

**GAUDENCIO I. BANAAG, PETITIONER, VS., INTESTATE ESTATE OF
SISENANDO ENRIQUEZ, RESPONDENT.***G.R. No. L-4266. February 29, 1952*

Ponente: TUASON, J.

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This is a petition to review a decision of the Public Service Commission granting the intestate estate of Sisenando Enriquez a certificate of public convenience to operate at Bongabong, Mindoro, an ice plant with a daily productive capacity of two tons, reduced in an amendatory decision to one ton. The petitioner for review, Gaudencio L. Banaag, is the operator of a similar plant with a daily capacity of five tons in Pinamalayan, Mindoro, and supplies ice in Bongabong, among other municipalities. He opposed the new application, contending that there was no necessity for the proposed ice plant and warning against ruinous competition.

Public convenience and necessity is the primary consideration for which public utility is authorized to operate. (Manila Electric Co., vs. Pasay Transportation Co., 31 O. G. 2083; Manila Electric Co., vs. Pasay Trans. Co., 36 O. G. 3250; Manila Railroad Co. vs. Parsons Hardware Co., 37 O. G. 1333; Tanjuangco vs. De Borja, Off. Gaz. Sup., Dec. 16, 1941, p. 172; Linjuco vs. San Miguel Brewery, Off. Gaz. Sup., Oct. 4, 1941, p. 125.) And so long as there is evidence before the Public Service Commission reasonably supporting its order and there is no clear abuse of powers, the Supreme Court will not interfere. (Alcosan Transportation Co., Inc. vs. Public Service Commission et al., 36 O. G. 2193; Ampil vs. Public Service Commission, 59 Phil. 586; Gilles vs. Halili, G. R. No. 45398; Bulacan Bus Company, Inc., vs. Enriquez, G.R. No. 46055; Cebu Autobus Co., vs. Bisaya Land Transportation Co., 37 O. G. 86.)

The commission has found that the owner of the existing ice plant in Pinamalayan has not been rendering adequate service to the people of Bongabong and, consequently, that an ice plant is needed in the latter municipality to meet its inhabitant's demands for this important commodity. The facts set forth in the decision clearly warranted the Commission's findings. Says the Commission:

"After a careful examination of the record, we are of the opinion that the opposition to the application cannot be sustained. It is established that Bongabong does not have and has never had an ice plant although there is a regular daily demand for ice from the people living in the place. Bongabong is a town with a population of approximately 18,000 people and lies 36 kilometers from Pinamalayan and 90 kilometers from Calapan. Ice is needed by the general public and by stores and refreshment parlors in the poblacion which have to use ice every day to carry on their business. Applicant's witnesses testified that the ice service from the Pinamalayan ice plant is occasional and not regular and although oppositor's witnesses stated that ice is brought every day to Bongabong from Pinamalayan, we find the evidence of the applicant on this point more credible, that is, that Bongabong does not receive a regular and sufficient supply of ice every day from oppositor's plant in Pinamalayan. It is established that the 36 kilometers of road between Pinamalayan and Bongabong is not very good aside from the fact that there are several wooden bridges which during the rainy season are not transitable so that there is no means of access between the two towns. When this happens the people of Bongabong do not get any kind of ice service whatsoever. The operation of applicant in Bongabong would result in a better

service for the people in that town than the service which might be rendered by the oppositor from his Pinamalayan plant. While it is true that the operation of applicant's 2-ton plant might result in reducing oppositor's ice sales in Bongabong, it is not established that the said operation would bring about the ruinous competition feared by oppositor. It is our finding that the best interests and convenience of the public of Bongabong Justify the grant of the authorization applied for herein."

The plea that the petitioner for review is heavily indebted to the Rehabilitation and Finance Corporation and has mortgaged his plant to secure the loan with the approval of the Public Service Commission is not by itself a good ground for setting aside the decision complained of. That approval was not a commitment that the debtor could have a monopoly of ice-making for any length of time. It is doubtful whether the Commission could lawfully make such commitment even if it wanted.

Moreover, we do not think that the projected new ice plant in Bongabong will pose any serious threat of ruining Banaag's business. The new applicant is authorized to make only one ton of ice a day and the locale of his plant is 36 kilometers from appellant's Banaag still has to himself Pinamalayan and the rest of the other municipalities, except Bongabong, where he has been selling ice heretofore. And even Bongabong is not closed to his business.

What is likely to emerge from the new set up is a healthy competition, which the Commission not only may but should foster under ordinary circumstances. "Reasonable and well-regulated competition should be stimulated because it encourages and promotes a public service as well as the interests of the community. Ruinous competition ought to be avoided, but constructive and well regulated competition makes (for) progress and development of the ice industry for the benefit of the community," (Cebu Ice & Cold Stores Corporation vs. Velez, G. R. No. 35705.)

The petition for review is denied with costs.

Paras, Feria, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

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