

R. J. ENRIQUEZ & CO., PETITIONER, VS. ATILANO M. ORTEGA, RESPONDENT.*G.R. No. L-4865. December 22, 1952*

Ponente: BAUTISTA ANGELO, J.

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On December 16, 1949, Atilano M. Ortega filed an application with the Public Service Commission praying for a certificate of public convenience to install and operate an ice plant with a productive capacity of two tons daily in the municipality of Iba, Province of Zambales, and to sell its produce not only in said municipality but in other towns of the Province of Zambales (case No. 54258).

The application was opposed by petitioner who was already an operator of a similar plant in the same municipality of Iba, with authority to sell ice in the same places as those applied for by Atilano M. Ortega.

In accordance with the practice then prevailing in the Public Service Commission, Atty. Antonio H. Aspillera, chief of the legal division of the Public Service Commission, was authorized to receive the evidence of both parties. Attorney Aspillera proceeded to receive the evidence and thereafter submitted his report. On the strength of the evidence received by Attorney Aspillera, the Public Service Commission rendered its decision on January 15, 1951, granting the application. On February 5, 1951, petitioner filed a motion for reconsideration alleging that the decision is not supported by the evidence and is contrary to law, and while this petition was pending consideration because the parties asked that they be given time within which to submit their memoranda, petitioner filed a motion to set aside the decision invoking the ruling which was recently, laid down by this court in the case of *Silva vs. Cabrera* (G. R. No. L-3629). But the Commission denied both the petition for reconsideration as well as the motion to set aside for lack of merit. Hence this petition for review.

The only ground on which this petition for review is predicated is the refusal of the Public Service Commission to set aside its decision of January 15, 1951, which refusal it is claimed is erroneous because it runs counter to the doctrine laid down by this court in the case of *Silva vs. Cabrera* (88 Phil., 381).

In the *Cabrera* case, it is true, we held that "tinder the provisions of section 3 of the Public Service Commission Act, as amended by Republic Act No. 178, the reception of evidence in a contested case may be delegated only to one of the Commissioners and to no one else, it being understood that such reception of evidence consists in conducting hearings, receiving evidence, oral and documentary, passing upon the relevancy and competency of the same, ruling upon the petition and objections that come up in the course of the hearings, and receiving and rejecting evidence in accordance with said ruling, and that if this procedure is not followed the proceedings are null and void and should be disregarded. But in the same case we likewise pointed out that this requirement was merely procedural in nature and could be waived by a party if no timely objection is interposed by him and the case is decided by the Commission. By timely objection we mean when the point is raised at the beginning of the hearing or investigation before the person assigned to receive the evidence, and not after he has completed the investigation. The reason is obvious. If the objection is raised at the beginning of the hearing, and the objection is

sustained, the trouble and expense that a trial or an investigation generally entails could be avoided and the case may then be tried by the Commission, or by a member thereof, as the law requires. And if the objection is interposed opportunely and is overruled and the investigation is continued over and above the objection of opposing counsel, the party so objecting can later reiterate his objection and pray for the nullification of the proceedings for then it is not fair that he be made to suffer the consequence resulting from the mistaken resolution of the officer assigned to receive the evidence.

No such step was taken by petitioner herein, nor by its counsel. When the case was called for hearing by Attorney Aspillera for the reception of the evidence in line with the authority delegated to him by the Commission, both parties appeared with their witnesses. Petitioner never objected to the delegation nor to the authority of Attorney Aspillera to receive the evidence. On the contrary, petitioner even cross-examined extensively all the witnesses of the applicant and presented witnesses to substantiate its opposition to the application of respondent. And it is for this reason that the Public Service Commission denied its motion to set aside. Said the Commission:

"On the question of the delegation made in favor of Attorney Aspillera, Chief of the Legal Division, to receive the evidence of parties in the case it should be stated that during the hearings of this case, parties voluntarily submitted their evidence and no question raised on the legality of the delegation made to Attorney Aspillera to receive such evidence. Parties also submitted the case for decision by the Commission on the evidence presented by them before Attorney Aspillera. The ruling in the case of *Silva vs. Cabrera* mentioned above is not applicable to the present case because in the *Cabrera* case the authority of the Chief of the Legal Division to receive the evidence of parties was questioned from the start of the proceedings whereas in the present case the question was never raised throughout the entire proceedings".

The interpretation placed by the Commission on the doctrine of this court in the *Cabrera* case is correct. The objection must be timely interposed in order to prevent the presentation of the evidence before a person who has no legal authority to receive the evidence. If the objection is interposed after the evidence had been presented, it comes late and should be disregarded. This is in substantial compliance with two recent decisions of this Court (*La Paz Ice Plant and Cold Storage Co., Inc., vs. Comision de Utilidades Publicas* (89 Phil., 109), and *Everett Steamship Corporation vs. Chuahiong* (90 Phil., 64)).

Wherefore, the petition is denied, with costs.

Paras, C. J., Bengzon, Padilla, Montemayor, and Jugo, JJ., concur.

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