

SECOND DIVISION

[G.R. No. 242860, March 11, 2019]

THE LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD (LTFRB) AND THE DEPARTMENT OF TRANSPORTATION (DOTR), PETITIONERS, VS. HON. CARLOS A. VALENZUELA, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF MANDALUYONG CITY, BRANCH 213 AND DBDOYC, INC., RESPONDENTS.

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for *certiorari*^[1] is the Order^[2] dated August 20, 2018 (Assailed Order) rendered by public respondent Judge Carlos A. Valenzuela of the Regional Trial Court of Mandaluyong City, Branch 213 (RTC) in R-MND-18-01453-SC which directed the issuance of a writ of preliminary injunction in favor of private respondent DBDOYC, Inc. (DBDOYC) essentially enjoining petitioners the Land Transportation Franchising and Regulatory Board (LTFRB) and the Department of Transportation (DOTr; collectively, petitioners) from regulating DBDOYC's business operations conducted through the *Angkas* mobile application.

The Facts

On May 8, 2015, the Department of Transportation and Communications (DOTC), the predecessor of DOTr, issued Department Order No. (DO) 2015-11,^[3] amending DO 97-1097,^[4] which set the standard classifications for public transport conveyances to be used as basis for the issuance of a Certificate of Public Convenience (CPC)^[5] for public utility vehicles (PUVs). In recognition of technological innovations which allowed for the proliferation of new ways of delivering and offering public transportation, the DOTC, through DO 2015-11, created two (2) new classifications, namely, **Transportation Network Companies (TNC) and Transportation Network Vehicle Service (TNVS).**^[6]

Under DO 2015-11, a TNC is defined as an **"organization whether a corporation, partnership, sole proprietor, or other form, that provides pre-arranged transportation services for compensation using an online-enabled application or platform technology to connect passengers with drivers using their personal vehicles."**^[7] Although DO 2015-11 made mention of TNVS, the term was not clearly defined until June 19, 2017, when the DOTr issued DO 2017-11^[8] which set the rules and procedures on the issuance of franchises for public transport routes and services,^[9] including TNCs and TNVS. Under DO 2017-11, TNVS is defined as **"a [PUV] accredited with a [TNC], which is granted authority or franchise by the LTFRB to run a public transport service."**^[10] DO 2017-11 further provided in Item 2.2 thereof that **"[m]otorcycles x x x are**

likewise not allowed as public transport conveyance."^[11]

Consequently, the LTFRB issued various memorandum circulars^[12] to govern the issuance of the necessary CPC for a TNVS and the accreditation of a TNC. In its issuances, the LTFRB declared that a TNC is treated as a transport provider.^[13] whose accountability commences from the acceptance by its TNVS while online.^[14] On the other hand, the accountability of the TNVS, as a common carrier, attaches from the time the TNVS is online and offers its services to the riding public.^[15]

Meanwhile, on May 26, 2016, DBDOYC registered its business with the Securities and Exchange Commission (SEC), and subsequently, in December 2016, launched "Angkas, an online and on-demand motorcycle-hailing mobile application (Angkas or Angkas app) that pairs drivers of motorcycles with potential passengers without, however, obtaining the mandatory certificate of TNC accreditation from the LTFRB." In this regard, DBDOYC accredited *Angkas* drivers and allowed them to offer their transport services to the public despite the absence of CPCs.^[16]

Cognizant of the foregoing, the LTFRB issued a press release on January 27, 2017 informing the riding public that DBDOYC, which is considered as a TNC, cannot legally operate.^[17] Despite such warning, however, DBDOYC continued to operate and offer its services to the riding public *sans* any effort to obtain a certificate of TNC accreditation.^[18]

In response, DBDOYC, on July 4, 2018, filed a Petition for Declaratory Relief with Application for Temporary Restraining Order/Writ of Preliminary Injunction^[19] against petitioners before the RTC alleging that:

(a) it is not a public transportation provider since *Angkas* app is a mere tool that connects the passenger and the motorcycle driver; (b) *Angkas* and its drivers are not engaged in the delivery of a public service; (c) alternatively, should it be determined that it is performing a public service that requires the issuance of a certificate of accreditation and/or CPC, then DO 2017-11 should be declared invalid because it violates Section 7 of Republic Act No. (RA) 4136 or the "Land and Transportation Traffic Code,"^[20] which does not prohibit motorcycles from being used as a PUV; and (d) neither the LTFRB nor the DOTr has jurisdiction to regulate motorcycles for hire.^[21]

The RTC Proceedings and The Assailed Order

In an Order^[22] dated July 13, 2018, the RTC issued a Temporary Restraining Order (TRO) finding DBDOYC's business not subject to any regulation nor prohibited under existing law. It added that since the use of DBDOYC's internet-based mobile application is not contrary to law, morals, good customs, public order, or public policy,^[23] a clear and unmistakable right has been established in favor of DBDOYC such that if petitioners prohibit the operation of *Angkas*, the same would cause irreparable injury to the company.^[24]

Proceedings were thereafter conducted relative to the application for a writ of preliminary injunction. Eventually, through the Assailed Order,^[25] the RTC issued

the said writ to enjoin petitioners and anyone acting on their behalf: (a) from interfering, whether directly or indirectly, with DBDOYC's operations; (b) from apprehending *Angkas* bikers who are in lawful pursuit of their trade or occupation based on *Angkas* mobile application; and (c) from performing any act/acts that will impede, obstruct, frustrate, or defeat DBDOYC's pursuit of its lawful business or trade as owner and operator of *Angkas*.^[26]

In so ruling, the RTC found that DBDOYC has a clear and unmistakable right "to conduct its business based on its constitutional right to liberty," which includes "the right of an individual to x x x earn his livelihood by any lawful calling; [and] to pursue any [vocation] and essentially to do and perform anything unless otherwise prohibited by law."^[27] In this light, the RTC concluded that DBDOYC has a right to enter into an independent contract with its *Angkas* riders as an application provider, further reiterating that DBDOYC's business is not yet subject to any regulation nor prohibited by any existing law, and that the *Angkas* biker's offer of transportation services to a potential passenger is a purely private arrangement using DBDOYC's application.^[28] Thus, should petitioners prohibit DBDOYC from operating *Angkas*, an irreparable injury will result, thereby entitling it to the issuance of the injunctive relief prayed for.^[29]

Aggrieved, petitioners are now before the Court ascribing grave abuse of discretion on the part of the RTC in issuing the writ of preliminary injunction through the Assailed Order. Notably, in the present petition, petitioners sought the issuance of a TRO to enjoin the RTC from enforcing its injunctive writ, which the Court granted in a Resolution^[30] dated December 5, 2018.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the RTC committed grave abuse of discretion amounting to lack or in excess of jurisdiction in issuing a writ of preliminary injunction in favor of DBDOYC and against petitioners.

The Court's Ruling

Preliminarily, despite the absence of the required prior motion for reconsideration,^[31] the Court finds it proper to give due course to the petition in view of the public interest involved, and further, the urgent necessity of resolving this case so as not to prejudice the interests of the government.^[32]

The petition is meritorious.

Case law states that "grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence."^[33] According to its classic formulation:

By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to

amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.^[34]

In ruling on whether or not the RTC gravely abused its discretion in this case, the Court turns to the basic principles governing the issuance of preliminary injunctive writs.

The first and foremost requisite in the issuance of a writ of preliminary injunction is the **existence of a clear legal right**. The rationale therefor hews with the nature of these writs being mere provisional reliefs. In *Department of Public Works and Highways v. City Advertising Ventures Corporation*,^[35] the Court explained that a writ of preliminary injunction is issued to:

[P]revent threatened or continuous irremediable injury to some of the parties *before their claims can be thoroughly studied and adjudicated*. Its sole aim is to preserve the status quo until the merits of the case can be heard fully[.] **Thus, it will be issued only upon a showing of a clear and unmistakable right that is violated.** Moreover, an urgent necessity for its issuance must be shown by the applicant.^[36] (Emphasis and underscoring supplied)

In *Spouses Nisce v. Equitable PCI Bank, Inc.*,^[37] the Court held that "[t]he plaintiff praying for a writ of preliminary injunction must x x x establish[, *inter alia*,] that he or she has a **present and unmistakable right to be protected; x x x [t]hus, where the plaintiffs right is doubtful or disputed, a preliminary injunction is not proper**. The possibility of irreparable damage without proof of an actual existing right is not a ground for a preliminary injunction."^[38]

In this case, the RTC premised its issuance of the assailed injunctive writ on DBDOYC's purported clear and unmistakable legal right "to conduct its business based on its constitutional right to liberty."^[39] Prescinding therefrom, the RTC concludes that DBDOYC has "the right to enter into an independent contract with its *Angkas* bikers as an [application] provider [without] initially requiring it to secure [a CPC]."^[40]

As in all fundamental rights, the State has a legitimate interest in regulating these rights when their exercise clearly affects the public. To recount, "[p]olice power is the inherent power of the State to regulate or to restrain the use of liberty and property for public welfare."^[41] Accordingly, the State "may interfere with personal liberty, property, lawful businesses and occupations to promote the general welfare [as long as] the interference [is] reasonable and not arbitrary."^[42]

Here, it is petitioners' position that **DBDOYC is a transportation provider and its accredited drivers are common carriers** engaged in rendering **public service which is subject to their regulation**.^[43] The regulatory measures against DBDOYC, as mentioned above, pertain to DOs 2015-11 and 2017-11, which have created new classifications of transportation services, namely TNC and TNVS, in light of modern innovations. These issuances may be traced to Commonwealth Act No. 146,^[44] otherwise known as the "Public Service Act," as amended.^[45] Under Section 13 (b) thereof, a "public service" is defined as follows:

(b) The term "public service" includes every person that now or hereafter **may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier**, railroad, street railway, traction railway, sub-way motor vehicle, either **for freight or passenger, or both with or without fixed route and whatever may be its classification**, freight or carrier service of any class, express service, steamboat or steamship line, pontines, ferries, and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine railway, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas electric light, heat and power, water supply and power, petroleum, sewerage system, wire or wireless communications system, wire or wireless broadcasting stations and other similar public services; *Provided, however*, That a person engaged in agriculture, not otherwise a public service, who owns a motor vehicle and uses it personally and/or enters into a special contract whereby said motor vehicle is offered for hire or compensation to a third party or third [parties] engaged in agriculture, not itself or themselves a public service, for operation by the latter for a limited time and for a specific purpose directly connected with the cultivation of his or their farm, the transportation, processing, and marketing of agricultural products of such third party or third parties shall not be considered as operating a public service for the purposes of this Act. (Emphases and underscoring supplied).

Section 15 of the same law requires that, except for certain exemptions, no public service shall operate in the Philippines without possessing a CPC.^[46] In turn, the then DOTC (which had supervision and control over the LTFRB that had assumed certain powers of the old Public Service Commission^[47]) issued DO 97-1097 providing for the standard classifications of all PUVs before they can be issued a CPC. This department order was later amended by the above-stated DOs 2015-11 and 2017-11 and thereafter, the LTFRB issued various memorandum circulars governing the rules for TNC and TNVS accreditation, which rules DBDOYC purportedly failed to comply.

As stated in the Public Service Act, the term "public service" covers any person who owns, operates, manages, or controls in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, **any common carrier**.^[48] The Civil Code defines "common carriers" in the following terms:

Article 1732. Common carriers are persons, corporations, firms or associations **engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air for compensation, offering their services to the public.** (Emphases supplied)

For its part, DBDOYC claims reprieve from the above-stated regulatory measures, claiming that it and its accredited drivers are not common carriers or transportation providers.^[49] It argues that "[its] technology [only] allows a biker willing to give a ride and a passenger willing to pay the set price to meet and contract with each