100 Phil. 858

[G. R. No. L-9566. February 04, 1957]

MARCOS MACLANG, PETITIONER, VS. THE PUBLIC SERVICE COMMISSION AND JACINTO GENUINO, JR., RESPONDENTS.

D E C I S I O N

REYES, J.B.L., J.:

Petitioner Marcos Maclang is the owner and operator of an ice plant originally located at rented premises in the Municipality of Plaridel, Bulacan, and with the right to sell his ice in Plaridel, Bustos, Angat, Baliuag, San Rafael, Malolos, and Paombong, all within the province of Bulacan.

On September 29, 1954, petitioner applied with the Public Service Commission for authority to transfer the site of his ice plant from Plaridel, Bulacan to his own lot in Barrio Santisima Trinidad, Malolos, Bulacan, as well as to substitute his diesel power prime .movers with electric motors. The Commission issued an order setting the application for hearing on November 8, 1954, furnishing applicant with copy thereof and requiring him to publish the same in a daily newspaper of general circulation in Malolos, Bulacan, for at least 10 days prior to the date of the hearing. The order was published by petitioner as required, and on November 8, 1954, trial was had on his application, after which the Commission rendered judgment granting the application and, subject to certain conditions, giving petitioner six months from the date of the order to transfer his ice plant from Plaridel to Barrio Santisima Trinidad, Malolos.

Later, on January 21, 1955, respondent Jacinto Genuino, Jr., owner and operator of an 8 ton ice plant located in Malolos, Bulacan, filed a motion with the Commission to vacate its aforementioned order of November 8, 1954 on the ground that he was never notified of the hearing of the petition, and that he would be greatly affected by the authorized transfer of petitioner’s ice plant from Plaridel to Malolos. Finding that respondent was an interested party who was not notified of the application, the Commission, on January 24, 1955, granted

respondent's motion, vacated its order of November 8, 1954, set the case for hearing anew on February 8, 1955, and ordered petitioner to desist from the transfer of his plant from Plaridel to Malolos until further orders from the Commission.

The records do not show that petitioner moved to reconsider, or in any way objected to, the Commission's order of January 24, 1955 vacating its previous order of November 8, 1954. What appears is that the rehearing of petitioner's application was postponed to March 10, 1955, at which trial petitioner testified anew on the merits of his application for the transfer of the site of his ice plant. Trial was again postponed to March 16, 1955, on which date additional evidence for petitioner and for oppositor Jacinto Genuino, Jr., were received. Then, after the parties had filed memoranda in support of their respective claims, the Commission issued an order on May 24, 1955, denying petitioner's application for the transfer of his ice plant on the following grounds:

> "Applicant stresses that being: authorized to sell ice in Malolos, it really does not make much difference whether the plant is installed in Plaridel or in Malolos itself because he could send his ice to Malolos whether the plant is installed in Plaridel or in a barrio of Malolos. He further stresses that he has incurred expenses to make partial transfers of his machineries to the barrio of Santisima Trinidad pursuant to the authority granted to him by the Commission. As to the first point, we do not see that it has any merit for the reason that the fact that a certain town is part of the authorized territory of an ice plant operator does not necessarily give him the right to install his plant in said town especially when in that town there is already an authorized plant in operation. Applicant's predecessor in interest was authorized a plant in Plaridel upon a finding by the Commission that public convenience would be promoted by the installation of such a plant. Undoubtedly competition between applicant and oppositor would be keener if the former's plant were installed in Malolos instead of Plaridel and such a transfer should be allowed only if it clearly appears that the first operator is not able to serve the needs of the public adequately, which is not the case here. It would not be a good policy to grant a certificate for an ice plant in a given town and afterwards to permit that plant to be transferred to another town as there is already authorized operator. As to the second point, we also think it has no merit. In the first place, there is evidence that for some time even before the application was filed, applicant Maclang had not operated his plant in Plaridel and that one

> of the two diesel motors had already been dismantled. He claims that as a result of the decision authorizing the transfer, he started to dismantle his plant and to install them in the new site at Santisima Trinidad. We do not think that this is true because the decision provides that he shall effect the transfer within six months but that before commencing any installation, he should file with the Commission an application for approval of the installation plans, and the records do not show that any time prior to the vacation of the decision applicant submitted such plans and much less that they had been approved by the Commission. Applicant presented as Exhibit "B" a contract entered into between him and the Service Engineers, Inc. for the installation of the plant at the new site but it is significant that no one connected with the company was called to testify as to any installation work done by the company pursuant to said contract. We do not believe either the claim of the applicant that he has spent about P3 0,000.00 to transfer his machineries or to install his plant pursuant to the decision of the Commission authorizing the transfer and which was subsequently vacated. We are not satisfied from the evidence that there is a sufficient and valid reason for authorizing the transfer of applicant's plant from Plaridel to Malolos; that public convenience does not require such transfer because there is an adequate ice service in Malolos rendered by the authorized operator Jacinto Genuino; that applicant should continue operating his plant in Plaridel, Bulacan, so as not to prejudice the interests of the public of Plaridel for whose benefit the installation of the plant was permitted, for which reason it is ordered that the application filed herein be, as it is hereby denied." (Order, pp. 2-4; Records, pp. 124-126).

Petitioner sought to reconsider the above order, claiming that the alleged damages that would be caused to oppositor Genuino, Jr. by the transfer of his ice plant had not been proved; and that he had already completed the installation of his new ice plant in Barrio Santisima Trinidad, Malolos, Bulacan, with funds borrowed from the Rehabilitation Finance Corporation upon the Commission's authority (given in another case) and invited the Commission to conduct an ocular inspection of the premises, but upon opposition, reconsideration was denied. A second motion for reconsideration, having been likewise denied for being out of time, petitioner filed in this Court the present appeal by certiorari to review the orders of the Public Service Commission of January 24 and May 24, 1955.

Firstly, petitioner charges the respondent Public Service Commission with arbitrariness in

vacating its order of November 8, 1954 authorizing the transfer of petitioner's ice plant from Plaridel to Barrio Santisima Trinidad, Malolos, Bulacan, without notice to him and without giving him the opportunity to show cause why said order should not be vacated. While it is true that the proper procedure should have been for the Commission to give petitioner the chance to show why the order of November 8, 1954 should not be vacated before it set said order aside, the records show, however, that petitioner neither I complained nor asked for the reconsideration of the order in question, and instead voluntarily went to trial for the second time on the merits of his application and introduced evidence anew in support thereof. As correctly pointed out by respondent Genuino, Jr., whatever defect there had been in the issuance of the Commission's order of January 24, 1955 without notice to petitioner, had been cured and waived by the latter when he agreed and submitted to a retrial of the case on the merits.

Under his other assignments of error, petitioner claims (1) that no injury or damage would be cause to respondent Genuino, Jr. by the transfer of his ice plant in Plaridel to his lot in Barrio Santisima Trinidad, Malolos, which is allegedly only ^ km. from the boundary of Plaridel and Malolos; (2) that relying on the authority given him by the Commission in its order of November 8, 1954 to transfer his ice plant, he had already dismantled the same and completed its installation in Barrio Santisima Trinidad, spending for the dismantling, transfer, and installation the total amount of F60,000; and (3) that to deny him authority to operate his plant at Barrio Santisima Trinidad would cause him the total loss of his investment of P60,000. We find these arguments equally without merit.

In the first place, it is not true, as repeatedly asserted by petitioner in his brief, that his new site in Barrio Santisima Trinidad is only y% km. from the boundary of Plaridel and Malolos, so that the transfer of his plant would cause no'real injury to respondent Genuino, Jr. who has his plant in the heart of the town of Malolos. According to petitioner himself when he testified at the hearing before the Commission, his site in Barrio Santisima Trinidad is about 5 kms. from the boundary of Malolos and Plaridel (Recs., p. 69), not y% km. as he now claims in his brief. Petitioner likewise testified that his former site in Plaridel is about 4^ kms. from the boundary (Recs. pp. 60, 69), so that the actual distance between his old site in Plaridel and his new site in Barrio Santisima Trinidad is 9V2 kms., not 2 kms., as he now makes it appear in his brief. On the other hand, petitioner also declared that the distance between his new plant and that of respondent Genuino, Jr. is only about 3V& kms. (Recs., p. 60) ; in other words, while petitioner's old plant in Plaridel was originally about 13 kms. distant from respondent's plant in Malolos, its transfer to his new site would bring it 91/2 kms. nearer to respondent's plant. Considering that, as found by the respondent

Commission and is supported by the records, the town of Malolos cannot even consume the total daily output of respondent's plant of 8 tons, causing losses in respondent's investment, we agree with the Commission that to allow petitioner to operate his plant just zy% kms. away from that of respondent would result in keener competition between them in the town of Malolos and more losses to respondent. Upon the other hand, petitioner's certificate of public convenience to operate an ice plant in Plaridel, Bulacan, is primarily and principally for the benefit of the people of that towns; to allow the transfer of petitioner's plant to a place about 10 kms. away from his old site can not but work to the prejudice of the people of Plaridel.Petitioner bewails the enormous losses he would allegedly suffer if he is not allowed to operate his plant at Barrio Santisima Trinidad, as it has already been completely installed thereat. It should be remembered, however, that when petitioner was ordered by the Commission to desist from the transfer of his ice plant on January 24, 1955, until further orders from that body, petitioner had not yet transferred and installed his plant at the new site. As already stated before, petitioner did not even make known any objection to the order enjoining the transfer, nor did he inform the Commission that he had already started with the dismantling and transfer of his plant. Instead, petitioner voluntarily and without complaint agreed to a retrial of the merits of his application. And at the trial of March 10, 1955, petitioner testified to the effect that although a major portion of his ice plant in Plaridel had already been dismantled (Recs. p. 63), the transfer had not been actually completed, much less the installation at Barrio Santisima Trinidad, because according to him, his new electric motors "are not yet connected, not yet installed" (Recs. pp. 62-63). As for the dismantling of his plant, petitioner would have done it with or without an authority from the Commission to transfer his plant to Malolos, for according to his testimony at the first hearing *ex parte* on November 8, 1954 in support of his application for transfer, his landlord in Plaridel had already asked him to vacate the premises (Recs. p. 11). It must have been after the retrial of his application in March, 1956, and long after he was ordered by the Commission in January, 1955, to desist from trnsferring his ice plant, that he completed its transfer and installation at his new site. Therefore, whatever losses he would suffer by the disauthorization of the transfer are oi his own making and due to his utter disregard for the Commission's orders.

Petitioner capitalizes on the authority given him by the respondent Commission in another case (No. 83986) on April 24 1956, to mortgage his certificate of public convenience and ice plant to the Rehabilitation Finance Corporation for a loan of PI 50,000, to defray the expenses of the transfer, installation, and completion of his ice plant at Barrio Santisima Trinidad, claiming that he would not have secured the loan with which he completed the

installation of his new plant at Barrio Santisima Trinidad had not the Commission given him such authority. It appears, however, that Commissioner Ocampo, who authorized the mortgage in Case No. 83986, was not the one who presided over, heard, and decided petitioner's application for the transfer of his plant (Case No. 82151), but Commissioner Aspillera. Commissioner Ocampo must have been completely unaware that the authority given to petitioner in Case No. 82151 to transfer his plant had been set aside, when he acted favorably for petitioner in Case No. 83986. It was petitioner's duty to notify Commissioner Ocampo of the developments in Case No. 82151, particularly the revocation of his authority to transfer; instead, he concealed that fact from Commissioner Ocampo, got the authority to mortgage, received the loan from the Rehabilitation Finance Corporation, went ahead with the installation of his plant at Malolos, and even operated it for some time without authority until he was enjoined by the Quezon City Court of First Instance in still another case (G.C. Q-1559) (Annex "B" of Petitioner's Brief). Even with authority from Commissioner Ocampo in Case No. 83986 to mortgage his certificate of public convenience and ice plant, petitioner should have desisted from the transfer and installation of his plant until the final outcome of Case No. 82151; had he heeded Commissioner Aspillera's order in the latter case not to proceed with the transfer (issued as early as January 24, 1955, three months before the Rehabilitation Finance Corporation loan was authorized), petitioner would not have incurred ,the expenses for the installation of his plant at its proposed site in Barrio Santisima Trinidad. In fine, petitioner has tried to confront the Commission with a *faith accompli*.

Lastly, petitioner complains about the refusal of the respondent Commission to conduct an ocular inspection on his new plant at Barrio Santisima Trinidad to see for itself that the same had already been completely installed thereat. According to the records, however, petitioner's offer to have the premises ocularly examined came for the first time only in his motion for the reconsideration of the Commission's order of May 24, 1955, denying his application to transfer after full trial on the merits. Suffice it to say that as early as January 24, 1955, petitioner had already been enjoined by the Commission to desist from the transfer of his plant to Malolos; then trial was had two months later, in March, 1955, and still petitioner presented absolutely no evidence to show that he had already completely installed his plant at its new site in Barrio Santisima Trinidad. As we have stated before, petitioner must have installed his plant in Malolos only after March, 1955, in disobedience of the Commission's order of January 24, 1955 and without awaiting the final outcome of his application for transfer. It is, therefore, completely immaterial to the merits of petitioner's application for transfer that by the month of May, 1955, he had already completed the

installation of his plant at its new site in Barrio Santisima Trinidad. Petitioner took the risk of a denial of his application and he has nobody but himself to blame if he suffers losses thereby.Wherefore, the orders appealed from are affirmed, with costs against petitioner Marcos Maclang. So ordered.

Pards, C. J., Bengzon, Padilla, Montewvayor, Reyes, A., Bautista Angela, Conception, Endencia, and *Felix, JJ.*, concur.

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