

## MANUEL REGALADO, ET AL., PETITIONERS, VS. THE PROVINCIAL CONSTABULARY COMMANDER OF NEGROS OCCIDENTAL, ET AL., RESPONDENTS.

*G.R. No. L-15300. May 18, 1960*

Ponente: BAUTISTA ANGELO, J.

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### BAUTISTA ANGELO, J.:

Petitioners seek to enjoin respondents from preventing or interfering with the entry of petitioners' ice to the Municipality of Cadiz, Negros Occidental, for the exclusive use of their deep-sea fishing business undertaken outside of the territorial limits of said municipality.

Petitioners are engaged in deep-sea fishing business who sell their fish as far as the City of Manila, Philippines. Although their fishing boats are fishing far beyond the territorial limits of Cadiz, Negros Occidental, they dock their fishing boats in said municipality. The use of ice in their fishing business is indispensable, and because they send to their fishing boats in Cadiz the ice they buy from Bacolod City where they can buy it at cheaper price than what they can buy in the Municipality of Cadiz, the Public Service Commission, thru the Provincial Constabulary Commander of Negros Occidental, acting thru his soldiers and agents, decided to prevent the entry and passage of said ice to said municipality under the pretense that the same is in violation of its Revised Order No. 1. Hence they presented the present petition for injunction.

Respondents, answering the petition, set up the following special defenses: (a) that respondent Provincial Commander has acted under orders of respondent Public Service Commission pursuant to the power vested in it by Commonwealth Act No. 146, as amended, known as the Public Service Act, to supervise and regulate the operation of public utilities in such manner as to protect and promote the convenience of the public; (b) that the jurisdiction, supervision and control of respondent Commission over the operation of public utilities extend not only to the acts of public utility operators but also to certain acts of users or consumers such as petitioners whose acts of buying large quantities of ice in Bacolod and using them in Cadiz have the effect of violating Section 156 of its Revised Order No. 1 of which petitioners have actual knowledge, as well as of the opinion rendered by said Commission interpreting the pertinent provision of said order; and (c) that respondents' acts, having been done in the valid exercise of the Commission's police power, do not constitute an unlawful limitation of petitioners' right as to warrant the restriction of the performance of said acts.

The pertinent portion of the opinion of respondent Commission dated July 25, 1958 which clarifies the pertinent provision of Section 156 of its Revised Order No. 1 which provides that "No ice produced by any operator shall be sold directly or indirectly outside of its authorized territory", says:

"Our opinion therefore, is that Section 156 of Revised Order No. 1 of the Public Service Commission prohibits an ice plant operator from selling his ice even within the limits of his authorized territory to any person if he knows that that persons will use or resell that ice outside of the operator's authorized territory, and that an operator's ice must be sold only to the public of his authorized territory so as to avoid unlawful competition

and safeguard the interests and convenience of said public."

In connection with the above directive, the issues now posed by petitioners are: Has respondent Public Service Commission any legal authority to prevent the entry or passage to the Municipality of Cadiz of the ice bought by petitioners in Bacolod City when the ice is not for resale or distribution in Cadiz but for the exclusive use of their deep-sea fishing business? Can respondent Public Service Commission, in order to favor a particular ice plant operator, compel petitioners to buy ice from this particular operator although they can buy ice elsewhere at a cheaper price? Has respondent Public Service Commission authority to prohibit petitioners as consumers from buying ice wherever they please?

The purpose of Section 156 of Revised Order No. 1 of respondent Commission, as clarified in its opinion of July 25, 1958, which prohibits an ice plant operator from selling his ice even within the limits of his authorized territory to any person if he knows that that person will use or resell that ice outside of the operator's authorized territory, is dual in character: first, to prevent unlawful competition between ice operators, and second, to make certain that the full production of a given plant is always available for the use of the public which that operator is obliged to serve (See opinion). In this sense, we hold that the issuance of said Revised Order No. 1 is valid, it being an exercise of the supervision and control the Commission has over all public services conferred upon it by Section 13 of Act 146. But, do petitioners come within the purview of said Order No. 1? Or stated in another way, is there any evidence to show that the Negros Ice & Cold Storage Company, or the Bacolod Ice & Cold Storage Company, from whom petitioners bought the ice for use of their fishing business, sold their ice with knowledge that it will be used or sold outside of their authorized territory? Is there any evidence showing that petitioners bought the ice to be sold within the territory of another operator?

The record shows none. On the contrary, it is an admitted fact that petitioners bought the ice in question for the exclusive use of their fishing business which was then undertaken in the high seas—not within the territorial jurisdiction of any ice operator—even if incidentally it has to pass or go through the Municipality of Cadiz because their fishing boats are docked there. And, then, we know that respondent Commission has only jurisdiction over persons engaged in public utilities, or over a public utility which holds a certificate of public convenience, and not over persons who are not engaged in public utilities, except perhaps those who may violate any valid regulation it may promulgate under the law. (*Iloilo Ice & Cold Storage Company vs. Public Utility Board*, 44 Phil., 551, 554; *Iloilo Commercial & Ice Company vs. Public Service Commission*, 56 Phil., 28, 29.) And even then, these persons, to be dealt with, need be given their day in court. They cannot be dealt with without due process of law.

It is, therefore, evident that petitioners do not come within the purview of Revised Order No. 1. And even if they do, they were not given their day in court, for the Commission has taken action against them without giving them an opportunity to explain their purpose of buying ice from an ice plant operator of Bacolod City. The order, therefore, given by the Commission to prevent the passage of petitioners' ice to the Municipality of Cadiz is arbitrary and as such has no valid force against petitioners.

Wherefore, petition is granted. Respondents are hereby enjoined from enforcing the Commission's order contained in Annex A of the petition, or from interfering with the entry of petitioners' ice to the Municipality of Cadiz, Negros Occidental, for the use of their fishing business outside of the territorial limits of said municipality. No costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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