

EN BANC

[G.R. NO. 148339, February 23, 2005]

LUCENA GRAND CENTRAL TERMINAL, INC., PETITIONER, VS. JAC LINER, INC., RESPONDENT.

DECISION

CARPIO-MORALES, J.:

Respondent, JAC Liner, Inc., a common carrier operating buses which ply various routes to and from Lucena City, assailed, via a petition for prohibition and injunction^[1] against the City of Lucena, its Mayor, and the Sangguniang Panlungsod of Lucena before the Regional Trial Court (RTC) of Lucena City, City Ordinance Nos. 1631 and 1778 as unconstitutional on the ground that, *inter alia*, the same constituted an invalid exercise of police power, an undue taking of private property, and a violation of the constitutional prohibition against monopolies. The salient provisions of the ordinances are:

Ordinance No. 1631^[2]

AN ORDINANCE GRANTING THE LUCENA GRAND CENTRAL TERMINAL, INC., A FRANCHISE TO CONSTRUCT, FINANCE, ESTABLISH, OPERATE AND MAINTAIN A COMMON BUS-JEEPNEY TERMINAL FACILITY IN THE CITY OF LUCENA

x x x

SECTION 1. – There is hereby granted to the Lucena Grand Central Terminal, Inc., its successors or assigns, hereinafter referred to as the “grantee”, a franchise to construct, finance, establish, operate, and maintain a common bus-jeepney terminal facility in the City of Lucena.

SECTION 2. – This franchise shall continue for a period of twenty-five years, counted from the approval of this Ordinance, and renewable at the option of the grantee for another period of twenty-five (25) years upon such expiration.

x x x

SECTION 4. – Responsibilities and Obligations of the City Government of Lucena. – During the existence of the franchise, the City Government of Lucena shall have the following responsibilities and obligations:

x x x

(c) It shall not grant any third party any privilege and/or concession to

operate a bus, mini-bus and/or jeepney terminal.

X X X

Ordinance No. 1778^[3]

AN ORDINANCE REGULATING THE ENTRANCE TO THE CITY OF LUCENA OF ALL BUSES, MINI-BUSES AND OUT-OF-TOWN PASSENGER JEEPNEYS AND FOR THIS PURPOSE, AMENDING ORDINANCE NO. 1420, SERIES OF 1993, AND ORDINANCE NO. 1557, SERIES OF 1995

X X X

SECTION 1. – The entrance to the City of Lucena of all buses, mini-buses and out-of-town passenger jeepneys is hereby regulated as follows:

(a) All buses, mini-buses and out-of-town passenger jeepneys shall be **prohibited from entering the city** and are hereby directed to proceed to the common terminal, for picking-up and/or dropping of their passengers.

(b) All temporary terminals in the City of Lucena are hereby **declared inoperable** starting from the effectivity of this ordinance.

X X X

SECTION 3. – a) Section 1 of Ordinance No. 1557, Series of 1995, is hereby amended to read as follows:

Buses, mini-buses, and jeepney type mini-buses from other municipalities and/or local government units going to Lucena City are directed to proceed to the Common Terminal located at Diversion Road, Brgy. Ilayang Dupay, to unload and load passengers.

X X X

c) Section 3 of Ordinance No. 1557, Series of 1995, is hereby amended to read as follows:

Passenger buses, mini-buses, and jeepney type mini-buses coming from other municipalities and/or local government units shall utilize the facilities of the Lucena Grand Central Terminal at Diversion Road, Brgy. Ilayang Dupay, this City, and **no other terminals shall be situated inside or within the City of Lucena;**

d) Section 4 of Ordinance No. 1557, Series of 1995, is hereby amended to read as follows:

Passenger buses, mini-buses, and jeepney type mini-buses coming from other municipalities and/or local government units shall avail of the facilities of the Lucena Grand Central Terminal which is hereby designated

as the officially sanctioned common terminal for the City of Lucena;

e) Section 5 of Ordinance No. 1557, Series of 1995, is hereby amended to read as follows:

The Lucena Grand Central Terminal is the permanent common terminal as this is the entity which was given the exclusive franchise by the Sangguniang Panglungsod under Ordinance No. 1631; (Emphasis and underscoring supplied)

These ordinances, by granting an exclusive franchise for twenty five years, renewable for another twenty five years, to one entity for the construction and operation of one common bus and jeepney terminal facility in Lucena City, to be located outside the city proper, were professedly aimed towards alleviating the traffic congestion alleged to have been caused by the existence of various bus and jeepney terminals within the city, as the "Explanatory Note"-Whereas Clause adopting Ordinance No. 1778 states:

WHEREAS, in line with the worsening traffic condition of the City of Lucena, and with the purpose of easing and regulating the flow of the same, it is imperative that the Buses, Mini-Buses and out-of-town jeepneys be prohibited from maintaining terminals within the City, but instead directing to proceed to the Lucena Grand Central Terminal for purposes of picking-up and/or dropping off their passengers;^[4]

Respondent, who had maintained a terminal within the city, was one of those affected by the ordinances.

Petitioner, Lucena Grand Central Terminal, Inc., claiming legal interest as the grantee of the exclusive franchise for the operation of the common terminal,^[5] was allowed to intervene in the petition before the trial court.

In the hearing conducted on November 25, 1998, all the parties agreed to dispense with the presentation of evidence and to submit the case for resolution solely on the basis of the pleadings filed.^[6]

By Order of March 31, 1999,^[7] Branch 54 of the Lucena RTC rendered judgment, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered, as follows:

1. Declaring City Ordinance No. 1631 as valid, having been issued in the exercise of the police power of the City Government of Lucena insofar as the grant of franchise to the Lucena Grand Central Terminal, Inc., to construct, finance, establish, operate and maintain common bus-jeepney terminal facility in the City of Lucena;
2. But however, declaring the provision of Sec. 4(c) of Ordinance No. 1631 to the effect that the City Government shall not grant any third party any privilege and/or concession to operate a bus, mini-

bus and/or jeepney terminal, as illegal and ultra vires because it contravenes the provisions of Republic Act No. 7160, otherwise known as "The Local Government Code";

3. Declaring City Ordinance No. 1778 as null and void, the same being also an ultra vires act of the City Government of Lucena arising from an invalid, oppressive and unreasonable exercise of the police power, more specifically, declaring illegal [sections 1(b), 3(c) and 3(e)];
4. Ordering the issuance of a Writ of Prohibition and/or Injunction directing the respondents public officials, the City Mayor and the Sangguniang Panglungsod of Lucena, to **cease and desist from implementing Ordinance No. 1778 insofar as said ordinance prohibits or curtails petitioner from maintaining and operating its own bus terminal** subject to the conditions provided for in Ordinance No. 1557, Sec. 3, which authorizes the construction of terminal outside the poblacion of Lucena City; and likewise, **insofar as said ordinance directs and compels the petitioner to use the Lucena Grand Central Terminal Inc., and furthermore, insofar as it declares that no other terminals shall be situated, constructed, maintained or established inside or within the City of Lucena;** and furthermore,
5. The Motion to Dismiss filed by the Intervenor, Lucena Grand Central Terminal Inc., dated October 19, 1998, is hereby DENIED for lack of merit.

SO ORDERED. (Emphasis and underscoring supplied)^[8]

Petitioner's Motion for Reconsideration^[9] of the trial court's order having been denied by Order of August 6, 1999,^[10] it elevated it via petition for review under Rule 45 before this Court.^[11] This Court, by Resolution of November 24, 1999,^[12] referred the petition to the Court of Appeals with which it has concurrent jurisdiction, no special and important reason having been cited for it to take cognizance thereof in the first instance.

By Decision of December 15, 2000,^[13] the appellate court dismissed the petition and affirmed the challenged orders of the trial court. Its motion for reconsideration^[14] having been denied by the appellate court by Resolution dated June 5, 2001,^[15] petitioner once again comes to this Court via petition for review,^[16] this time assailing the Decision and Resolution of the Court of Appeals.

Decision on the petition hinges on two issues, to wit: (1) whether the trial court has jurisdiction over the case, it not having furnished the Office of the Solicitor General copy of the orders it issued therein, and (2) whether the City of Lucena properly exercised its police power when it enacted the subject ordinances.

Petitioner argues that since the trial court failed to serve a copy of its assailed

orders upon the Office of the Solicitor General, it never acquired jurisdiction over the case, it citing **Section 22, Rule 3 of the Rules which provides:**

SEC. 22. *Notice to the Solicitor General.*—In any action involving the validity of any treaty, law, ordinance, executive order, presidential decree, rules or regulations, the court in its discretion, may require the appearance of the Solicitor General who may be heard in person or through representative duly designated by him. (Emphasis and underscoring supplied)

Furthermore, petitioner invokes Sections 3 and 4 of Rule 63 which respectively provide:

SEC. 3. *Notice on Solicitor General.* – In any action which involves the validity of a statute, executive order or regulation, or any other governmental regulation, the Solicitor General shall be notified by the party assailing the same and shall be entitled to be heard upon such question.

SEC. 4. *Local government ordinances.* – In any action involving the validity of a local government ordinance, the corresponding prosecutor or attorney of the local government unit involved shall be similarly notified and entitled to be heard. If such ordinance is alleged to be unconstitutional, the Solicitor General shall also be notified and entitled to be heard. (Emphasis and underscoring supplied)

Nowhere, however, is it stated in the above-quoted rules that failure to notify the Solicitor General about the action is a jurisdictional defect.

In fact, Rule 3, Section 22 gives the courts in any action involving the “validity” of any ordinance, *inter alia*, “discretion” to notify the Solicitor General.

Section 4 of Rule 63, which more specifically deals with cases assailing the *constitutionality*, not just the validity, of a local government ordinance, directs that the Solicitor General “shall also be notified and entitled to be heard.” Who will notify him, Sec. 3 of the same rule provides — it is the party which is assailing the local government’s ordinance.

More importantly, however, this Court finds that no procedural defect, fatal or otherwise, attended the disposition of the case. For respondent actually served a copy of its petition upon the Office of the Solicitor General on October 1, 1998, two days after it was filed. The Solicitor General has issued a Certification to that effect.

[17] There was thus compliance with above-quoted rules.

Respecting the issue of whether police power was properly exercised when the subject ordinances were enacted: As with the State, the local government may be considered as having properly exercised its police power only if the following requisites are met: (1) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State, and (2) the means employed are reasonably necessary for the attainment of the object sought to be accomplished and not unduly oppressive upon individuals. Otherwise stated, there must be a concurrence of a **lawful subject** and **lawful method**.^[18]

That traffic congestion is a public, not merely a private, concern, cannot be gainsaid.