

VICTORY LINER, INC., PETITIONER, VS. HON. JOSE E. EVANGELISTA, HON. GREGORIO C. PANGANIBAN, HON. JOSUE CADIAO, THE PUBLIC SERVICE COMMISSION, LA MALLORCA, AND PAMPANGA BUS CO., ...*G.R. Nos. 34189-91. January 25, 1993*

Ponente: MELO, J.

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Impugned in the petition for certiorari before us is the Order dated October 4, 1971 issued by the then Public Service Commission (Annex "L", Petition; p. 76, Rollo) which granted a provisional permit for the La Mallorca and the Pampanga Bus Co., Inc. (then jointly operating as La Mallorca-Pambusco) to field additional units along the Manila-San Fernando-Olongapo and Balanga-Dinalupihan--Olongapo routes. In contesting the Order, petitioner is of the impression that the temporary authority has no legal nor factual foundation considering that petitioner's service is more than enough to meet the needs of the riding public in the different towns of Zambales, part of Bataan and the Olongapo residents bound for Manila.

Private respondents are likewise holders of certificates of public convenience to operate public utility buses in Bulacan, Pampanga, Bataan, Nueva Ecija, Tarlac, Pangasinan, La Union, and Manila. During the pendency of private respondents' applications for authority to extend their existing lines, they requested the issuance of a provisional permit to immediately operate fourteen buses for the Manila-San Fernando-Olongapo route and to field four buses to serve the passengers along Balanga-Dinalupihan--Olongapo. Petitioner opposed the temporary authority prayed for by private respondents on account of the so-called prejudicial question which petitioner previously posed for resolution via two pending complaints for cancellation of private respondents' certificates of public convenience (Annex "F", p. 47, Rollo). Action on these complaints, premised on private respondents' partial abandonment of services in some areas, was held in abeyance until further orders by respondent Commission.

In resolving the opposition aired by petitioner, respondent Commission was of the view that there can be no prejudicial question to speak of since the certificates which petitioner sought to revoke in the other cases it filed are different from those involved in the application for extension filed by private respondents. A contrario, public respondent expressed the opinion that there was evidence to justify private respondents' operation in the projected expansion of business.

On the feasibility of issuing the provisional authority, respondent Commission enumerated the conditions for entitlement thereto, namely, 1) final resolution of the basic case has been unduly delayed; 2) the applicant is legally and financially capable of maintaining the proposed service; and 3) urgent public need therefor -- all of which were ascertained to be present in the case at bar, thus:

Anent the aspect of delay, public respondent noted that the application had been unduly hampered since the applicants consumed a year and nine months before they finally submitted their evidence for consideration while counsel for herein petitioner requested that the hearings be held in abeyance on account of the alleged prejudicial

question.

Concerning the second element, private respondents were determined to be financially capable of maintaining the proposed extension which will not require additional investments because private respondents will simply utilize the same units which are already authorized.

On the urgent need to immediately authorize the projected services, respondent Commission observed:

"Applicants have already introduced oral and documentary evidence to justify the grant of the basic applications. As earlier mentioned four witnesses were presented to establish public need for the proposed service in Manila-San Fernando to Olongapo City, requested in Cases Nos. 68-307 & 68-309. The gist of applicant's evidence on this score shows that applicants start their operations from Divisoria, Manila to San Fernando, Pampanga and this they proposed to extend to Olongapo City; that there is at present no PUB operator actually operating a direct bus service from Manila (Divisoria) to Olongapo City; that although the oppositor Victory Liner is authorized to operate a PUB service from Manila to Olongapo, actually it starts its operations only from its terminal at Grace Park, Caloocan, a good four or five kilometers away from Divisoria and ends its trips at its terminal station on the outskirts of Olongapo City about two or three kilometers away from the City proper or 'poblacion'; that the oppositor, Saulog Transit operates from Cavite City to Olongapo City merely passing Manila on the way; that the oppositor, Rabbit, does not operate a Manila-Olongapo City line; that passengers coming from Manila proper going to Olongapo have to take a taxi, AC, PUJ or PUB ride first to the terminal of the Victory Liner at Grace Park, Caloocan City before they can take a bus ride to Olongapo City; that there are many passengers commuting from Manila to Olongapo and vice-versa, that at both terminals of the Victory Liner at Caloocan and Olongapo most of these prospective passengers have to pay an extra fee for the privilege of getting a seat on the buses; that Manila passengers going to Olongapo cannot take a ride on the Saulog buses which pass Manila because more often than not they are fully loaded and no more seats are available; that Manila passengers going to Olongapo, especially those with cargoes, find much inconvenience taking the Victory Liner Bus at its terminal in Caloocan City, but they have to endure all inconvenience because there are no other buses directly going to Olongapo City.

On the other hand, although two witnesses have already been presented by oppositor Victory Liner to testify in support of the opposition, these witnesses did not introduce any testimony to impugn the facts sought to be established by applicants evidence on the existence of a public need for more buses on the Manila-Olongapo City and vice versa line. Rather, these two witnesses testified mainly on the conditions obtaining on the Balanga-Dinalupihan to Olongapo City line. So far, therefore, there is nothing on record to dispute the prima facie facts established by applicant's evidence that there is urgent public need for the proposed extension of line from Manila-San Fernando to Olongapo City.

Verily, the putting up of a direct bus service on the Manila-Olongapo City line will greatly ease the inconvenience presently encountered by commuters on these points. Moreover, the competition that will be engendered by the operation of a new operator on the Manila-Olongapo line will result in improved services on the line and break the present monopolistic hold the Victory Liner has on this line, all to the ultimate benefit of the riding public. In the light of the foregoing, we find the existence of urgent public need for the proposed service, Manila-San Fernando to Olongapo City, sufficient prima facie established.

On the extension of line from Balanga-Dinalupihan to Olongapo City, subject matter of Case No. 68-5614, applicants introduced three witnesses. The gist of applicants evidence shows that the oppositor Victory Liner is the only PUB operator operating a direct terminal to terminal service on said line; that the Rabbit operates on the Manila to Bataan line and none to Olongapo City; that the Saulog Transit operates on the Cavite City to Olongapo

Line but none going towards Bataan; that there are many people, mostly traders who travel from Olongapo City to Balanga because goods in the latter place are much cheaper; that although there are 'colorum' jeeps travelling from Balanga to Olongapo and vice-versa there are no authorized PUJ operators plying said route; that because there are many passengers taking the Victory Liner at its terminal in Olongapo, most of these passengers have to pay extra for the privilege of acquiring a seat on the bus; that the same condition obtains at the Balanga terminal of the Victory Liner for those who want to go to Olongapo; that the Victory Liner does not operate enough buses on the line to adequately meet the volume of passengers commuting therein.

On the other hand, the gist of the testimony of oppositors two witnesses so far introduced, who testified on the conditions of travelling from Olongapo City to Balanga and vice-versa, shows that there are few passengers commuting on the said line; that aside from the Victory Liner there are plenty of colorum jeeps operating on the Olongapo to Balanga line and vice-versa; that it is easy to take a ride and a comfortable one at that at either terminal of the Victory Liner in Balanga or Olongapo; that aside from the Victory Liner and colorum jeeps there are many other PUJ jeeps operating on intermediate points on the line Balanga to Olongapo and vice-versa; that the present number of buses being operated by the Victory Liner on the Olongapo to Balanga line and vice-versa is more than sufficient to meet adequately the volume of passengers travelling on this line.

Between these two conflicting sets of testimony, the Commission believes, that at this stage, there is not enough evidence to destroy the prima facie facts established by applicant's evidence. The assertion by applicants that there are colorum jeeps operating on this line and admitted by oppositors witnesses, to our mind, is a persuasive proof that there are many passengers commuting therein which cannot be adequately accommodated by the Victory Liner. The operation of four more PUB units serving directly the Balanga to Olongapo line will ease the monopolistic hold of the Victory Liner on the line, encourage fair competition and give passengers an alternative to choose the bus most convenient for their purpose. Consequently we find urgent need for the proposed extension of line Balanga-Dinalupihan to Olongapo City sufficiently prima facie established. In the light of the foregoing discussion we find the 3 requisites for the proper issuance of a provisional authority present in the case at bar. (pp. 81-85, Rollo.)

In essence, petitioner alleges denial of due process since the ponente assigned to hear and decide the cases below abstained for no apparent reason, apart from the absence of the conditions sine qua non for granting the provisional permit in favor of private respondents. On October 13, 1971, this Court enjoined public respondent from implementing the assailed order until further notice (p. 95, Rollo).

What seems to be the source of petitioner's aspersion of unfair play that supposedly characterized the proceedings below is the demeanor of Associate Commissioner Josue L. Cadiao when he refrained from participating in the resolution of the assailed order despite the fact that the cases were assigned to him for deliberation (pp. 41-43, Rollo). While it may be observed that said respondent's conduct in shirking his responsibility is not worth emulating, it is nonetheless not sufficient to render the order ineffective inasmuch as the competencia to rule on the matter is conferred upon any of the remaining commissioners comprising the Division acting either individually or jointly:

"All the powers herein vested upon the Commission shall be considered vested upon any of the Commissioners, acting either individually or jointly as hereinafter provided. The Commissioners shall equitably divide among themselves all pending cases and those that may hereafter be submitted to the Commission, in such manner and form as they may determine, and shall proceed to hear and determine case assigned to each or to their respective divisions, or to the Commission en banc as follows: uncontested cases, except those pertaining to the fixing of rates, shall be decided by one Commissioner; contested cases and all cases involving the fixing of rates shall be decided by the Commission in division and the concurrence of at least two Commissioners in the division shall be necessary for the promulgation of a decision or

non-interlocutory order in these cases: Provided, however, That any motion for reconsideration of a decision or non-interlocutory order of any Commissioner or division shall be heard directly by the Commission en banc and the concurrence of at least four Commissioners shall be necessary for the promulgation of a final decision or order resolving such motion for reconsideration. (Section 3, C.A. No. 146, as amended by R.A. No. 178, 723, and 2677).

Withal, it has been stressed that any Commissioner may decide a case pending before the Commission whether or not he heard the evidence therein (*San Miguel Brewery vs. Espiritu*, 60 Phil. 745 [1934]; *Manila Yellow Taxicab Co. vs. Barredo*, 58 Phil. 385 [1933]; *Orlanes and Banaag Trans. Co. vs. Public Service Commission*, 57 Phil. 634 [1932]; 4 *Agbayani, Commentaries and Jurisprudence on Commercial Laws*, 1983 Ed., p. 329). It is needless to emphasize that what does not square with due process is absolute want of opportunity to be heard unlike in the proceedings below wherein Hearing Officer Vitaliano Santos was delegated to conduct the hearings during which the parties were given the chance to ventilate their views and evidence preparatory to submission of the diverse disputations to the Commission for decision (Section 32, C.A. 146 as amended by Rep. Act No. 723, approved on June 6, 1952; *Jaculina vs. National Police Commission*, 200 SCRA 489 [1991]).

We now tackle the aspect of whether the Commission properly issued the provisional permit in favor of private respondents as tested by the elements necessary to justify such temporary relief.

There is no doubt that the proceedings below were conducted at a snail's pace but what escaped the attention of public respondents was the fact that the hearings were impeded not only on account of petitioner's deferment but were significantly retarded by private respondents' indifference. It is to be noted that private respondents, as applicants, filed their causes of action as early as January 1968 and, as observed by the Commission itself, it took private respondents a year plus nine months before they finally submitted their evidence. In other words, the Commission could not have utilized the postponements caused mainly by private respondents to appreciate the so-called "undue delay" as to warrant immediate issuance of the provisional authority. Otherwise, every applicant can capitalize on its own sluggishness so as to secure prompt relief triggered by its own sinister, nay, hidden agenda.

Relative to the financial status of private respondents, the Commission assumed the solvency of the proponents from the mere fact that they have been in the transportation business for quite some time and that the services will not entail additional investments on their part. But the needle of the compass points to the opposite direction, so to speak, given the cold assertions put forward by private respondents. A contrario, private respondents' pretense of sufficient liquidity and ability to provide additional services is belied by an event which supervened the assailed order whereby private respondents sought the temporary suspension of operations for the purpose of effecting much needed improvement of their units, shop facilities, equipment, and terminals. Private respondents further requested that the Cagayan Valley Transportation Co., fill the hiatus along the same routes until they can resume normal operations (p. 3, Supplemental Memorandum; p. 190, Rollo). A request of this nature is pregnant with the admission that indeed their solvency is questionable, especially so when they simply alleged in their petition for provisional authority to operate "that financial capacities of the applicants herein as established bus service operators, have been recognized" by the Public Service Commission (p. 2, Petition for Provisional Authority to Operate; p. 46, Rollo). Furthermore, another crucial point levelled against private respondents which remained unanswered adequately, is that out of the 782 units comprising the combined number of buses belonging to private respondents, 435 thereof had been placed in storage, thereby implying that private respondents are not that serious in their intent to undertake the operation of additional lines (Annexes "I" and "J", Petition; pp. 66-67, Rollo).

In view of the foregoing premises, it is virtually unnecessary for us to proceed with the discussion of the third

requisite anent public demand for the projected services. Verily, not long after it filed its petition to suspend operations temporarily, or more than 20 years ago, La Mallorca-Pambusco stopped operating and has not since then resumed business activities.

WHEREFORE, the petition is hereby GRANTED. The Order dated October 4, 1971 is hereby REVERSED and SET ASIDE.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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