

MARTIRES ERENO COMPETITIONER, VS. PUBLIC SERVICE COMMISSION AND VELASCO & CO., RESPONDENTS.

G.R. No. L-25962. September 30, 1975

Ponente: MARTIN, J.

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MARTIN, J.:

This is a petition to review the decision of the defunct Public Service Commission in its Case 62-7137, denying petitioner's application for certificate of public convenience to operate an ice plant.

Petitioner company is a general co-partnership between Pedro M. Martires and Jose Ereno, organized under the laws of the Philippines, and registered with the Securities Exchange Commission. On February 15, 1963, it applied certificate of public convenience to install, operate and maintain a 10-ton ice plant in the municipality of Casiguran, Sorsogon and to sell the ice produced in the said municipality as well as in the neighboring municipalities of Juban, Magallanes and Irosin, Province of Sorsogon. The application was opposed by the respondent Velasco & Co., Rafael Aquino and Bulan Electric and Ice Plant, but only respondent Velasco & Co. prosecuted its opposition, claiming that public convenience and necessity do not demand the operation of an ice plant in the municipality of Casiguran, since the need of ice in said municipality as well as in the aforementioned municipalities is duly and efficiently served by it, and that petitioner company is not legally and financially qualified to install, operate and maintain the proposed ice plant.

After due hearing, the Public Service Commission^[1] rendered a decision on September 3, 1965, disposing:

"The Commission has gone over the evidence of record and we believe that it [petitioner-applicant] has not proven to the satisfaction of the Commission that There is need for establishing an ice plant in Casiguran, Sorsogon. On the contrary, oppositor [respondent company] has proven that it has not been remiss in its obligation to serve the municipalities composing its territory, for it has filed and was granted authority to increase its daily productive capacity if and when it feels that there is need for such additional capacity. Besides, Ereno failed to prove his Filipino citizenship as has been discussed above.

"In view of the foregoing circumstances, we are constrained to dismiss, as we hereby order that the application filed in this case, be as the same is hereby dismissed." (Stress supplied; subsequent italics with like intention).

Forthwith, petitioner company elevated the matter to Us thru the present petition.

As gathered, the imperative issues in this case are, first, whether necessity exists for the establishment of an ice plant in the municipality of Casiguran to serve the said municipality as well as the municipalities of Irosin, Juban and Magallanes, and second, whether petitioner company is legally qualified undertake the maintenance and operation of the ice plant.

Although the general rule is that this Court will not disturb the decision of the Public Service Commission if reason supported by evidence,^[2] We feel that the present petition for review should be granted and the decision of the Public Service Commission reversed.^[3]

In the granting of certificates of public convenience, the principle that overrides all others is that public interest, necessity and convenience should be the first and paramount consideration.[4] The number of persons to be benefited by the proposed service is immaterial.[5]

In the case before Us, it was shown that in the municipalities of Casiguran, Juban, Irosin and Magallanes, there is no ice plant. The inhabitants of these municipalities procure their ice requirements from the Velasco Ice Plant of respondent company in Sorsogon or from the Bulan Ice Plant in Bulan, through the conductors of Alatco or Ammen Transportation Company by sending money and empty sacks,⁶ because the respondent company has no delivery truck.[7] Casiguran is around 21 kilometers from Sorsogon and 45 kilometers from Bulan.[8] It has a population of 15,043 inhabitants and 67 registered business establishments. Us residents are engaged in fishing and they preserve their catch with ice.[9] On December 17, 1962, the Municipal Council of Casiguran favorably endorsed the application of petitioner company to operate an ice plant in the municipality.[10] Juban is a neighboring town of Casiguran, about 4 kilometers away, with a population as big as Casiguran. Likewise, its residents are engaged in fishing and they too preserve their catch with ice.[11] On February 23, 1964, the Municipal Council of Juban adopted Resolution No. 20, endorsing the application of petitioner.[12] Magallanes is 18 kilometers away from Casiguran, 47 kilometers from Sorsogon, and 40-50 kilometers from Bulan.[13] It has a population of 18,144 inhabitants and 134 business establishments. It is a fishing center where the National Fishing Development is proposing to establish a canning factory. Its fishermen, like those of Casiguran and Juban, send their catch to Manila and Albay and preserve it with ice they get from the Sorsogon Ice Plant.[14] Irosin is 24 kilometers from Casiguran, 21 kilometers from Bulan, and [15] kilometers from Sorsogon. It has a population of 53,106 inhabitants and 180 business establishments, such as restaurants, carinderias, ice cream manufacturers, and fish and meat vendors.[15]

A fortiori, it cannot be lightly said that necessity does not obtain to compel the establishment of an ice plant in Casiguran. In fact, in view of the universal and widespread demand for ice,[16] "no evidence is necessary to show that an ice plant in the locality is much more advantageous to the general public as to facility in acquiring said article of commodity, not to say of domestic necessity, without loss in weight, than a plant some kilometers from said locality, which distributes to its customers by means of delivery trucks at certain hours of the day. Even in the case where an outside manufacturer has an ice depository in the locality, this court has found and held that it is always more advantageous to have an ice plant in the same locality,"[17] The mere fact that the ice plants at Sorsogon and Bulan supply and sell ice in these municipalities is no impediment to the subsequent authorization of an applicant in these localities, taking into consideration the distance between Sorsogon, Bulan and Casiguran, Juban, Magallanes and Irosin. This is not a case of land transportation company with a time-table, whose service may be increased or decreased according to the needs of the public, but that of a company supplying ice manufactured by it, whose efficiency to satisfy the needs of the buying public depends upon its promptness and economy in so doing.[18] The rule should apply with more force where the applicant proposes not only to sell and distribute ice in the localities covered by his application but to establish an ice plant in one of them.[19] That an old operator can fill up the deficiency at any time, and for that reason it is not advisable to grant a new applicant a permit to operate, is not worthy of any consideration as he should have applied to the Commission for that purpose before the new applicant presented his application.[20] Respondent company's alleged continuous supply of ice to an ice seller at Magallanes and two ice dealers at Casiguran to secure ice requirements thereof is no valid legal barrier; this notwithstanding, still the installation of an ice plant in these municipalities is more advantageous.

The "prior operator" and "protection of investment" rules cannot prevail over the convenience of the public. At present, there is no ice plant in any of the municipalities of Casiguran, Juban, Magallanes and Irosin, where a great demand for ice exists, as can be gleaned from the successive increase in the productive capacity of

respondent company's ice plant from 2 tons in 1948 to 7 tons in 1950 and to 13.5 tons in 1952.[21] Said "protection of investment" rule is not absolute, for nobody has exclusive right to secure a franchise or a certificate of public convenience.[22] It cannot be applied unqualifiedly for that would encourage violation or disregard of the terms and conditions of the certificate and the Commission's directives and regulations, and would close the door to other applicants who could establish, operate and provide adequate, efficient and satisfactory service for the benefit and convenience of the inhabitants.[23]

Nor could an unfair or ruinous competition result from the authorization of the ice plant applied for. In order that the opposition based on ruinous competition may prosper, it must be shown that the oppositor would be deprived of fair profits on the capital invested in its business. The mere possibility of reduction in the earnings of a business is not sufficient to prove ruinous competition. It must be shown that the business would not have sufficient gains to pay a fair rate of interest on its capital.[24] This, respondent company has not convincingly shown.

Its apparent apprehension that it may lose the P6,000-net earnings realized by the company in 1963 which, according to its formulation, is the fair return of the P59,700-capital investment, cannot be accurately relied upon, in the absence of proof of its accuracy, for the purpose of proving ruinous competition. Besides, respondent company has been in operation since 1948 and there is no showing that the said P6,000-profit in 1963 was due to the ice it sells in the municipalities of Casiguran, Juban, Magallanes and Irosin. As its present facilities are not enough to supply ice to the inhabitants of these four municipalities, it may not raise the alarm that there is bound to be a "ruinous" competition upon failure to present concrete proof that the establishment of another ice plant would reduce its business to the extent that its profit would no longer amount to a fair return of its investment.[25] On the contrary the resulting competition will undoubtedly benefit the people of these municipalities through improvement in the service and reduction in retail price.[26] And this should be allowed, because it tends to promote satisfaction and efficiency,[27] rather than a monopoly which would be a burden to the community.[28]

Next, respondent company impugns, as it did before the respondent Commission, the financial capacity of petitioner company to maintain and operate the ice plant applied for. However, We note that the respondent Commission found no insufficiency or deficiency in the financial capacity of petitioner company. In breadth, respondent Commission denied the application because petitioner company "has not proven to the satisfaction of the Commission that there is need for establishing an ice plant in Casiguran, Sorsogon" and that "Ereno failed to prove his Filipino citizenship." [29] Upon the record, this finding is not patently justified.[30] Moreover, with the nature of petitioner's partnership as general where the liabilities of the partners are unlimited and extend to their private properties (Article 1816, Civil Code), of which the partners Martires and Ereno are possessed (consisting of real properties), it is not likely that it would encounter difficulties in starting with its P40,000-capital which the partners are even willing to increase.[31] This is different from an individual applicant whose resources are but limited to his personal assets.

Finally, respondent company contests the citizenship of Jose Ereno, a son of a Chinese father, for want of proof of his election of the Philippine citizenship and the non-registration of his election with the nearest civil registry. Before the respondent Commission, Jose Ereno declared under oath that he is a Filipino citizen, a registered voter, who has been voting since before the second world war, and that he was elected as barrio councilor in Casiguran.[32] In 1938, upon reaching the age of majority, he took his oath of allegiance as a Filipino citizen before the Justice of the Peace of Casiguran, with whom he subsequently filed his election of Filipino citizenship. However he lost his copy during the war. These acts are sufficient to show Jose Ereno's preference for Philippine citizenship. Indeed, it would be unfair to expect the presentation of a formal deed of election considering that prior to the enactment of Commonwealth Act 625 on June 7, 1941, no particular proceeding was required to exercise the option to elect Philippine citizenship, granted to the proper party by Section 1, subsection 4, Article

IV of the 1935 Constitution.[33] What is more when no contrary proof was presented by respondent company, which, in the first place, should not rely on the weakness of Ereno's proofs, if weakness there is, but on the strength of its own evidence. The adverse finding of the respondent Commission on Ereno's citizenship (which was principally based on Ereno's failure to present his document of election), while it has the power to inquire into,[34] is not conclusive.[35]

ACCORDINGLY, the decision under review is hereby reversed and set aside and the respondent Commission, or whichever office or agency has taken over its functions, is hereby directed to grant to petitioner company the certificate of public convenience, as applied for. No costs.

SO ORDERED.

Teehankee, Makasiar, Muñoz Palma, and Aquino, JJ., concur.

Esguerra, J., on leave.

[1] Abolished and functions transferred to Board Transportation, Department of Public Works. Transportation and Communications; see Letter of Implementation No. 1. dated September 27, 1972, in relation to PD No. 1. dated September 24. 1972.

[2] Ledesma v. PSC, L-26900, February 27, 1970, 31 SCRA 805; Intestate Estate of Tiongson v. PSC, L-24701, December 16, 1970, 36 SCRA 241; Carpena v. Salisi, L-22027, July 3 1, 1973, 52 SCRA 168; City of Taghilaran v. Lim, L-30323, August 31, 1973, 52 SCRA 381.

[3] Halili v. Daplas. L-20282. May 19, 1965, 17 SCRA 648; Del Pilar Transit, Inc. v. Silva, L-21574, July 15, 1966, 14 SCRA 14; Central Tuxicab Corp. vs Public Service Commission, L-24289, February 17, (1968. 22 SCRA 616.

[4] Clemente v. Bonifacio, L-14888, September 30. 1964. 12 SCRA 63; Republic Telephone Co., Inc. v. PLOT, L-21075, September 23. 1968. 25 SCRA 81; Dizon v. PSC, L-3482U. April 30, 1973. SO SCRA 507,

[5] Manila Electric Co. v. Pasay Transportation Co., Inc., 66 Phil. 38.

[6] Brief, petitioner, at 3.

[7] Brief, respondent, at 34,

[8] Based on the distance of Irosin from Bulan. Casiguran, and Sorsogon.

[9] Brief, respondent, at 25, 26, 38.

[10] Idem, at 14.

[11] Idem, at 26.

[12] Idem, at 13.

[13] Brief, petitioner, at 9.

[14] Brief, respondent, at 26.

[15] Brief, petitioner, at 7. 8.

[16] Valenzuela v. Dupaya, L-16852, July 26, 1966, 17 SCRA 716.

- [17] San Miguel Brewery v. Espiritu, 60 Phil 745, 751.
- [18] Limjoco v. PSC, et al., L-32831, not reported, September 13, 1930.
- [19] Limjoco v. San Miguel Brewery, 71 Phil. 189; Halili v. Ice and Cold Storage Industries of the Phils., 77 Phil. 823; Santiago Ice Plant v. Lahoz, 87 Phil. 221.
- [20] Halili v. Flora, 90 Phil. 245.
- [21] Brief, respondent, at 27.
- [22] Teresa Electric & Power Co., Inc. v. PSC, L-21804, September 25, 1967, 21 SCRA 198.
- [23] Rizai Light & Ice Co., Inc. v. Mun. of Morong, I.-20993-21221, September 28, 1968, 25 SCRA 300, 301.
- [24] Halili v. Ice A Cold Storage Industries of the Phils., 11 Phil. 823; Raymundo Transportation Co., Inc. v. Tanchingco, 97 Phil. 105; MD Transit v. Pepito, L-16481, September 29, 1962, 6 SCRA 141; Halili v. Daplas, L-20282, May 19, 1962, 14 SCRA 14.
- [25] Santiago v. Lahoz, ante.
- [26] Intestate Estate of Teofilo M. Tiongson v. PSC, L-24701, December 16, 1970, 36 SCRA 245.
- [27] Robles v. Blaylock, L-24123-26, March 27, 1968, 22 SCRA 1284.
- [28] Robles v. Blaylock, L-17629, March 31, 1964, 10 SCRA 530, 531.
- [29] Sec Decision of respondent Commission at 2, 3, this Decision.
- [30] Alatco Transportation Co., Inc. v. Bonele, Jr., L-25078, December 24, 1968, 26 SCRA 503 and cases cited.
- [31] Reply Brief, petitioner, at 26.
- [32] Reply Brief, petitioner at 17.
- [33] In re Florencio Mallare, Adm. Case No. 533, September 12, 1974, En Banc, 59 SCRA 52; see also Zamboanga Transportation Co., Inc. v. Fargas, 91 Phil. 68.
- [34] Zamboanga Trans Co. v. Lim, 105 Phil. 1321.
- [35] Lee v. Commissioner of Immigration, L-23446, December 20, 1971, 42 SCRA 565; Burca v. Republic, L-24252, June 15, 1973, 51 SCRA 260.

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