

96 Phil. 139

[G.R. No. L-5619. November 22, 1954]

BUTUAN SAWMILL, INC., RECURRENTE, CONTRA BAYVIEW THEATER CO., INC., RECURRIDA.

D E C I S I O N

PABLO, J.:

En 24 de julio de 1950 la Butuan Sawmill, Inc., presento una solicitud a la Comision de Servicios Publicos (causa No. 57855) pidiendo que se expidiese a su favor un certificado de conveniencia publica para instalar y operar una fabrica de fluido electrico en el municipio de Nasipit, Agusan, de acuerdo con la franquicia concedida por la Ley de la Republica No. 497. Contra esta solicitud se opuso la Bayview Theater Co. Inc., en 21 do septiembre del mismo ano, alegando que ya habia solicitado a la Comision, en la causa No. 57212, la aprobacion de la franquicia concedida a ella por el consejo municipal de Nasipit para instalar y operar una fabrica de fluido electrico en el mismo municipio; que despues de concedida la franquicia municipal coraenzo inmediatamente los trabajos de instalacion, y luego inauguró el servicio electrico en dicho municipio; que hasta entonces nadie habia pensado en proveer servicio electrico sino cuando la recurrida ya habia comenzado a suministrarlo.

Las dos causas fueron vistas conjuntamente en 3 de julio de 1951 ante el Comisionado Hon. Feliciano Ocampo, y parte de las pruebas fueron prescntadas ante el jefe de la division industrial de la Comision.

Sometidas las causas, la Comision de Servicios Publicos dicto sentencia en 1.º de marzo de 1952, denegando la solicitud de la Butuan

Sawmill, Inc. en la causa No. 57855 y concediendo la solicitud de la Bayview Theater, Co., Inc. en la causa No. 57212. Dentro del plazo reglamentario, la recurrente presento peticion de revision.

La recurrente alega que la Comision de Servicios Publicos erro (1) al sobreseer su solicitud por haber dejado de instalar y opcrar la fabrica de fluido electrico en el municipio de Nasipit dentro de un ano y medio desde la aprobacion de la franquicia legislativa, como lo exige el articulo 1.º de la Ley de la Republica No. 497; (2) al no declarar que la franquicia mediante ley concedida a la recurrente es preferente a la franquicia municipal concedida a la recurrida; y (3) que la decision es contraria a las pruebas obrantes en autos.

Las conclusiones de hecho de la Comision de Servicios Publicos son las siguientes:

“It appears from the records and the evidence presented at the hearing of these cases that, on November 5, 1948, the Municipal Mayor of Nasipit, on demand of the people, requested the Rayview Theater Co., Inc. to render electric service to the people of Nasipit; that the Bayview Theater Co., Inc., acting on said request of the Municipal Mayor applied to the Municipal Council of Nasipit for a special permit to install and operate its 10 Kva, generating1 unit in the municipality of Nasipit; that the special permit was granted by the Municipal Council of Nasipit in its Resolution No. 38, dated May 28, 1949, that by virtue of said special permit, Bayview Theater Co., Inc. installed and o operated its 10 Kva. generating unit and commenced the rendition of its service on August 15, 1949, and that the Bayview Theater Co., Inc., since the commencement of its operation has been and is at present continuously rendering electric service in Nasipit.

“On May 17, 1950 the Municipal Council of Nasipit granted Bayview Theater Co., Inc., a franchise in its Resolution No. 34. On May 30, 1950, the Provincial Board of Agusan passed Resolution No. 121, forwarding to the Public Service Commission Resolution No. 34, series of 1950, of the Municipal Council of Nasipit and recommending its approval. The Bayview

Theater Co., Inc., filed its application in Case No. 57212 on June 6, 1950. In a letter dated June 23, 1950, the Commission advised the Bayview Theater Co., Inc., to secure from the Provincial Board of Agusan express approval and not just a recommendation for approval of its municipal franchise. On June 7, 1950, the Municipal Council of Nasipit passed Resolution No. 37 protesting to the President of the Philippines against the approval of House Bill No. 591, granting a franchise to Butuan Sawmill, Inc. The Bill was signed by the President and became Act No. 497 on June 12, 1950. In view of the enactment of Act No. 497, the Provincial Board of Agusan adopted Resolution No. 142 on June 30, 1950 disapproving the action taken by the Municipal Council of Nasipit in protesting against the approval of the bill granting the franchise to Butuan Sawmill, Inc. On July 11, 1950, however the Provincial Board passed Resolution No. 150, approving Resolution No. 34, dated May 17, 1950, of the Municipal Council of Nasipit, granting the franchise to Bayview Theater Co., Inc. The Butuan Sawmill, Inc., filed its application in Case No. 57855 on July 24, 1950.

“Bayview

Theater Co., Inc., is a corporation duly registered in the Securities and Exchange Commission, 90% of the capital of which are owned by Filipino citizens. The authorized capital of the Company is P50,000, At the time of incorporation, the subscribed capital was P14,650 Ibid the paid-up capital was P13,650. The paid-up capital has since been increased to P24,000. Most of the incorporators are employees of the Nasipit Lumber, Inc. The stockholders of the Company are living in about ninety percent of the total number of houses in the poblacion of Nasipit. The company established first a theater in Nasipit and later extended the facilities of theater to render electric service to the streets and people of Nasipit. When it commenced the rendition of its electric service on August 15, 1949, it had in operation of 10 Kva. generating unit. To meet the demand of the public, the Company replaced the 10 Kva. unit with a 50 Kva. unit in February 1950. It has fully paid for all the equipment including the generating unit, the transformers, and lines and the power house. It is not indebted for any equipment used in the electric plant. At the beginning of its

operation, the Company was losing but at the present time, the expenses of rendering the service are about equal to the revenues. There are now 144 customers served with a prospect of 30 additional customers in the future. The operation of the plant has improved the town. Prior to the rendition of the electric service, the only recreational facilities in the town of Nasipit were a cockpit and the theater owned by the Company. As a result of the operation of the electric plant, wholesome recreational establishments were opened such as boxing shows and bowling alleys. The use of refrigerators enabled the refreshment parlors to serve cold drinks and the installation of electric lights enable the private school to offer evening classes.

“The

Butuan Sawmill, Inc. is a Corporation duly organized under the laws of the Philippines. It's authorized capital stock is P500,000 all of which have been subscribed and paid. It is a closed corporation composed of Rafael Consing who has been its president since its organization in 1920 and his children who are all Filipino citizens. The corporation besides engaging in the lumber and shipping business is an electric plant operator. It is a holder of reconstituted certificates of public convenience and necessity for the operation of electric services in the City of Butuan and in the municipality of Cabadbaran, Agusan, and is at present operating power plants and actually rendering electric services in said city and municipality. As grantee of the franchise for the operation of an electric service in the municipality of Nasipit, under Republic Act No. 497, which is subject to Act No. 8636 as amended, the Butuan Sawmill, Inc. has filed its written acceptance of the terms and conditions of said franchise and has executed surety bond in the amount of P1,000 within the period fixed in Act No. 3636, as amended.

“With

regards to the public necessity and convenience of an electric service in the town of Nasipit, it appears that the said town is located at the Bay of Nasipit which is one of the best harbors in Northern Mindanao. It is the port through which logs and lumber from the province of Agusan are exported to foreign countries. There are about 300 houses' in the poblacion and another 300 in outlying barrios. Electric service

is, therefore, urgently needed in the town of Nasipit.

“The records show that the needs of the inhabitants of Nasipit ‘can be adequately served by one electric plant operator. The question to be resolved by this Commission is who of the two applicants should be authorized to operate an electric service in Nasipit.”

Estas conclusiones estan sostenidas por las pruebas. El hecho de que no apareciese en la transcripcion de las notas taquigraficas que el 90 por ciento de las easas en la poblacion de Nasipit estan ocupadas por los accionista de la Bayview Theater Co., Inc., no es razdn suficiente para que se revoque la decision; es un detalle tan insignificante que, aun descartandolo de la decision, no altera en conjunto de los hechos esonciales probados.

La recurrente contiene que no podia comenzar la instalacion de la fabrica, porque (a) el articulo 8 de’ la Ley No. 3636, tal como fue enmendada por la Ley del Commonwealth No. 132, dispone que “the grantee shall not exercise any rights or privileges under this franchise, nor commence any construction thereunder, unless and until the grantee shall first file with the Public Service Commission within one hundred and twenty days from the date of the approval of this Act,” porque (b) el articulo 9 de dicha ley dispone que “after compliance with the requirements of the next preceding section, the Public Service Commission or its legal successor, by proper order or writ, shall authorize the construction of necessary work for the purposes of this franchise, within a reasonable time to be determined by the said Commission”, y porque, (c) ademas, el articulo 18 de la Ley No. 146 dispone que es ilegal “to engage in any public service business without having first secured from the Commission a certificate of public convenience * * * except grantees of legislative franchise, expressly exempting such grantees from the requirement of securing a certificate from the Commission”.

La Comision de Servicios Publicos—arguye la recurrenter—solo dicta

su decision en estas dos causas en 1.º de marzo de 1952; por tanto, la recurrente no podia comenzar la instalacion dentro del ano y medio concedido por la Ley No. 497, que termina en 12 de diciembre de 1951.

Para armonizar las disposiciones de las tres leyes citadas, el ano y medio concedido a la recurrente—segun ella—debe comenzar, no desde la aprobacion de la Ley No. 497, sino desde la expedición a su favor del certificado de conveniencia y necesidad publicas. Esta pretension es insostenible. La Ley No. 497 dispone que “Con sujecion a los terminos y condiciones establecidos en la Ley Numero Tres Mil seiscientos treinta y seis, segun esta reformada por la Ley Numero Ciento treinta y dos del Commonwealth, * * * se concede a la Butuan Sawmill, Incorporated, por un periodo de cincuenta años desde la aprobacion de esta Ley, el derecho, privilegio y autorizacion para construir, sostener y explotar una fabrica de alumbrado, calefaccion y fuerza motriz electricos con el objeto de producir y distribuir luz, calor y fuerza motriz electricos para su venta dentro de los limites del municipio de Nasipit, Provincia de Agusan: *Entendiendose*, Que el poseedor de la *franquicia que se concede por esta Ley*, empezara a explotarla dentro de un ano y medio desde la aprobacion de dicha franquicia, si no es un empresario en la actualidad; y dentro de seis meses si ya es poseedor de una franquicia municipal. El incumplimiento de este requisito dara lugar *ipso facto* a la cancelacion y anulacion de la franquicia.” Al tiempo de la aprobacion de la ley, la recurrente no explotaba aun el negocio de fluido electrico en Nasipit, ni poseia una franquicia municipal; por tanto, debia comenzar a explotar el negocio dentro de un año y medio desde la aprobacion de dicha ley. La falta de cumplimiento de dicha condicion *ipso facto* dio lugar a la cancelacion de la franquicia. El Bill No. 591 o proyecto de ley presentado al efecto contenia la siguiente nota explicativa: “In said municipality (Nasipit), there is no electric plant to furnish the locality with light facilities. It is certainly a blessing for the residents of said municipality if this franchise bill be approved.” (Exhibit 1, Bayview Records, Case No. 57855.)

En aquel tiempo el gobierno encaminaba todos sus esfuerzos por rehabilitar los servicios de utilidad publica destrozados por la guerra, facilitar el establecimiento de cualquier actividad o empresa

para acelerar el mejoramiento de las condiciones economicas dislocadas por la guerra. Al aprobar el Bill No. 591 el Congreso tenia evidentemente el proposito de apresurar el establecimiento de la fabrica de fluido electrico en el municipio de Nasipit, y por eso, impuso, como condicion, la de que la recurrente comenzarse el establecimiento de la fabrica dentro del plazo fijado despues de concedida la franquicia que ella solicitaba, y el Presidente, al aprobar la Ley No. 497, indudablemente tenia tambien el deseo de que alii se estableciese cuanto antes un servicio de fluido electrico. El Congreso sabia el tiempo que se pierde para la concesion de un certificado de conveniencia publica; que si no ponia la condicion de un año y medio, mucho tiempo transcurriria hasta que el municipio de Nasipit obtuviese servicio de fluido electrico. Era la epoca de la reconstruccion de las areas destruidas y la reorganizacion de todos los elementos disponibles para que el pais saliese de aquella condicion caotica.

Esa condition de comenzar a explotar el negocio de fluido electrico dentro del año y medio despues de aprobada la Ley No. 497 es incompatible con las disposiciones de los articulos 8 y 9 de la Ley No. 3636, tal como fue enmendada y articulo 18 de la Ley No. 146: si se cumplen estas tres disposiciones legates se infringe aquella condition de un año y medio. Las disposiciones de las leyes citadas son aplicables a todos los solicitantes de certificado de conveniencia y necesidad publicas en general; pero la condition impuesta por la Ley No. 497 de que se instalase dentro de un año y medio inmediatamente despues de concedida la franquicia, es imperativa para este caso particular, y tan imperativa que sin su cumplimiento queda cancelada la franquicia. La ley especial que concede una franquicia tiene la indole de contrato privado: se adopta ordinariamente despues de haberse tenido en cuenta por el Congreso las circunstancias especiales que tiene que remediar y los derechos privados en relacion con los beneficios resultantes para el Estado (*Manila Railroad Co. contra Rafferty*, 40 Jur. Fil., 237). La Ley No. 497 se considera como excepcion general que regula la concesion de certificados de conveniencia y necesidad publicas.

” ‘Special provisions relating to specific subjects control general provisions relating to general subjects. The things specially treated will be considered as exceptions to the general provisions.’” (City of Birmingham vs. Southern Express Co. 164 Ala 529, 51 So 159.) “Where there are two laws relating to the same subject they must be read together and the provisions of one having a special application to a particular subject will be deemed to be a qualification of, or an exception to, the other act general in its terms.” (Mark D. Eaglcton vs. Richard Murphy, 138 A. L. R., 749.)

“A special statute controls a general statute relating to the same .subject-matter. Stadler vs. City of Helena, 46 Mont. 128, 127, P. 454; Daley vs. Torrey, supra; Franzke vs. Fergus Country, 176 Mont. 150, P. 962; Indian Fred vs. State, 36 Ariz., 48, 282 P. 930; State vs. White, 41 Utah, 480, 120 P. 331; In re Estate, 169 Cal. 77, 145 P. 1008; Country Sanitation District vs. Payne, 197 Cal. 448, 241 P. 264; 25 R. C. L., 929; State vs. Preston, 103 Or. 631, 206 P. 304, 23 A. L. R. 414; Ahern vs. Livermohe Union High School District, 20S Cal. 770, 284 P. 1105; .Wulf vs.

Fitzpatrick, 124 Kan. 642, 261 P. 838. A. special statute covering a particular subject-matter must be read as an exception to the statute covering the same and other subjects in general terms. State ex. rcl. Special Road District vs. Millis, 81 Mont. 86, 261 P. 885; Western & Southern Indemnity Co. vs.

Chicago Title & Trust Co. 128 Ohio St. 422, 191 N. K. 462. Where special and general statutes relate to the same subject-matter, the special act will prevail as far as the particular subject-matter comes within its provisions. State ex rel. McDowell, Inc., vs.

Smith, 334 Mo. 653, 67 S. W. (2d) 50; United States us. Hess (C. C. A.) 71 F. (2d) 78.” (Re Estate of Charles Wilson, 105 A. L. R., 367.)

Es principio Men establecido de hermaneutica legal el de que las disposiciones especiales deben prevalecer sobre las disposiciones generates, y este Tribunal aplico esta doctrina en varios casos: “No pueden aplicarsedijo en Arayata *contra* Joyaal presente caso, como lo ha hecho el Tribunal a quo, las disposiciones delCodigo Civil referentes a los bienes de la sociedad de gananciales, puesto que la

Ley que regula la adquisicion, disposicion y transmision de los derechos sobre terrenos de los frailes, adquiridos por el Gobierno Insular, establece reglas que estan en pugna con dichas disposiciones delCodigo Civil, y siendo este cuerpo legal de caracter general y la Ley No. 1120 de caracter especial, esta es de preferente aplicacion.” (51 Jur.Fil., 689.) “El articulo 176 del Codigo de Procedimientodijo en Leyte A. & M. Oil Co. *contra* Block, Johnston & Greenbaum,no es tan terminante ni completo para los casos de insolvencia como las disposiciones contenidas en la Ley de Insolvencia, cuyos precedimientos son definitivos en cuanto a la disposicion de los creditos, lo cual no ocurre en las actuaciones sobre depositaria. Por consiguiente, no erro el Juzgado a quo al declararse competente en las presentcs actuaciones y al no sobreseerlas.” (52 Jur. Fil., 442.) “Las disposiciones del Codigo de Procedimiento Civildijo en Philippine Trust Co. *contra* Macuan,referentes a la administracion y al inventario de los bienes de la pupila demente casada o no, son de caracter general, puesto que afectan a todos los bienes de la misma indistintamente; al paso que las disposiciones del Codigo Civil referentes a la administracion de los bienes de la misma pupila demente casada son de caracter especial; por consiguiente, estas deben aplicarse con preferencia a aquellas, no siendo posible armonizar ambas disposiciones legales.” . (54 Jur. Fil., 700.) “Porque el no haber el demandado—dijo en Sancho *contra* Lizarraga—aportado a la sociedad toda la cantidad por el prometida solo tuvo el efecto de constituirle en deudor a la sociedad de dicha suma y de sus intereses ademas de los danos que por tal motivo se hubieron ocasionado, sin que de ello naciera para el demandante el derecho de exigir la rescision del *contrato* social, bajo el articulo 1124 del mismo Codigo. Este ultimo articulo no puede aplicarse al caso presente pues, se refiere a la resolution de las obligaciones en general, mientras los referidos articulos 1681 y 1682 atanen especificamente al contrato de sociedad en particular. Y es principio bien sabido que los preceptos especiales deben prevalecer sobre los generales.” (55 Jur. Fil., 643.)

Esta doctrina ha sido reafirmada en Philippine Railway Co. *contra* Collector of Internal Revenue, 91 Phil., 3,5, (Marzo 25, 1952) y en Visayan Electric *contra*

David, 92 Phil., 969, 49 Off. Gaz., 1385. Cuanto al segundo error, la recurrente no puede reclamar preferencia porque ella no cumplio con la condicion impuesta por la ley.

Se confirma la decision apelada con costas *contra* la recurrente.

Padilla, Reyes, A., Jugo, Bautista Angelo, Concepcion y Reyes, J.B.L., JJ., estan conformes.

Paras, J., esta conforme con el resultado.

CONCURRING

BENGZON, J.:

I concur. For having failed to “start operation” within one and one-half years from June 12, 1950, the Butuan Sawmill forfeited its franchise granted by Rep. Act No. 497.

After the approval of said Act *it was unnecessary* for petitioner previously to get a certificate of public convenience from the Public Service Commission before beginning business, the question of convenience having already been determined favorably by Congress upon the approval of Rep. Act No. 497. Indeed, Act No. 3636 as amended by Com. Act No. 132 clearly contemplates that *before approving a franchise* for electric light and power, the Congress should be satisfied of its convenience. Wherefore, *it must be presumed* that when it approved Rep. Act No. 497 Congress was convinced of the convenience of permitting the Butuan Sawmill to operate its franchise.

It is true that under Act 3636 and Com. Act 132 a certificate of public convenience issued by the Public Service Commission *should be filed* before the Congress approves a franchise. But that does not prevent Congress from dispensing with such certificate on occasion, and approving a grant of franchise—as it did in this case.

Reason and logic would conclude that in approving the franchise, Congress could not have intended^[1]

to empower the Public Service Commission to nullify the grant, upon a finding that its operation is not for public convenience. Why, that is the first question the Congress decides, and should decide, in the grant of franchises?

There is a ground for suspicion that the petitioner, in effect, attempted indirectly to *extend the time*

fixed by Republic Act No. 497 (1 1/2 years) to start operation, by means of this doubtful expedient of addressing a petition to the Public Service Commission and then leisurely waiting for its resolution.

Moreover, conceding that it was essential to secure the certificate of the Public Service Commission before starting operations. I believe that petitioner having been to obtain it, did not obtain it within one and one-half years from June 12, 1950. Hence its franchise lapsed, *ex vi termini*.

Petitioner argues that its failure to obtain the certificate was due to the delay in the proceedings before the Public Service Commission. Nevertheless, it does not appear that the latter was urged to decide promptly on account of the deadline. And surely, mandamus was available if such governmental body had been remiss in the performance of its functions. Anyway, in the matter of privileges granted subject to conditions, the maxim *dura lex sed lex* may properly be applied. *Se confirma la sentencia*.

^[1] In the absence of clear indication.
