

JOAQUIN MA. JOSON, PETITIONER, VS. ILDEFONSO SANTOS, RESPONDENT.

G.R. No. L-455. October 30, 1947

Ponente: BENGZON, J.

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BENGZON, J.:

This is an appeal from an order of the Public Service Commission dated February 14, 1946, granting the respondent Ildefonso Santos a temporary certificate of public convenience to install, and operate until the end of the year 1948, in the municipality of Orion, Province of Bataan, an ice plant capable of producing five tons daily, the product to be sold in Orion and the other municipalities of Bataan.

It is admitted that long before the Pacific War, petitioner Joaquin Ma. Joson was operating ice plants in the municipalities of Orani, Samal, Balanga and Orion, Province of Bataan, pursuant to certificates of public convenience regularly issued. As a result of the war his establishments were destroyed, except that of Orani, which was nevertheless considerably damaged.

Herein respondent, who is a Filipino, submitted on August 6, 1945, the application that started these proceedings. He alleged that he had complete machineries and equipment for the proposed ice plant and was in a position to immediately commence the installation thereof. Herein petitioner Joaquin Ma. Joson objected in writing, upon the ground that he had a certificate for the territory, and that public convenience did not demand the construction of another ice maker, which would additionally prejudice his prior rights entitled to protection.

Favorably acting on the application, the Public Service Commission made the following estimate of the evidence pro and con:

"Applicant's evidence aims to prove that actually there is a great demand for ice not only in Orion but in the entire Province of Bataan; that this demand comes from the general public and especially from fishermen who need big quantities of ice daily to preserve their catch; that the present supply of ice which comes from Orani is insufficient for this demand; that even before the War the production of the 2-ton plant in Orion was inadequate for the needs of the people of that town; that the ice plant in Orion is not operating at present having been destroyed during the War; that fishing is one of the major industries of Bataan but due to the inadequate supply of ice a big portion of the daily fish catch is spoiled due to lack of this needed commodity; that applicant has the necessary capital to invest in the installation and operation of the proposed ice plant, and that public interests and convenience will be properly and adequately served by the approval of this application.

"Oppositor's evidence, on the other hand, purports to show that there is no necessity for an ice plant in Orion inasmuch as even prior to the War the produce of his 2-ton plant in Orion was in excess of the actual ice demands of that municipality and at the present time the little demand that exists is supplied by him from his plant in Orani; that the ravages of and the destruction caused by the War have greatly impaired the principal industries of Bataan, particularly the fishing industry, so that the demand for ice to be used to conserve fish is very small; that there is little demand for ice from the general public and as to the fish most of it is immediately

brought to Manila and other towns so that fishermen really have no use for ice; that he has already ordered from the United States, through the Atlantic Gulf and Pacific Co., ice plant machineries and equipment part of which will be installed in Orion, and has made an initial investment of more than P40,000; that the little demand for ice in Orion does not warrant the operation of two ice plants in that place, and would only result in bringing about a ruinous and destructive competition between his plant and that of the applicant."

Overruling the opposition, the Commission made these pertinent remarks:

"Oppositor also argues that he has already ordered from the United States machineries and equipment part of which will be used for his plant in Orion, and has invested more than P40,000, and that the operation of two ice plants in Orion would result in ruinous competition. It appears that oppositor has deposited P41,000 on an indent order for ice plant machineries placed with the Atlantic Gulf and Pacific Co. in Manila. The witness of the oppositor who testified on this point said that the order was transmitted to the Fairbanks Morse & Co. and York Corporation in the United States. Said companies, according to the witness, accepted the order but would not commit themselves as to when shipment of the machineries would be made to Manila. There is no certainty, therefore, as to when oppositor would be able to operate his plant, and it would not be proper for us to deprive the public of this much needed service while oppositor waits for his machineries. Nor can we sustain oppositor's contention that the operation of two plants in Orion would result in ruinous competition. The evidence regarding the demand for ice in Orion and the rest of Bataan shows that even if the oppositor should install his plant there would be enough business for his plant and that of the applicant, and no ruinous competition would ensue.

"With reference to the contention of the oppositor that his rights and investments as a prior operator should be protected by this Commission thru a denial of this application, we have repeatedly ruled in other cases of applications for certificates of public convenience to operate ice plant services (Case No. 177, Off. Gaz., Vol. 41, No. 7, Page 670; Cases 307, 417, et al., Case 136 and Case 401) that that protection can be effected by issuing only temporary certificates in territories where the former operators are not operating at present due to the destruction of their plants. In the present case applicant made of record his willingness to accept a certificate subject to a period of validity which the Commission may fix and to operate the proposed service under said certificate. * * *"

Attributing error to the Commission, the instant petition for review has argued several propositions which may be reduced to three, namely: (1) the order is not reasonably supported by the evidence of record; (2) there is no emergency requiring a temporary permit; (3) the petitioner was denied the protection he is entitled under the law; and (4) the grant violates the Commission's policy not to authorize more than one plant in any given municipality.

In this class of cases it is a fundamental rule that this Court will not modify or set aside the Commission's order unless it clearly appears that there was no evidence before it to support reasonably such order, or that the same was without the jurisdiction of the Commission, or contrary to law.[1]

There being no question as to the jurisdiction of the Commission, and the legal principles involved, our inquiry in this litigation is necessarily limited to the issue whether its award is reasonably justified by the evidence submitted to it, and which is presently before this Court for examination and revision.

We observe that, besides the applicant and his wife, three fishermen of Orion and one fish trader of the same locality testified in support of the application. Their assertions are aptly summarized in the appealed order, and undoubtedly furnish rational basis for the grant of a temporary permit to manufacture and sell ice.

It is true that the portions in the testimony of applicant and his spouse quoted by petitioner in his brief are hearsay; but the other parts referring to the same point (inadequate supply of ice in Bataan) are of their own knowledge. Anyway the need for ice and the scarcity thereof was sufficiently established with the statements under oath of Gregorio Dijungco and Pedro Quicho, whose veracity has not been successfully impeached. On the other hand, it

appears that whereas the applicant had, at the time of the hearing, the necessary machineries and equipment ready for erection in Orion, the oppositor merely proved that he had placed orders for new equipment, but the dates of the receipt and of the installation thereof were uncertain. Both reason and equity approve the issuance of the temporary license. In these days of reconstruction and rehabilitation there is a crying need to reestablish public services destroyed by the war. As always, the people's convenience and welfare should be of paramount importance. It is not in keeping with this view for pre-war operators to adopt a dog-in-the-manger policy, opposing the rendition by others of those services which they can not actually and immediately perform. At any rate, protection is not denied them if, as in this instance, the permit is temporary in nature, because at the expiration of the period—when normalcy shall have been probably restored—their prior rights will be recognized and preserved, if herein applicant should ask for a permanent certificate or should wish to continue operating his plant. It is needless to add that these temporary permits are accepted at their face value, the permittees realizing that no extension or continuation is thereby promised or held forth.

The order is sustained, with costs.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Hilado, Briones, Padilla, and Tuason, JJ., concur.

[1] Section 35, Com. Act 146; *San Miguel Brewery vs. Lapid*, 53 Phil., 542; *Manila Yellow Taxicab Co. and Acro Taxicab Co. vs. Danon*, 58 Phil., 75.

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