

SANTIAGO ICE PLANT & CO., INC., PETITIONER AND APPELLANT, VS. RAFAEL LAHOZ, RESPONDENT AND APPELLEE.

G.R. No. L-3661. August 29, 1950

Ponente: REYES, J.

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REYES, J.:

This is a petition to review a decision of the Public Service Commission.

It appears that in June, 1949, the now respondent Rafael Lahoz filed with said Commission an application for a certificate of public convenience for the installation and operation of an ice plant of two-ton capacity in the municipality of Echague, province of Isabela. The application was opposed by the Santiago Ice Plant & Co., Inc., a post-war ice plant operator in the municipality of Santiago of the same province with authority to sell its ice not only in said municipality but also in eight others, including Echague. To serve those nine municipalities, this oppositor had but a small ice plant capable of producing 2 1/2 tons of ice daily, located in Santiago. However, in May, 1949, it applied for authority to increase its plant's capacity to 7 1/2 tons, and the claim is made that, with this proposed increase, the installation and operation of another ice plant within the territory served by the oppositor is no longer necessary and would only lead to ruinous competition. A hearing was had, and from the evidence presented the Commission found the facts to be as follows:

" * * * It is established by a preponderance of the evidence that oppositor has not been rendering adequate and regular service in Echague notwithstanding the daily steady demand for ice in this latter town. It appears that many ice users in Echague can not count with a regular ice service from the Santiago Ice Plant because said plant does not make regular deliveries of ice in Echague. Also when people from Echague go to Santiago to buy ice, they do not succeed in buying because the Santiago Ice Plant very frequently runs out of ice. There is no question that there is sufficient demand for ice in Echague to warrant the authorization of a 2-ton plant in that town. Echague is about 16 kilometers from Santiago and the operation of a plant in Echague itself will be much more convenient to the people of Echague than an ice service from the Santiago Ice Plant. The operation of applicant's proposed 2-ton plant will result in promoting the interests and convenience of the public of Echague and will not bring about the ruinous competition alleged by oppositor."

The Commission, therefore, overruled the opposition and granted Lahoz's application. We were informed at the hearing that Lahoz's ice plant in Echague is already in operation.

In seeking a review of the decision below, counsel for the appellant contend, in the first plane, that the Commission erred in finding that the oppositor had not been rendering adequate and regular service. But we find from an examination of the record that this finding is amply supported by the evidence and that the question posed by the error assigned is one of credibility and preponderance of proof. Such question is not for this Court to determine. In reviewing a decision of the Public Service Commission, this Court is not supposed to examine the proof de novo and determine for itself whether or not the preponderance of evidence really justifies that decision. Out only function is to determine whether or not there is evidence before the Commission upon which its decision might reasonably be based. This Court will not substitute its discretion for that of the Commission on questions of

fact and will not interfere with the latter's decision unless it clearly appears that there is no evidence to support it. (I Moran, Comments on the Rules of Court, p. 757). We cannot say from an examination of the record of this case that the decision below is not reasonably supported by proof.

To the contention that appellant as an existing operator should first be given an opportunity to improve and expand its service and that only upon its failure to do so should a newcomer be allowed to invade the field, the answer is that in matters of public utility the convenience and welfare of the public are the paramount considerations, and this Court has already declared that an ice plant which manufactures its ice in the locality where it sells that commodity is more advantageous and convenient to the general public in that locality than an ice plant located some kilometers away. In the case at bar, appellant, which has its ice plant in Santiago, wants to monopolize the sale of ice not only in that municipality but also in eight others, including Echague. This municipality is about 15 or 16 kilometers from Santiago and connected with it by a road which is none too good. It would, of course, be most inconvenient for the inhabitants of Echague to have to negotiate that distance in order to get a supply of ice, which in the case of vendors of ice-cream and other frozen foods is essential to their livelihood. And while appellant boasts of a delivery service, it appears that, notwithstanding the wide territory to be served, it has but one vehicle for that purpose, a weapons carrier, which, like its ice plant, sometimes goes out of order. When it is furthermore considered that appellant's past performance leaves much to be desired, the Commission having found that appellant has been rendering inadequate and unsatisfactory service, we think the authorization for a two ton ice plant in Echague is fully justified.

Contrary to the finding of the Public Service Commission, appellant claims that the authorization of another ice plant in Echague would lead to ruinous competition. But this claim is not founded on established facts. Appellant's certificate covers 9 municipalities. That its present facilities are not enough to serve such a large territory may be deduced from the fact that it has applied for authority to treble the capacity of its plant. With so much apparent room for expansion and development, appellant may not raise the alarm that there is bound to be a "ruinous competition" without concrete proof that the establishment of another ice plant in one of the 9 municipalities served by it would so reduce its business that its profits would no longer amount to a fair return on its investment.

There being no reason to disturb the decision brought here for review, the same is hereby affirmed, with costs against the appellant.

Moran, C.J., Ozaeta, Pablo, Bengzon, Tuason, and Montemayor, JJ., concur.

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