AERO-MAYFLOWER TRANSIT COMPANY v. UNITED STATES

208 F. Supp. 303 (1962) | Cited 0 times | C.D. California | August 21, 1962

This is an action to review and annul two orders of theInterstate Commerce Commission entered on May 12 and December 26,1961, in its Docket No. MC-11,9049, granting T.E.K. Van Lines,Inc.'s application of July 10, 1959, under § 207 of theInterstate Commerce Act [49 U.S.C.A. § 307], to operate as acommon carrier by motor vehicle over irregular routes in thetransportation of "household goods" between points in Arizona,California, Idaho, Oregon, Utah and Washington, and betweenpoints in those States and points in Colorado, Louisiana,Missouri, Montana, New Mexico, Texas and Wyoming [T.E.K. VanLines, Inc., Common Carrier Application, 86 M.C.C. 139 (1961)].

Jurisdiction of this Court is invoked under 49 U.S.C.A. §§17(9) and 305(g), 28 U.S.C. § 1336, 1398, 2284, 2321-2325, and5 U.S.C.A. § 1009.

The material facts are not in dispute, and it would serve nouseful purpose to recount them here, other than to say that theorders under attack presage for plaintiffs a new competitor inthe business of "nationwide" and "coast-to-coast" transportationof "household goods". [See Movers' Conf. of America v. UnitedStates, 205 F. Supp. 82 (S.D.Cal. 1962).]

Plaintiffs' application to enjoin the Commission pendente litefrom issuing a certificate of convenience and necessity inaccordance with the challenged orders was denied at the outset ofthis proceeding, since it appeared to us interlocutorily that noprospect of irreparable injury to plaintiffs could be shown,beyond a possible loss of some trade which might be suffered byplaintiffs, if T.E.K. should proceed to operate under thecertificate before the case could be determined upon the merits.We therefore concluded, upon balance of probable detriment andinconvenience which would result, that the equities opposed thegranting of a preliminary injunction. [See Railway ExpressAgency, Inc. v. United States, Interstate Commerce Commission andUnited Parcel Service, by Harlan, J., 82 S.Ct. 466, 7 L.Ed. 432(1962).]

Briefly stated, plaintiffs' contentions here are that theCommission erred: (1) "in certificating a new carrier serviceabsent probative evidence that the services and abilities ofpresent carriers are deficient or inadequate, (2) incertificating a new carrier service without probative evidencereflecting a need for the service between the points socertificated, and (3) in making and relying upon evidentiaryfindings contrary to the record evidence".

Turning to the first contention, adequacy of the "services andabilities of present carriers" is only one phase of the problemthat confronted the Commission. [Cf. I.C.C. v. J-T Transport Co.,368 U.S. 81, 88, 82 S.Ct. 204, 7 L.Ed.2d 147 (1961).] Subject tothe restrictions of § 210 as to "dual operation", §207

declares that "a certificate shall be issued to any qualifiedapplicant therefor * * * if it is found * * * that the proposedservice * * * is or will be required by the present or futurepublic convenience and necessity * * *." [49 U.S.C.A. § 307; andsee id. § 310.]

Such a finding, the Court observed in United States v. Detroit,etc. Navigation Co., 326 U.S. 236, 66 S.Ct. 75, 90 L.Ed. 38(1945), "entails a prophecy so far as future requirements areconcerned. * * * If the Commission were required to deny theseapplications unless it found an actual inability on the part ofexisting carriers to acquire the facilities necessary for futuretransportation needs, a limitation would be imposed on the powerof the Commission which is not found in the Act. The Commissionis the guardian of the public interest in determining whethercertificates of convenience and necessity shall be granted. Forthe performance of that function the Commission has beenentrusted with a wide range of discretionary authority. * * *Forecasts as to the future are necessary to the decision." [326U.S. at 240-241, 66 S.Ct. at 77; see also: United States v.Pierce Auto Lines, 327 U.S. 515, 531-532, 66 S.Ct. 687, 90 L.Ed.821 (1946) ; I.C.C. v. Parker, 326 U.S. 60, 64, 65-66, 65 S.Ct.1490, 89 L.Ed. 2051 (1945); Lang Transportation Corp. v. UnitedStates, 75 F. Supp. 915, 929 (S.D.Cal. 1948).]

Here, as the Commission's report points out:

"Census statistics and growth rate projections for the western States, offered through an assistant professor of economics of a western university, show * * * that they had an aggregate population growth of 46 percent, as compared with a national growth rate of 14.5 percent between 1940 and 1950; that their growth rate exceeded the overall national growth by 30.8 percent to 15 percent between 1950 and 1957; and that the projected growth rate for each, with one exception, would exceed the projected national growth rate of 27.4 percent, for the period 1958 through 1975. This witness was of the opinion that the availability of adequate transportation would contribute to their development and growth." [86 M.C.C. at 143.]

Plaintiffs' second contention may also be answered in thelanguage of the Court: "To consider the weight of the evidencebefore the Commission, the soundness of the reasoning by whichits conclusions were reached, or whether the findings areconsistent with those made * * * in other cases, is beyond ourprovince." [Virginian R. Co. v. United States, 272 U.S. 658, 663,47 S.Ct. 222, 224, 71 L.Ed. 463 (1926); see also: UniversalCamera Corp. v. N.L.R.B., 340 U.S. 474, 488, 71 S.Ct. 456, 95L.Ed. 456 (1951); Rochester Tel. Corp. v. United States,307 U.S. 125, 139-140, 59 S.Ct. 754, 83 L.Ed. 1147 (1939); I.C.C. v. UnionPac. R. Co., 222 U.S. 541, 547-548, 38 S.Ct. 108, 56 L.Ed. 308(1912).]

We have been unable to find any basis for plaintiffs' thirdcontention that the Commission made and relied upon "evidentiaryfindings contrary to the record evidence". Nor does there appearany basis for criticism of the Commission's exercise ofdiscretion under § 5(2) [49 U.S.C.A. § 5(2)], in approving thecontrol of T.E.K. Van Lines, Inc., by other motor carriers [see:86 M.C.C. at 142, 147-148; McLean Trucking Co. v. United States,321 U.S. 67, 87, 64 S.Ct. 370, 88 L.Ed. 544 (1944)].

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Judging the orders of the Commission under review at bar, asall orders of the Commission are entitled to be judged, by "thereport, read as a whole" [United States v. Louisiana,290 U.S. 70, 80, 54 S.Ct. 28, 33, 78 L.Ed. 181 (1933)], and by "the recordas a whole out of which the report arose" [City of Yonkers v.United States, 320 U.S. 685, 695, 64 S.Ct. 327, 88 L.Ed. 400(1944)], the orders are supported by findings which are neitherarbitrary nor capricious, but are adequately sustained by therecord [cf. United States v. Carmack,329 U.S. 230, 243-244, 67 S.Ct. 252, 91 L.Ed. 209 (1946)]; andthere is rational basis for the administrative conclusion [Miss.Valley Barge Line Co. v. United States, 292 U.S. 282, 286, 287,54 S.Ct. 692, 78 L.Ed. 1260 (1934)].

"The judicial function is exhausted when there is found to be arational basis for the conclusions approved by the administrativebody." [Miss. Valley Barge Line Co. v. United States, supra, 292U.S. at 286-287, 54 S.Ct. at 693.]

This action to annul the Commission's orders of May 12 andDecember 26, 1961 [86 M.C.C. 139], must therefore be dismissed.

Solicitors for defendants will lodge with the Clerk findings offact, conclusions of law and judgment of dismissal pursuant toLocal Rule 7, West's Ann. Code, within ten days.