

ANTONIO S. COHON, PETITIONER, VS. COURT OF APPEALS, HON. REYNALDO MARQUEZ, IN HIS CAPACITY AS DEPUTY ADMINISTRATOR AND HEARING OFFICER OF THE MARITIME INDUSTRY AUTHORITY (MARINA...

G.R. No. 83542. August 20, 1990

Ponente: PARAS, J.

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PARAS, J.:

Before Us for review is the Decision** dated March 3, 1988 of respondent Court of Appeals denying due course to the petition filed by petitioner Antonio S. Cohon and dismissing the same for lack of merit. Petitioner also presents for review the Resolution of May 31, 1988 of said appellate court denying his motion for reconsideration of the subject decision.

The prefatory facts, as found by respondent Court of Appeals, are not disputed. Thus:

"Respondent Enrique Tan, Jr. applied for and was granted a certificate of public convenience to operate inter-island shipping service for transportation of passengers and freight on the line Cebu-Cataingan-Placer--Kawayan-Masbate and vice versa, with the use of one motor vessel named "M/V Young Lady", in a decision of the Board of Transportation (BOT) dated August 26, 1981 in BOT Case No. 78-26975.

"Tan's operation was stopped sometime in December, 1983, due to engine breakdown of his vessel "M/V Young Lady" and thereafter he completely abandoned the service of the route.

"In April, 1985, to provide a much needed service caused by Tan's abandonment of operations, petitioner herein, Antonio Cohon, doing business under the name and style of "Lapu-Lapu Shipping Lines" applied with the BOT, and was granted a Certificate of Public Convenience (CPC) for the Cebu-Kataingan route.

"Around May or June, 1985 petitioner discovered that FGR Shipping Lines, an alleged interloper, was operating illegally on his route under Tan's CPC which he allegedly leased, for which reason he filed a complaint with MARINA (MARINA Case No. 85-003C) charging FGR with illegal operations.

"Claiming to have purchased Tan's CPC, co-respondent Vicente Atilano, together with Tan, filed with MARINA on May 29, 1985 an "Application for Approval of Sale and Transfer with substitution of Unit", respondent Atilano proposing to use the "M/V Yellow Rose" instead of the "M/V Young Lady" which was then unfit for public service, docketed as MARINA Case No. 85-079.

"Petitioner opposed the joint petition on the following grounds:

- '1. He has been granted a CPC by the former BOT in a decision dated April 26, 1985 (BOT Case No. 84-7228), one of the approved routes of which is Cebu-Kataingan route;
- '2. His service on this route with the use of the motor vehicle "M/V Honey" has been regular and uninterrupted,

adequate and efficient;

'3. Vendor Tan's franchise had already expired in May, 1985 and his vessel "M/V Young Lady" which he sold to Atilano has been unseaworthy and has not been in operation since 1983;

'4. Vendor Tan, having ceased to serve the Cebu-Cataingan route since late 1983, is guilty of non--user of franchise that had since expired;

'5. Approval of the joint petition will prove detrimental to petitioner and the interest of the riding public and will result in destructive competition.'

"FGR filed an application for a CPC in its name, which was opposed by herein petitioner, docketed as MARINA Case No. 85-226. This application was finally dismissed by MARINA on January 19, 1987.

"After MARINA Case No. 85-079 was reset for hearing on March 11, 1987, the same was dismissed for failure to prosecute because of the non-appearance of both private respondents and their counsel.

"On a motion to set aside order of dismissal and to reset case for hearing, apparently with the notice to petitioner, the case was reinstated and a hearing was conducted on an amended application filed by respondents who then finished presenting their evidence.

"On July 14, 1987 petitioner filed an urgent motion to set aside all proceedings after March 11, 1987, which was denied but petitioner was merely given the right to recall the sole witness of respondents for cross-examination.

"In the course of the hearing of September 16, 1987, petitioner sought to prove the invalidity of Tan's CPC by showing that it was signed by only one BOT Member instead of at least two board members as allegedly required by law. Respondent Marquez blocked petitioner's efforts saying that the CPC is not subject to collateral attack and that petitioner should file a separate action directly impugning the CPC's validity.

"Accordingly, petitioner on October 7, 1987 filed MARINA Case No. 87-029-C entitled "Petition for declaration of Nullity of Certificate of Public Convenience and/or Cancellation of CPC," praying that Tan's CPC be declared void ab initio, or in the alternative that the same be cancelled by reason of abandonment.

"On the same date petitioner filed his "Motion to Suspend Proceedings" in Case No. 85-079 on the ground that MARINA Case No. 87--029-C for declaration of nullity raises a prejudicial question the resolution of which is determinative of the merits of MARINA Case No. 85-079 for approval of the sale and transfer of Tan's CPC to Atilano.

"Respondent Marquez orally denied the motion for suspension in the hearing of October 7, 1987, which was confirmed by written order dated October 27, 1987. Reconsideration was sought but subsequently denied." (pp. 30-32, Rollo)

Petitioner submits these allegations:

1. Respondent Court of Appeals committed an error in declaring that private respondent's Certificate of Public Convenience is valid on the basis of its argument that the original BOT case wherein said Certificate had been granted was principally a case of rate fixing which should have required the approval of at least two members of the defunct BOT board. The Certificate definitely spelled out the freight and passenger rates.

The law provides that all cases involving the fixing of rates must have concurrence and signatures of at least two board members. The law referred to are the Rules of Practice and Procedure then enforced by the defunct BOT, specifically Sec. 2 of Rule 14 of said Rules.

Considering that the CPC which involved the fixing of rates was issued against the mandatory requirements of the

aforecited law, it follows that the decision allowing the grant of the CPC and the CPC itself are void and ineffective and, therefore, the Certificate did not confer any right or privilege to respondent-awardee. For being invalid from the beginning, the same cannot be ratified nor validated. It further follows that the Maritime Industry Authority (the agency which took over the powers and functions of the Board of Transportation) has no jurisdiction to proceed with MARINA Case No. 85-079 which allegedly involved the approval and sale of the invalid CPC.

2. Respondent Court of Appeals failed to perceive or appreciate the real nature of the main issue raised by petitioner the - invalidity of private respondent's CPC which is a jurisdictional and threshold issue since it is only proper and logical to determine first if the Certificate subject of a purported sale is valid and actually exists before resolving whether or not to approve the sale and transfer thereof.

The question of the CPC's invalidity is a jurisdictional issue since the very premise of MARINA Case No. 85-079 (for approval of the sale of the CPC) is the existence of a valid CPC. A finding as to the nullity and non-existence of the subject CPC would render the aforecited case legally baseless and would thus deprive MARINA of its jurisdiction to act on or proceed with the case.

The ruling of the Court of Appeals stating that the proceedings in MARINA Case No. 85-079 can continue without first resolving the issue of the invalidity of the CPC would result in a major absurdity and would cause serious damage to petitioner. For, the consequence of such a ruling is that respondent Atilano as transferee of the void CPC and successor-in-interest of private respondent would automatically be allowed to operate the route covered by the CPC and compete with petitioner to his prejudice.

Private respondent, on the other hand, contends:

1. The CPC under question was validly granted to him because his application was for the issuance of a certificate of public convenience and not for the fixing of rates in which case, the grant thereof of one BOT member was sufficient. The fact that rates were indicated did not make the application a case for the fixing of rates. The rates are merely incidental to the grant of the certificate in order to make the grantee aware of what rates to charge and which rates are the usual standard rates.

Under the BOT Rules and Procedure, the signature or approval of two board members is required only in cases which are contested or specifically involving the fixing of rates.

2. If the application for a CPC were treated as one concerning the fixing of rates, such action would result in absurdity because every application would then be an application for rate fixing, which should not be the case.

The resolution of this case hinges on the basic issue of whether or not a certificate of public convenience embodying a schedule of rates for passengers, freight and cargo, which was granted on the basis of an application for the issuance of said certificate to operate an interisland shipping service, should be considered as a certificate primarily involving a fixing of rates.

The other questions of whether or not the award of the certificate of public convenience was legal and regular with only one BOT member approving the same, and whether or not the determination of the validity of the Certificate is a jurisdictional issue, would depend on the resolution of the aforestated pivotal issue.

We find merit in private respondent's submission. The application of private respondent was filed specifically for the issuance of a certificate of public convenience and not for the fixing of rates.

The decision itself of the defunct Board of Transportation supports the above finding when it explicitly declares that the applicant private respondent requests for the issuance of a CPC to operate an inter-island shipping service

for the transportation of passengers and freight.

Thus, the dispositive portion of the BOT decision, in squarely responding to the request, states as follows:

"Wherefore, it is ordered that pursuant to the provisions of Section 16 (a) of Commonwealth Act 146, as amended, let a certificate of public convenience be issued to herein applicant, Enrique Tan, Jr. (Grace Shipping Lines) authorizing him to operate an inter-island shipping service on the line: Cebu-Cataingan-Placer-Kawayan-Masbate and vice versa, with the use of one (1) motor vessel, subject to the following." (underscoring supplied) (p. 53, Rollo)

Notably, the fixing of the rates is an essential pre-condition to the approval of the application for the certificate of public convenience and the award of the same. It is not merely incidental as private respondent claims; it is more of a mandatory condition that comes with the grant of the certificate. The CPC embodies certain conditions imposable upon its approval and certain conditions which should be complied with in order to sustain the validity of the certificate.

As per verification with the Franchise Department of the Maritime Industry Authority, a CPC normally includes the standard rates for passengers, cargo, and freight.

Thus, it appears that the CPC was granted on the basis of private respondent's application for the issuance thereof and clearly, not for the fixing of rates. This finding is sufficiently supported by the dispositive portion of the BOT decision as aforequoted.

Since the application was not contested at the time of its consideration and since the same was definitely not for the fixing of rates, the requisite approval of two (2) Board members does not apply as contended by private respondent. The approval of one member was enough to grant a valid certificate. In this regard, therefore, private respondent's CPC was legally granted and valid.

But what started as a valid CPC assumed a different status by reason of a subsequent violation of two (2) mandatory conditions embodied in the decision. We are speaking of No. 11 of the "Conditions" which provides:

"11. That the authority herein granted shall be good only for the applicant's motor vessel named "M/V Young Lady" while the license issued to him by the Philippine Coast Guard is still subsisting and in effect." (p. 56, Rollo)

The aforestated condition mandates that the CPC was granted exclusively for the operation of "MV Young Lady" and not for any other vessel. This simply means that the moment such particular vessel became unseaworthy as when it was abandoned due to engine trouble, then it follows that the object covered by the license and CPC became inexistent. Correspondingly, the CPC became ineffective.

It should be noted that the CPC covered the "MV/Young Lady" only. Said certificate was awarded exclusively for the operation of the vessel. Hence, when the said ship became unseaworthy due to engine trouble in December, 1983, private respondent had to abandon completely the service of the route covered by the CPC. At that very moment, private respondent already committed a violation of no. 2 of the "Conditions" imposed under the Certificate.

Condition No. 2 reads thus:

"Applicant shall not operate his motor vessels unless they are fit for public service and that before operating his motor vessel, applicant shall renew his Coastwise License within thirty (30) days from receipt of this decision and furnish copy thereof to the Board within thirty (30) days after renewal and every year thereafter. Failure of applicant to renew said license will be sufficient cause for the cancellation of the authority herein granted." (Rollo, p. 55)

It becomes evident that private respondent could not have renewed his Coastwise License in 1983 because the vessel "MV/Young Lady" was already grounded and hence, there was no more ship over which a license should be secured. This was a sufficient cause for the cancellation of the CPC.

It appears clearly from the Conditions aforementioned that the original vessel covered by the License and Certificate could not be substituted with another vessel. Such being the case, private respondent could not legally sell and transfer his CPC in 1985 to Atilano when at that time, the "MV/Young Lady" subject of the Certificate was no longer operational. Without the original and basic motor vessel, the CPC became unenforceable and incapable of being the subject matter of a sale and transfer. This alone had the effect of invalidating the CPC and private respondent therefore, had no valid CPC to sell and transfer to Atilano. Consequently, MARINA Case No. 85-079 had no legal basis to proceed. Better still, it should not have been instituted for lack of right of action.

Considering the foregoing, the appealed decision is hereby REVERSED and public respondent Reynaldo Marquez, Deputy Administrator of MARINA is hereby directed to DISMISS MARINA Case No. 85-079.

SO ORDERED.

Melencio-Herrera, (Chairman), Padilla, and Regalado, JJ., concur.
Sarmiento, J., no part, on leave.

** Penned by Justice Oscar R. Victoriano, concurred in by Justices Ricardo P. Tensuan and Venancio D. Aldecoa, Jr.

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