

PANTRANCO SOUTH EXPRESS, INC., PETITIONER, VS. BOARD OF TRANSPORTATION AND BATANGAS LAGUNA TAYABAS BUS CO., INC., RESPONDENTS.

G.R. Nos. 49664-67. November 22, 1990

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari and/or prohibition with prayer for the issuance of a restraining order seeking to annul the order of public respondent Board of Transportation dated January 4, 1979.

The antecedent facts, as culled from the pleadings, are as follows:

On August 5, 1971, the then Public Service Commission granted certificates of public convenience to private respondent Batangas Laguna Tayabas Bus Co., Inc. (BLTB) for the operation of twelve (12) bus units on the Pasay City - Legaspi City line (Case No. 70-5749); six (6) bus units on the Pasay City - Bulan, Sorsogon line (Case No. 70-5750), and ten (10) bus units on the Pasay City - Sorsogon line (Case No. 70-5751) (pp. 59-64, Rollo).

On April 4, 1975, petitioner Pantranco South Express, Inc. (PANTRANCO) filed a complaint against BLTB before public respondent Board of Transportation (BOT), docketed as Case No. 75-31-C, charging it with abandonment of services on said lines from August, 1971 to April, 1975 and praying for the cancellation of BLTB's certificates of public convenience (pp. 69-70, Rollo).

On March 24, 1976, in Cases Nos. 70-5749, 70-5750 and 70-5751, PANTRANCO filed an urgent petition charging BLTB with abandoning said services from March, 1975 to March, 1976 and reiterating its prayer for the cancellation of the certificates of public convenience (pp. 77-78, Rollo).

BLTB did not file any written answer either to the complaint in Case No. 75-31-C or to the urgent petition in Cases Nos. 70-5749, 70-5750, and 70-5751. Rather, in a Motion dated July 26, 1978, BLTB, referring to hearings before the BOT on March 24, 1977 and April 13, 1977, alleged (pp. 126-128, Rollo):

“3. At said hearings, Respondent admitted non-operation of the bus services authorized in Cases Nos. 70-5749, 70-5750 and 70-5751 and thus the need for Complainant to present evidence in both proceedings may be dispensed with.

“4. At the said hearings, Respondent advanced affirmative defenses on Complainant's Urgent Motion of March 24, 1977 (sic) which Respondent, in its Rejoinder of May 5, 1977, adopted also as its affirmative defenses with respect to Case No. 75-31-C.

"Briefly, these affirmative defenses are:

(a) Respondent actually registered under PUB denomination all the twenty eight (28) buses authorized for operation under the certificates sought to be cancelled (Annex 'A');

(b) The following supervening factors which are beyond Respondent's control however, arose and prevented Respondent from operating the lines at issue:

- (1) The gasoline crises starting 1971;
- (2) The destructive big floods in 1972 and 1974;
- (3) The general troubled conditions of peace and order in 1971 and 1972 leading to the declaration of martial law;
- (4) Starting 1973 and on to 1974, 1975 and 1976 the nearly prohibitive cost of units and spare parts (if available at all), the higher costs of operations and acute tire shortages particularly in 1974;
- (5) All these, which are of general public knowledge and known to the Board, brought the whole land transportation industry in what might be termed as in extremis condition causing the bankruptcy of many operators, big and small; and
- (6) Complainant Pantranco South Express, Inc. was not spared the ill effects of these adverse conditions to the extent that up to the present it has not registered all the buses required for its regular bus operations (Annex 'B', 'B-1').

"5. At the said hearings also, Respondent prayed that these incidents in these proceedings be considered and, decided in the light of present conditions which are:

- (a) The certificates of public convenience of Respondent are still valid;
- (b) Respondent is willing and desirous to operate (sic) the said certificates;
- (c) Respondent has the capability to operate, in fact, has ready the full twenty-eight (28) buses needed for full operation of the authorized services;
- (d) Complainant is not operating all its authorized bus services for lack of sufficient rolling stock;
- (e) The need for the services sought to be cancelled is patent, in fact, urgent at the present time; and
- (f) That the public interest is paramount against other considerations such as the incidents in these cases."

On January 4, 1979, the BOT issued an order, the dispositive portion of which reads (p. 133, Rollo):

"In view of all the foregoing, this Board, in addition to its rulings mentioned above -

"1. Orders respondent to operate within fifteen (15) days from date hereof the whole complement of twenty-eight (28) units authorized under the said certificates, utilizing for the purpose such units presently authorized as RESERVES and inform the Board within ten (10) days from commencement of operation, the makes and motor numbers of the units to be operated for each line and the case numbers under which they are authorized for appropriate entry in the records of the above-entitled cases, and

"2. Orders the fine of P10,000.00 imposed above to be paid to this Board within ten (10) days from receipt by it of a copy of this Order and declares the consolidated complaints filed in the above-entitled cases closed and terminated.

"Failure of respondent/applicant to comply with any of the foregoing requirements shall be considered sufficient cause for this Board to withdraw the authority herein granted.

"SO ORDERED."

It rationalized the non-cancellation of BLTB's certificates of public convenience, as follows (pp. 128 A - 133, Rollo):

"Obviously, cancellation of a certificate of public convenience is a penalty of the severest degree. Its consequences are suffered not exclusively by the operator; it extends to the travelling public whose needs for transportation facilities would further be aggravated by a diminution of needed services. Consequently, where such a penalty is prayed for, this Board requires the evidence to be strong. Less than that this Board must apply the less severe penalties provided for by law, but equally disciplinary in nature.

"Sec. 16 (n) of the Public Service Law empowers this Board 'to suspend or revoke any certificate x x x whenever the holder thereof has violated or willfully (sic) and contumaciously refused to comply with any order, rule or regulation of the Board or any provision of this Act. x x x'

"Sec. 21 of the same law provides that 'every public service violating or failing to comply with the terms and conditions of any certificate or any orders, decisions or regulations of the Commission shall be subject to a fine not exceeding two hundred pesos per day for every day of service during which such default or violation continues x x x'

"A reading of both provisions would show that failure to comply with the terms and conditions of any certificate of public convenience is basically punished with a fine, unless the violation is wilful or contumacious, in which case the penalty of suspension, or cancellation may be imposed.

"Judged by the foregoing standards, this Board declares the evidence of the complainant to be sadly lacking in elements that would qualify the respondent's failure to operate as wilful and contumacious. True the respondent did not operate on its certificate from the time it was granted on August 4, 1971 up to the present. It had not justified its non-operation from said date up to September 2, 1972. But on September 2, 1972, the respondent justified its non-operation by writing to the Board, that because of unfinished portions of the road it could not render the service authorized by the Board to be rendered. The Board never overruled the respondent.

"x x x.

"At this point, it must be borne in mind that whether in the case of application for new services, or for the cancellation of lines already granted, this Board must determine what the public need is.

"This leads us into discussing what the public need is in the areas covered by the certificates of public convenience in question.

"The Board, in its desire to be responsive to public need, has always kept itself informed of actual and latest transportation conditions in the provinces, including the Bicol region. Thru reports/complaints from the general public, from reports of its fieldmen, and from its own personal observations acquired thru inspection trips, this Board is aware that buses which are operating are very much less than what has been authorized. This was officially confirmed in a meeting of provincial and Metro-Manila bus operators held in Malacañang Palace on June 21, 1976, presided over by His Excellency, President Ferdinand E. Marcos himself.

"In Bicol region, for instance, in the past four years (1974, 1975, 1976 and 1977) PSEI (PANTRANCO) registered and operated less than 50% of its authorized units:

Year

Authorized Units

Registered

1974

466

159 units

1975

(not available)

162 units

1976

453

227 units

1977

464

221 units

and among the lines not so operated or only partially operated, either through expiration of certificates, petitioned suspension of operation or for sheer lack of units are long distance lines from Manila to the provinces of Quezon, Camarines Norte, Camarines Sur, Albay and Sorsogon aside from lines serving inter-provincial and local needs in Quezon province and the whole Bicol Region. Among them are the following lines which are concurrent in whole or in portions of the lines Pasay City - Legaspi City, Pasay - Sorsogon and Pasay - Bulan, all the said lines requiring the operation of some two hundred twenty seven (227) buses:

“x x x.

"The non-operation by PSEI (PANTRANCO) of these more than two hundred (200) buses clearly requires the entry or operation of an equal number of buses. Any prohibition against an effort to fill up a public need would be contrary to public interest.

"Public interest will better be served if respondent is allowed to operate the service authorized in its certificate of public convenience. To cancel these certificates at a time when the clamor and demand for such service have been increasing day to day, prodded by the people's desire to avail of the excellent road conditions, which in turn conduces to fast and convenient travel, would be to negate and turn back the clock of progress which has been seeping steadily and constantly to the long neglected vast communal area that is the Bicol Region. To authorize the operation of these services will complement the government's multi-purpose development effort to hasten the Socio-Economic growth of these areas, notable among which are the Philippines-Japan Friendship Highway, of which the routes covered by applicant/respondent's certificates traverse and the Bicol River Basin Development Project, a program designed to tap the rich natural resources of the region."

Hence, the present petition.

On January 15, 1979, We issued a temporary restraining order enjoining the BOT from enforcing its January 4, 1979 order (pp. 147-148, Rollo).

In this petition, PANTRANCO imputes grave abuse of discretion, acting without or in excess of jurisdiction on the part of the BOT when it issued the questioned order, as indicated by several circumstance that it enumerated. Among these, only the following deserve discussion:

- 1) refusal to cancel the certificates of public convenience of BLTB despite its abandonment and/or non-operation on the subject lines since August 5, 1971 up to the present;
- 2) using as basis for its questioned order BLTB's letter dated September 2, 1972 (wherein it justified its non-operation on account of unfinished portions of the road) which is not part of the records of the case; and

3) resorting to extraneous facts not supported by competent evidence as basis for its conclusion that the demand of public need would be more paramount than the need to penalize BLTB.

For its part, BLTB contends that:

- 1) the cancellation or non-cancellation of its certificates of public convenience is addressed to the sound discretion of the BOT;
- 2) its letter dated September 18, 1972 (erroneously referred to as the letter dated September 2, 1972) forms part of the BOT's records; and
- 3) the BOT acted correctly in the exercise of its sound discretion and within its jurisdiction when it found that the demand of public need would be paramount than the need to penalize it (BLTB).

There can be no dispute that the law (Section 16(n) of the Public Service Act) gives to the BOT (successor of the Public Service Commission)* ample power and discretion to decree or refuse the cancellation of a certificate of public convenience issued to an operator as long as there is evidence to support its action, as held by this Court in a long line of cases, wherein it was even intimated that in matters of this nature so long as the action is justified this Court will not substitute its discretion for that of the BOT (see *Javier, et al. v. de Leon, et al.*, 109 Phil. 751; *Santiago Ice Plant and Co. v. Lahoz*, 87 Phil. 221; *Raymundo Transportation Co. v. Cedra*, 99 Phil. 99; *Manila Yellow Taxicab Co., Inc. v. Castelo*, 108 Phil. 394; *Dagupan Ice Plant Co., Inc. v. de Lucero, et al.* citing *Manila Yellow Taxicab Co., Inc., et al. v. Araullo*, 34 O.G. 241; *Sambrano v. Northern Luzon Transportation Co.*, 35 O.G. 2271). The BOT, in refusing to cancel the certificates of public convenience of BLTB, relied on these pieces of evidence: (1) the letter of BLTB dated September 18, 1972; (2) reports/complaints from the general public; (3) reports of its fieldmen; and (4) its own observations acquired thru inspection trips, all of which form part of its records. As We have ruled before, the BOT is particularly a fact-finding body whose decisions on questions regarding certificates of public convenience are influenced not only by the facts as disclosed by the evidence in the case before it but also by the reports of its field agents and inspectors that are periodically submitted to it (see *La Mallorca and Pampanga Bus Co., Inc. v. Mercado*, G.R. No. L-19120, November 29, 1965, 15 SCRA 343). Likewise, the BOT has the power to take into consideration the result of its own observation and investigation of the matter submitted to it for decision, in connection with other evidence presented at the hearing of a case (*Manila Yellow Taxicab Co., Inc., et al. v. N. & B. Stables Co., Inc.*, 60 Phil. 851 citing *Manila Yellow Taxicab Co., Inc., et al. v. Danon*, 58 Phil. 75; *Manila Electric Co. v. Balagtas*, 58 Phil. 429).

Taking into consideration BLTB's letter dated September 18, 1972, it acted in good faith when it did not immediately operate on those lines and not because of a design to prejudice public interest. Certificates of public convenience involve investment of a big amount of capital, both in securing the certificate and in maintaining the operation of the lines covered thereby, and mere failure to operate temporarily should not be a ground for cancellation, especially as when, in the case at bar, the suspension of the service was directly caused by circumstances beyond the operator's control (*Pangasinan Transportation Co. v. F.F. Halili, et al.*, 95 Phil. 694). In the absence of showing that there is willful and contumacious violation on the part of the utility operator, no certificate of public convenience may be validly revoked (*Manzanal v. Ausejo, et al.*, G.R. No. L-31056, August 4, 1988, 164 SCRA 36). More importantly, what cannot be ignored is that the needs of the public are paramount, as elucidated by the BOT in its order. In the exercise of its power to grant or cancel certificates of public convenience, the BOT is guided by public necessity and convenience as primary considerations (see *Dizon v. Public Service Commission, et al.*, G.R. No. L-34820, April 30, 1973, 50 SCRA 500).

Apparently, PANTRANCO's purpose in instituting the proceedings for cancellation of BLTB's certificates of public convenience is to remove it (BLTB) as a competitor in the business in which they are both engaged (see

Pangasinan Transportation Co. v. F.F. Halili, et al., supra), which is detestable. Experience has demonstrated that healthy competition always redounds to the benefit of the commuters and the development of transportation as a whole.

ACCORDINGLY, the petition is hereby DISMISSED. The order of the Board of Transportation dated January 4, 1979 is AFFIRMED. The temporary restraining order issued on January 15, 1979 is LIFTED.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

* On September 23, 1972, Presidential Decree No.1 was promulgated reorganizing the executive branch of the national government. The Public Service Commission was then abolished. Its functions were transferred to three specialized regulatory boards, namely, the Board of Transportation, Board of Communications and Board of Power and Waterworks. On June 19, 1987, Executive Order No. 202 was issued creating the Land Transportation Franchising and Regulatory Board (LTFRB) which now exercises the powers and functions of the BOT.

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