

**BIÑAN TRANSPORTATION COMPANY AND MARTIN SOUZA,
PETITIONERS, VS. HON. GABRIEL PRIETO AND HON. QUINTIN
PAREDES, JR., ASSOCIATE PUBLIC SERVICE COMMISSIONERS, AND
LAGUNA TAYABAS BUS...**

G.R. No. L-5139. July 25, 1952

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal by way of certiorari against an order of the Public Service Commission dated August 30, 1951, granting the respondent Laguna Tayabas Bus Company provisional permit to operate six auto-trucks for the transportation of passengers and freight on the line San Antonio (Biñan) to Manila, issued in Case No. 61037 of the Public Service Commission, entitled Laguna Tayabas Bus Company, Applicant vs. Biñan Transportation Company, Laguna Transportation Company, and Martin Souza, Oppositors.

On July 10, 1951, the Laguna Tayabas Bus Company filed an application to operate transportation and freight service between the barrio of San Antonio (Biñan) and Manila, and vice versa, with stops at intervening points, namely, Landayan Junction, San Pedro, Muntinlupa, Alabang Junction, and Sapote. The petition alleges that the service was to be "express," but specific authority is asked to pick up and discharge passengers at the intervening points. Opposition was filed thereto by the oppositors on the ground that the service prayed for is unnecessary, because there are not enough passengers between the two points to fill the capacity of the vehicles operated by them (the oppositors), and the granting of the service would offer ruinous competition to them.

The case was called for hearing on August 13, 1951, and on the said date applicant (respondent transportation company herein) presented its evidence. The oppositors did not then present their evidence, and the case was set for continuation on August 23, 1951, the parties being notified of this continuation during the hearing. On August 22, 1951, the attorneys for the oppositors filed a motion asking for the postponement of the hearing to September 4, 1951, on the ground that they (attorneys) had a case set for hearing on August 23, 1951, and would, therefore, be unable to appear. So no hearing was had on that date.

On August 29, 1951, respondent herein Laguna Tayabas Bus Company filed a petition ex parte, without notice of any kind to the oppositors, praying that a provisional permit be granted to it to render the service prayed for in its application. The following day, August 30, 1951, the said ex parte petition was granted by Associate Commissioners Gabriel P. Prieto and Quintin Paredes, Jr., and respondent herein Laguna Tayabas Bus Company was thus authorized to operate six auto-trucks on the line mentioned in its application in accordance with the time schedule attached thereto. It is against the granting of this temporary permit that the present petition for certiorari is presented, petitioners alleging that the issuance thereof is beyond the power and jurisdiction of the Public Service Commission, and is not authorized by the Public Service Law. Against this petition an answer has been filed, claim being made therein by the respondents that the granting of the provisional permit is authorized under the ruling of this Court in the cases of Javellana vs. La Paz Ice Plant & Cold Storage Co., 64 Phil. 893, and Ablaza

Transportation Co., Inc. vs. The Honorable Feliciano Ocampo, et al., G. R. No. L-3563, March 29, 1951.

There is no question that the Public Service Commission may grant a temporary permit to operate a public service "where the case can not be decided at once and the Commission issues a provisional permit to meet an urgent public need." (Javellana vs. La Paz Ice Plant & Cold Storage Co., 64 Phil. 393, 399-900.) This Court, applying the above doctrine, held recently that where a case is only half-finished and the decision is still remote because of the various motions for postponement whereby delay of the hearing has been systematically caused, and there is an urgent public need for a readjustment of a pre-war authorized service (not a new service), the granting of a temporary permit does not constitute excess of jurisdiction. (Ablaza Transportation Co., Inc. vs. The Hon. Feliciano Ocampo, et al., G. R. No. L-3563, March 29, 1951.)

But the circumstances justifying the granting of a provisional permit in the above two cases are not present in the case at bar. Here only one postponement was asked, and this is only for the period from August 23, 1951, to September 4, 1951, or a delay of twelve days. The petition for continuance appears to have been made in good faith, without any indication whatsoever that a systematic blocking of the ordinary course of the investigation was contemplated. The service for which the provisional permit was granted is not a mere readjustment of an existing public service, adopted for the convenience of passengers; it appears to be almost entirely a new service. Although given the name of an "express line" between San Antonio (Biñan) and Manila, stops are provided for at various intervening points for the discharge and loading of passengers. The petitioners herein already have a full and complete service along the line applied for, with the exception of the last end between San Antonio, the terminal, and Biñan town. The line between Biñan and Manila is around 34 kilometers in length, constituting more than 90% of the whole line, and less than 10% of the line applied for is actually a new one. To us, the respondent herein Laguna Tayabas Bus Company is in effect establishing a new line between Biñan and Manila, excuse for which is a new one at one end of the line, of only about 3 kilometers in length. It appears to us that the making of San Antonio, a barrio 3 to 5 kilometers to Biñan, as a starting point, is merely a blind to hide the ultimate object and purpose of the service sought to be established.

We can find no excuse or justification for the filing of the petition for provisional permit ex parte, or for the immediate approval thereof by the Public Service Commission on the next day following its presentation, because the postponement of the hearing prayed for was, at the time of the granting of the provisional permit (August 30, 1951), only five days away, and the service granted already covered by a public service which does not appear to be inadequate. The service, furthermore, is for a trip every half hour, with a total number of twenty-seven trips over a line where plenty of public services pass. The circumstances which have justified previous grants of provisional permits are, therefore, wanting.

We are, therefore, constrained to hold, as we hereby hold, that under the circumstances of the case, the granting of the provisional permit was made with abuse of discretion. The order granting the provisional permit to respondent Laguna Tayabas Bus Company is, therefore, hereby vacated, with costs.

Paras, Pablo, Bengzon, Padilla, Tuason, and Montemayor, JJ., concur.

Bautista Angelo, J., dissents.

Feria, J., took no part.

DISSENTING

BAUTISTA ANGELO, J.:

I dissent from the opinion of the majority because I believe this case comes squarely within the ruling laid down in the case of *Ablaza Transportation Co. Inc. v. Hon. Feliciano Ocampo et al.*, G.R. No. L-3563, March 29, 1951, which holds that the Court of Industrial Relations may grant a temporary permit on an ex parte motion when the case cannot be decided at once because of several motions for postponements interposed by the oppositor. Under the circumstances obtaining in this case, the Court in my opinion did not abuse its discretion in granting provisional permit because it found that it is necessary to meet an urgent public need.

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