Philippines.

[8] Soncuya v. National Loan & Investment Board, 69 Phil. 602.

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