

[WITH RESOLUTION OF APRIL 24, 1967]

G.R. Nos. L-16204 and L-16256. August 31, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

This is the second time that this case involving petitioners' application for a certificate of public convenience and necessity to operate a telephone service in Pasig, Rizal, has reached this Court. In a previous proceeding brought to us by these same petitioners Ernesto A. Papa and Conrado V. Atanacio (G. R. No. L-12433), asking for the review of an order of the Public Service Commission, dismissing their application, this Court rendered a decision (promulgated on February 28, 1959) based on the following facts duly appearing in the records:

"Under resolution No. 217, dated November 27, 1954, the Municipal Council of Pasig, Rizal, granted respondent (Severo J.) Santiago a municipal franchise to operate a telephone service in Pasig. It seems that this resolution was not approved by the Provincial Board, as required by Act No. 667 as amended by Act No. 1022. The Provincial Board returned it, disapproving the resolution, advising the council that the application for said franchise be submitted to public bidding.

"The same Municipal Council of Pasig approved Resolution No. 212, dated December 22, 1955, granting to petitioners Papa and Atanacio a municipal franchise to operate a telephone service in Pasig. Said franchise was granted after a sealed bidding conducted by the council, in which respondent Santiago took part but lost. Santiago claims in his brief that he did not participate in this bidding, but petitioners answered without denial on Santiago's part that he, Santiago, really took part through the Republic Telephone Co., Inc., of which he was the, president and principal stockholder.

"As required by law (Act No. 667), the said Municipal Resolution No. 212 was referred to the Provincial Board of Bizal for approval. According to petitioners, it was approved by the Provincial Board on January 25, 1956, in its Resolution No. 119. What the Provincial Board really said in its resolution No. 119 was as follows:

IT WAS RESOLVED to respectfully forward the aforementioned resolution to the Public Service Commission and the Office of the President of the Philippines, recommending approval.

'Carried.'

(Italics supplied).

"Following said resolution of the Board, petitioners Papa and Atanacio, on February 1, 1956, filed an application in Case No. 24119 of the Public Service Commission for a certificate of public convenience and necessity to operate a telephone service in Pasig, Rizal, and completed submission of their evidence in support thereof on November 28, 1956.

"In the meantime, the same Municipal Council of Pasig passed Resolution No. 245 on December 12, 1956, revoking the franchise given to petitioners Papa and Atanacio, on the ground that they had failed to install a telephone service. This municipal resolution was approved by the Provincial Board on February 13, 1957, by Resolution No. 192, amended by its Resolution No. 204 of February 18, 1957.

"The Municipal Council, on September 10, 1956, in its Resolution No. 186, granted respondent Santiago a franchise to operate a telephone service in Pasig. Petitioner called this resolution a revival of its original Resolution No. 217, dated November 27, 1954, which was not approved by the Provincial Board. Said Municipal Resolution No. 186 was approved by the Provincial Board on November 12, 1956 by its Resolution No. 1437. After said Board's resolution, Santiago filed his application with the Public Service Commission on November 7, 1956, amending it on November 23, 1956, also for a certificate of public convenience and necessity to operate a telephone service in Pasig, in Case No. 101261. He finished submitting his evidence on February 15, 1957. Both applications of the petitioners and respondent were heard by the Commission, the parties mutually asking for the dismissal of each other's applications. Presumably, because the application of petitioners was submitted first, the Commission acted upon and decided it by its order of May 10, 1957, now sought to be reviewed.

"In his motion for the dismissal of the application of petitioners, Santiago claimed that petitioners, franchise had been revoked by resolution of the Municipal Council, approved by the Provincial Board, and that consequently, there was no existing franchise on which the Commission could act and base any grant of a certificate of public convenience and necessity. Ruling upon this claim and question raised, the Commission, in our opinion, correctly held that the Municipal Council and Provincial Board had no right to revoke a franchise already granted, unless there be a valid reason for doing so; that a franchise constitutes a contract between the grantor and grantee, and that it cannot be impaired except for given by the Municipal Council in revoking the franchise granted good reasons. The reason or excuse, according to the Commission, to the petitioners, was that the latter failed to install the telephone service involved in the franchise. But the Commission rightly argued and ruled that petitioners could not be expected to make the installation until and unless their franchise was acted upon favorably by the Commission by a grant of the corresponding certificate of public convenience and necessity, and approved by the Chief Executive, and at the time of the revocation by the Municipal Council, petitioners had not yet obtained said approval of the Commission and of the President. For this reason, the Commission denied Santiago's petition for dismissal.

"The Commission, however, evidently on its own initiative, found and held that the action taken by the Provincial Board by its resolution forwarding the municipal resolution granting a franchise to petitioners, to the Commission and to the President recommending approval, was not the express and explicit approval required by the law—Section 2 of Act 667, which states that "no franchise shall become operative until the same shall have been approved by the Municipal Council, and secondly, by the Provincial Board." The question now to determine is whether a recommendation for approval is equivalent to and may be regarded as an approval. Petitioners call our attention to authoritative definitions of and the import of the words and phrase "approval," "approved," "recommending approval" and their connotations. We shall not quibble about their significance and shades of meaning. We propose to approach the question from a practical and realistic standpoint."

Holding that the action of the Provincial Board of Rizal, "recommending approval" of the Council's resolution granting a franchise to Papa, et al., was actually an approval thereof, this Court ordered:

"IN VIEW OF THE FOREGOING, the appealed order of dismissal is hereby set aside and the case is ordered remanded to the Commission for further proceedings. As to which of the two applicants is entitled to a certificate of public convenience and necessity, assuming that they are both qualified, rests in the sound discretion of the Commission. The Commission may, however, take into consideration the fact that between the two, the petitioners obtained an operative franchise from the Council and the Provincial Board first; also that they were the first in filing an application with the Commission and in completing the submission of their evidence. Petitioners also informed the Court in their pleadings that they have already made investments and expenditures in preparation for the future operation of the franchise, in the sum of P60,000. We have no evidence before us as to the correctness and validity of said claim, which may well be considered by the Commission. No costs."

Pursuant to the above directive of this Court, the Public Service Commission, upon receipt of the records, set the

case for hearing "for the purpose of receiving such additional evidence as applicants Papa and Atanacio and Severo J. Santiago may desire to present to enable the Commission to determine which of the two applicants should be granted the certificate for a telephone service in Pasig, Rizal."

On September 29, 1959, after both parties had presented their respective evidence, the Commission rendered a joint decision (in PSC Cases Nos. 94119 and 101261) in part reading as follows:

"Upon a careful consideration of all the evidence before the Commission, particularly the technical plans, specifications, and layouts submitted by the applicants for their respective proposed telephone system; the class or type of equipment and material which they propose to use; the extent of service which they initially propose to render; the financial responsibility of the applicants; the extent of the investments already made by them; the quantity and quality of the equipment already in their possession, and whether or not the same have already been installed; the background, experience and technical qualifications of the applicants for this particular field of activity; their ability to expand the service if and when necessary their ability to insure a continuous and adequate service; and their ability to establish and operate the service without any further delay, the Commission finds that the certificate of public convenience and necessity should be granted to the applicant, Severo J. Santiago, to the exclusion of the other applicants.

"The Commission finds that whereas the applicant Severo J. Santiago, has already in his possession a complete set of equipment and material for his proposed telephone system in Pasig, the other applicants, Ernesto A. Papa and Conrado V. Atanacio, have not yet completed their equipment; that whereas applicant Santiago has already installed not only his central office equipment but also his outside plant equipment and facilities and that he has even connected telephone lines to a number of residential houses and commercial offices, including some offices of the Government, and this system has actually been tested by engineers of the Commission, and found to be satisfactory producing clear and distinct sound, the equipment of the applicants. Papa and Atanacio, are scattered in at least four different places in Manila, Quezon City, and Meycauayan (Bulacan) and are not yet installed; that whereas the equipment already installed by the applicant Santiago is ready for immediate use of the public of Pasig, those of the applicants Papa and Atanacio, being incomplete and uninstalled are not yet ready for use; that whereas the equipment already installed by the applicants, Severo J. Santiago, has been designed and installed to meet, by way of initial service, the requirements of Pasig for a period of five (5) years, that proposed by the other applicants is designed to serve less; that whereas the applicant Santiago is already possessed with the necessary tests and repair tools, equipment and material to insure a continuous service, the other applicants Papa and Atanacio are not so equipped; that whereas applicant Santiago having already designed his telephone system to meet the requirements of Pasig for a period of five (5) years, will not need any major financing to expand his service, the other applicants Papa and Atanacio having designed their proposed telephone system for a less initial service, have yet to acquire additional equipment for any expansion of their proposed service and according to their own evidence, the applicant, Ernesto A. Papa, will rely on a loan from the RFC for this purpose; that whereas the telephone system of applicant, Severo J. Santiago, as proposed by him can easily meet the requirements of the new manufacturing, industrial and commercial houses in Pasig, thru the establishment and use of private exchange switchboards, the other applicants do not propose the use of private exchange switchboards; and whereas we find the applicant Santiago far more responsible financially speaking and better qualified on a technical basis than the other applicants, this Commission should grant the certificate of public convenience and necessity to the said applicant, Severo J. Santiago. Moreover, to grant the certificate of public convenience and necessity to the applicant, Severo J. Santiago, will result in the immediate operation of a telephone system in Pasig. On the other hand, to grant it to the other applicants, Papa and Atanacio, will only result in further delay in the establishment of the telephone system, aside from the fact that in this event, Santiago will have to remove all the equipment which he has already installed at such great expense.

"There is in favor of the applicants Papa and Atanacio the factor of having been the first to file their application with the Public Service Commission. It has been consistently held by the Supreme Court, however,

that priority in the filing of an application is controlling only when all other facts and circumstances are the same. Obviously, the facts and circumstances are not the same in these cases, and for this reason, the priority in the filing of the application of Papa and Atanacio may not prevail.

* * * * *

"Upon consideration of all the foregoing, the Commission believes that the application filed by Ernesto A. Papa and Conrado V. Atanacio, in case No. 94119 should be, as it is hereby DENIED, and the application filed by applicant, Severo J. Santiago, in Case No. 101261, should be, as it is hereby, GRANTED. It is, therefore, ordered that, after approval of the applicant Severo J. Santiago's franchise by the President of the Philippines, a certificate of public convenience and necessity be issued to applicant, Severo J. Santiago, authorizing him to install, operate and maintain a telephone service in the municipality of Pasig, province of Rizal, the said certificate to be subject to the following:

* * *

"Let Resolution No. 217, dated November 27, 1954, of the Municipal Council of Pasig, Rizal, granting a telephone franchise to Mr. Severo J. Santiago together with Resolution No. 1379, dated October 29, 1956, as amended in Resolution No. 1437, dated November 12, 1956, of the Provincial Board of Rizal, and a certified copy of this decision be forwarded to the President of the Philippines, for final approval of the aforementioned franchise.

"This decision shall take effect immediately and shall become final thirty (30) days after notice to the parties.

"SO ORDERED. (*Italics supplied*)

Applicants Papa and Atanacio received copy of the above decision on October 10, 1959.[1]

On October 2, 1959, copy of the aforementioned joint decision was forwarded to the President of the Philippines. The same was favorably acted upon on that same day, in a communication reading as follows:

"Manila, October 2, 1959

"Gentlemen:

"Pursuant to the provisions of Section 2 of Act No. 667, the franchise granted to Severo J. Santiago for the installation, maintenance and operation of a telephone system in the Municipality of Pasig, Rizal, by the Municipal Council of said municipality in its Resolution No. 217, series of 1954, approved by the Provincial Board of Rizal in its Resolutions Nos. 1379 and 1437, both series of 1956, and approved by the Public Service Commission in its decisions rendered in Cases Nos. 94119 and 101251 is hereby approved, provided such approval shall take effect when said decisions become final.

"Very truly yours,

"By Authority of the President:

"ENRIQUE C. QUEMA

"Assistant Executive Secretary"

(*Italics supplied*)

It may be assumed that a certificate of public convenience and necessity was thereafter issued to applicant Santiago, for on October 3, 1959, he filed a written acceptance (of the certificate) with the Secretary of Public Works and Communications, paid the necessary fees, filed the required bond, and resumed[2] operation of the telephone service on October 4, 1959 (p. 11, respondent's brief). In the meantime, Papa, et al., instituted the

instant appeal.

As a general rule, this Court will not disturb factual findings of the Public Service Commission, except where there is a clear abuse of power or the order or decision appealed from is not reasonably supported by evidence.

In the cases at bar, it appears from the pertinent portions of the decisions quoted above, that the conclusion of the Commission is based upon the finding that Santiago's equipment is complete and, as a matter of fact, already installed, Papa and Atanacio's is yet "incomplete and uninstalled"; that Santiago's preparation was designed to meet the requirements of the service for five years; those of Papa, et al., for a less period; Santiago is "far more responsible financially speaking and better qualified on a technical basis than the other applicants." However, the joint decision failed to state that such "incomplete and uninstalled" equipment of Papa, et al., would be insufficient to operate the service proposed to be undertaken or that they are not qualified to render the same. Considering that Papa, et al., have in their favor a prior application and operative franchise, it is our view that, to offset this advantage, it is not only necessary for the other applicant to prove a superior equipment or preparation but also to show that the prior applicants are not themselves qualified. We, therefore, find it necessary to go over the records of these cases, which reveal the following testimony of Marciano Itliong, Supervising Regulation Utility Engineer of the Public Service Commission, who inspected Papa and Atanacio's equipment, to wit:

"Q Would you say the type of the switchboard you saw at Pasig, Rizal, belonging to applicant Santiago is of the same type as the switchboard you saw in the D. Tuazon St. belonging to the applicants Papa and Atanacio?

"A I remember very well that they are of the same type.

"Q Will you be able to state here Mr. Itliong after investigation is made the capacity of the switchboard which you inspected and which belonged to applicants Papa and Atanacio?

"A As stated here it will have a total of 320 common battery lines and 20 magneto lines and the other provides for eight trunk lines.

"Q Do I understand from you Mr. Itliong that all those items of communication materials which you have stated here in your report are those which you have seen during your inspection?

"A Yes, sir. All those things that we have stated there.

"Q In your opinion as an engineer of this Commission, can you state here if those equipments of the applicants Papa and Atanacio are in a position to start with the operation of the telephone system in Pasig, Rizal?

* * *

"A If they can be installed properly.

* * *

"Q As you said if properly installed and the other things that may be missing can be furnished the applicants Papa and Atanacio can operate?

"A They can operate." (pp. 128-130, t.s.n.—hearing of June 25, 1959).

On cross-examination, this witness declared that Papa, et al. have practically the same equipment as Santiago, with the exception of a set of batteries,[3] (which would be necessary only in case of breakdown of power supply) and rectifier (which is included in the battery charger), and that their (Papa, et al.) outside plant facilities would be sufficient to serve 200[4] initial subscribers, (pp. 138-143, t.s.n., hearing of June 25, 1959)

Ernesto Papa appears also to be the operator of the Meycauayan (Bulacan) telephone system, and there is no

evidence that said service has not been effectively and satisfactorily managed. As to financial capacity, there is no proof that Papa and Atanacio's resources would be insufficient to cover the expenditures incidental to the operation of the proposed telephone system. Too, while admittedly Santiago's service may have been designed to cover the needs of the community for 5 years and that of the other applicants for a less period, there is no requirement in the law compelling an applicant to make such extensive preparation. As a matter of fact, the Public Service Commission does not even require applicants to provide or prepare a particular kind of equipment in connection with a proposed telephone service.[5]

The records of these cases, disclose certain circumstances that militate against the position of respondent Santiago. In the first place, it is undisputed that in the public bidding conducted by the Municipal Council of Pasig for the granting of franchise to operate a telephone system in that municipality, the winners were petitioners Papa and Atanacio, and Santiago, taking part therein through the Republic Telephone Co., Inc., of which he was the President and principal stockholder, lost. Secondly, it likewise appears that notwithstanding the fact that he had no license from the municipality of Pasig nor permit from the Public Service Commission, Santiago, operated a telephone system during the hearing of these cases thereby giving rise to a complaint filed by Papa and Atanacio, as a result of which the Commission ordered Santiago to desist from such operation and to refund all collections made by him from concessionaires who had been illegally given telephone lines or connections. In fact, it is this illegal operation that gave Santiago the apparent advantages mentioned by the Commission in its appealed decision. It seems unjust to consider these apparent advantages resulting from his illegal operation in favor of Santiago, and in granting his application because of those advantages. Thirdly, Santiago, even before the finality of the decision in his favor, resumed the operation of the telephone system with the apparent acquiescence of the Public Service Commission. Note that the decision was made subject to the final approval of the franchise by the President. The Chief Executive approved the same with the proviso that such approval shall only take effect when the joint decision becomes final. As the decision itself fixed its date of finality, i.e., 30 days after the parties are duly notified thereof, and as applicants Papa and Atanacio received copy of said decision on October 10, 1959, the same actually became final (and the approval by the President became operative) only on November 9, 1959. And yet, as already stated, Santiago was permitted to resume operation on October 4, 1959, or more than a month before the decision became final. Fourthly, the fact that Severo Santiago is the President and majority stockholder of the Republic Telephone Co., operator of the telephone systems in Calamba, Santa Cruz, Los Baños, Santa Rosa-Cabuyao (in Laguna), Lipa City, Batangas, Bauan (in Batangas), and Cabanatuan City, should have been considered against him. As this Court had said in another case:

"The further fact that respondent Santos already owns 87 taxi-cab units which he presently operates militates against his application, because giving the award to him would likely create a monopoly in this particular line of business. A monopolistic trend with its concomitant evils can only serve to prejudice public interest, stifling as it does enthusiasm and initiative on the part of those eager to learn. Prior experience, while itself useful, cannot create a vested right which would endanger the national economy." (Benitez vs. Santos, 107 Phil., 167.)

As, evidently, Papa, et al., who had obtained a prior operative franchise, are themselves qualified to operate the proposed service, the certificate of public convenience should have been awarded to them.

Wherefore, the joint decision appealed from is hereby set aside, and the application of Papa and Atanacio for a certificate of public convenience to operate a telephone system in Pasig, Rizal, is granted. With costs against respondent Severo Santiago. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] p. 440, Vol. II, PSC records.

[2] Upon complaint of applicants Papa, et al., that Severo Santiago, without obtaining a certificate of public convenience, was already operating a telephone service in Pasig, and collecting fees therefor, the Public Service Commission, by order of June 27, 1957, required Santiago and/or Republic Telephone Co. "to cease or desist immediately from operating his telephone system in Pasig, Rizal for hire or compensation", and to refund any amount already collected for the purpose, if there be any. (p. 277, Vol. II. PSC records.)

[3] Batteries are now locally manufactured and may be purchased in any down town store. (Testimony of PSC employee Conrado Tadle, pp. 187-188, t.s.n., hearing of June 30, 1959).

[4] The number given as example by counsel for Santiago.

[5] p. 187, t.s.n., hearing of June 30, 1958.

RESOLUTION

April 24, 1967

REYES, J. B. L., J.:

Respondent Severo J. Santiago has petitioned for a reconsideration of our main decision of August 31, 1962, reversing that of the Public Service Commission which denied the application of Ernesto A. Papa and Conrado Atanacio in PSC Case No. 94119 for a certificate of public convenience and necessity to install and operate a telephone system in Pasig, Rizal, and simultaneously granted the application for the same purpose filed by Severo J. Santiago in PSC Case No. 101261.

It will be recalled that this Court in a preceding appeal (G. R. No. L-12433) remanded the case back to the Public Service Commission for further proceedings to determine which of the "two applicants is entitled to a certificate of public convenience and necessity, assuming that they are both qualified," since the matter "rests in the sound discretion of the Commission."

Pursuant to the directive from this Court, the Commission of Public Service held hearings, and after receiving the evidence of the parties, decided in favor of Severo J. Santiago, as above noted, on the following basis:

"The Commission finds that whereas the applicant Severo J. Santiago, has already in his possession a complete set of equipment and material for his proposed telephone system in Pasig, the other applicants, Ernesto A. Papa and Conrado V. Atanacio, have not yet completed their equipment; that whereas applicant Santiago has already installed not only his central office equipment but also his outside plant equipment and facilities and that he has even connected telephone lines to a number of residential houses and commercial offices, including some offices of the Government, and this system has actually been tested by engineers of the Commission, and found to be satisfactory producing clear and distinct sound, the equipment of the applicants, Papa and Atanacio, are scattered in at least four different places in Manila, Quezon City, and Meycauayan (Bulacan) and are not yet installed; that whereas the equipment already installed by the applicant Santiago is ready for the immediate use of the public of Pasig, those of the applicants Papa and Atanacio, being incomplete and uninstalled, are not yet ready for use; that whereas the equipment already installed by the applicant, Severo J. Santiago, has been designed and installed to meet, by way of initial service, the requirements of Pasig for a period of five (5) years, that proposed by the other applicants is designed to serve less; that whereas the applicant Santiago is already possessed with the necessary tests and repair tools, equipment and material to insure a continuous service, the other applicants Papa and Atanacio are not so equipped; that whereas applicant Santiago having already designed his telephone system to meet the requirements of Pasig for a period of live

(5) years, will not need any major financing to expand his service, the other applicants Papa and Atanacio having designed their proposed telephone system for a less initial service, have yet to acquire additional equipment for any expansion of their proposed service and according to their own evidence, the applicant, Ernesto A. Papa, will rely on a loan from the RFC for this purpose; that whereas the telephone system of applicant, Severo J. Santiago, as proposed by him can easily meet the requirements of the new manufacturing, industrial and commercial houses in Pasig, thru the establishment and use of private exchange switchboards, the other applicants do not propose the use of private exchange switchboards; and whereas we find the applicant Santiago far more responsible financially speaking and better qualified on a technical basis than the other applicants this Commission should grant the certificate of public convenience and necessity to the said applicant, Severo J. Santiago. Moreover, to grant the certificate of public convenience and necessity to the applicant, Severo J. Santiago, will result in the immediate operation of a telephone system in Pasig. On the other hand, to grant it to the other applicants, Papa and Atanacio, will only result in further delay in the establishment of the telephone system, aside from the fact that in this event, Santiago will have to remove all the equipment which he has already installed at such great expense."

Upon appeal, this Court reversed the verdict of the Public Service Commission on the following grounds:

(1) That to offset the prior application and operative municipal franchise granted to Papa and Atanacio, it is not only necessary for the other applicant to prove superior equipment and preparation, but also to show that the prior applicants are not themselves qualified.

(2) That the following circumstances operated against the position of Severo J. Santiago:

(a) That in the public bidding conducted by the Municipal Council of Pasig, Papa and Atanacio won against the Republic Telephone Co., Inc. of which Santiago was President and principal stockholder;

(b) That Santiago operated a telephone system without license or permit, leading to a cease and desist order from the Commission, upon complaint of Papa and Atanacio;

(c) That even before finality of the Commission's decision in his favor, Santiago operated his telephone system, albeit, with the apparent acquiescence of the Public Service Commission, when the Presidential approval of his Municipal franchise, required by Act 667, was conditioned upon the Commission's decision becoming final; and

(d) That Severo J. Santiago being already the operator of telephone systems in other municipalities, the appealed award would likely create a monopoly prejudicial to public interest.

Severo J. Santiago in due time filed a motion praying that this Court's decision be reconsidered and reversed, on the ground that the rival applicant was not properly-qualified, and that the violations charged against him (Santiago) were untrue and not supported by facts, since the "cease and desist" order of the Commission itself showed that it had been issued ex parte and was contingent in operation, and in fact the charges of illegal operation had been subsequently dismissed. Santiago further submitted affidavits purporting to show that Conrado Atanacio, co-applicant of Papa, had withdrawn as early as 1957, from their joint enterprise, for which a certificate of public convenience had been applied for; and further challenging Papa's financial resources to establish the service applied for, since at the time of the trial of the case before the Commission, Papa's equipment was not really complete, as the telephone cables he had shown for inspection by the technicians of the Public Service Commission were not his, but belonged to one Ocampo, who had merely granted Papa an option to purchase the cables, and that Papa had subsequently failed to take up the option, with the result that Ocampo had sold the same cables to the Republic Telephone Company.

Applicant Papa having opposed the motion for reconsideration, the Court resolved to remand the case for reception of evidence of Papa's financial ability to maintain the service applied for. The Commission having done

so, it remitted the new evidence to this Court in December, 1966.

The evidence submitted at the rehearing confirms the allegations made by movant Santiago, and shows that as early as May 1957, Papa's co-petitioner, Conrado Atanacio, had advised his associate that he was no longer interested in PSC Case No. 94119, due to his belief that Papa and he were not in a position to finance and establish the telephone system in Pasig which requires considerable initial and year to year investment. Ricardo Ocampo, for his part, testified that the telephone cable of 51 pairs that the applicant Papa had listed as part of his equipment, actually were his (Ocampo's) and that Papa only had an option to buy said cables for P10,000.00 which he promised to pay if he won the case then pending before the Public Service Commission; that Papa never was in possession of the cable, in fact the same was examined by the PSC inspectors in Ocampo's house; that later, Ocampo sold the cable to Santiago's Republic Telephone Company with Papa's knowledge and without objections from him.

It is markworthy that, originally, Papa and Atanacio had listed this 51 pairs of telephone cable among their assets (Exh. N-2, PSC Rec. Vol. I, p. 68) without disclosing that their acquisition thereof was contingent upon favorable decision by the Commission, and that revelation of this unfavorable detail was forced upon them (or rather, upon Ernesto Papa, since Atanacio had withdrawn from the enterprise) only when years later, Santiago called attention to this fact in his motion to have this Court's decision reconsidered. While Papa's conditional acquisition of this essential portion of his equipment (the telephone cable) is now being palliated on the plea that he was entitled to minimize the risks in case of unfavorable action, still it was his plain duty to frankly disclose such circumstance to the Commission, in order to enable it to assess thoroughly the capacity and reliability of the applicant. It can readily be understood that had the Commission been apprised of the true facts concerning this portion of Papa's equipment, it would have inquired more thoroughly into the applicant's resources. As things stand, Papa's concealment tended to mislead the Commission, and such tactics can not but affect his case unfavorably. That he finally admitted the truth at the rehearing ordered by this Court and there exhibited Ocampo's receipt (Exh. 2a-Papa) where the contingent transaction is set down, can not cure Papa's initial disingenuousness, making virtue out of necessity.

We agree with movant Santiago that the facts thus disclosed at the Commission rehearing (and which were not revealed when the case was first heard) emphasize the correctness of the Commission's decision in preferring Santiago's application over that of Papa. They point to the meagerness of Papa's resources and deny his alleged capability to render satisfactory service. The cardinal rule in cases of this nature, is to adhere to what is best for the interest of the public, and favor what would best serve the public convenience (In re Gregorio, 77 Phil. 908, 914 and cases therein cited; Carmelo and Oriol vs. Monserrat, 55 Phil. 644). And, considering that as pointed out in the previous quotation from the appealed decision, Santiago's equipment had been tested, found satisfactory and ready for immediate use by the public, while Papa's had not yet been completed and tested; that Santiago's system was designed to meet the needs of Pasig for the next five years, while that of Papa was designed for a much less extensive coverage; and that Santiago was far more responsible, financially and technically, while Papa, on his evidence, had to rely on an expected loan from the RFC to expand his original limited service there can be no doubt that the approval of Santiago's application corresponded to the demands of public interest, that is ever the paramount, in fact, the overriding consideration.

Furthermore, the withdrawal of Papa's co-applicant, Atanacio (even granting that the latter was merely contributing his labor and industry as Papa claimed in his testimony), would further pose the problem whether a grant of Papa's application by the Commission would be in accordance with the municipal franchise upon which the application was predicated. Since the franchise was admittedly granted by the Pasig authorities to both Papa and Atanacio jointly, a certificate of convenience granted to Papa alone would, in effect, amend the municipal

franchise without the consent of its grantor. It may well be doubted whether such amendment lay within the power of the Public Service Commission. Then, again, Papa deprecated Atanacio's financial contribution to other joint enterprise as nil, claiming that Atanacio was a mere industrial associate; but the version is inconsistent with Papa's original Exhibit N, p. 3, (PSC Rec, Vol. I, p. 65) where Atanacio is listed as owner and proprietor of Atanacio's Electrical Equipment & Supply, "which is on a profitable basis." Thus, the credit standing of Atanacio was originally advanced by Papa as a basis for favorable action by the Commission in his favor.

To minimize the impact of the disclosure that Ocampo's cables were not really part of his proposed equipment when the Commission heard and decided the case, Papa sought to introduce evidence at the 1966 rehearing that he had later purchased another 4 reels (10,000 feet) of telephone cable to replace the cables of Ocampo (t.s.n., p. 129); but also admitted that he had used part of these replacements in his Meycauayan telephone network, while the rest he had sold, with other equipment, for P50,000.00 (t.s.n., pp. 131-132). These transactions, being subsequent to the rendition of the Commission's decision were inadmissible to determine Papa's resources and financial responsibility at the time of his application but even if considered, such evidence proves the slenderness of the resources of Papa's disposal, and casts doubt on his ability to render adequate service. There is no reason for compelling the public to be content with Papa's limited and uncertain service, where Santiago's decidedly better offer is available.

For the same reason, no much weight can be accorded to the fact of Papa's priority of application and that he had won the bidding for the telephone service. Such circumstance can not override the paramount regard for public interest and convenience. More so when, as previously explained, issuance of a certificate of convenience to Papa alone, would not be in conformity with the basic municipal franchise in favor of both Ernesto Papa and Conrado Atanacio, and there is no proof that the grantor would consider the absence of Atanacio as indifferent.

Our previous decision also held against applicant Santiago that he had been operating in Pasig even before the finality of the Commission's decision, prompting the latter to issue a "cease and desist" order on June 27, 1957, of the following tenor:

"Upon consideration of the petition dated June 20, 1957, filed by Ernesto A. Papa and Conrado V. Atanacio, thru counsel, alleging that applicant Severo J. Santiago has been operating a telephone service for hire or compensation in Pasig notwithstanding the fact that said Santiago has no certificate nor authority to operate his telephone system, and it appearing from the records of this case that the decision approving the franchise and ordering the issuance of the certificate for the operation of a telephone system in Pasig has not yet been released so that Severo J. Santiago has no authority nor certificate to operate a telephone service for hire in Pasig, Rizal, and pursuant to the prayer in the petition, applicant Severo J. Santiago and/or Republic Telephone Company is hereby ordered to cease and desist immediately from operating his telephone system in question for hire or compensation, and in the event that he has operated his system and collected amounts from his customers, he is ordered to immediately refund said amounts and is warned that if he persists in operating his telephone system as a public utility, the Commission will proceed to take action against him for violations of the Public Service Law." (Italics supplied.)

Mature reflection upon the terms of the order, however, shows that the same does not substantiate the charge. In the first place, the order appears on its face to have been issued ex parte; it only mentions the complaint filed by Papa and Atanacio, but makes no reference to any answer thereto by Santiago or to any hearing thereon or to any evidence in support of the charge. Secondly, the order to desist and refund is plainly contingent, as it is prefaced by the expression "and in the event that he has operated his system and collected amounts from his customers" clearly indicating the absence of evidence showing that Santiago had in fact operated illegally. The record are further bereft on any proof of illegal operation, and Santiago's claim that the charge was ultimately dismissed had not been contradicted. We are forced to conclude that the charge of illegal operation was without foundation.

The last objection formulated in our previous decision against the appealed award by the Public Service Commission, was that the Republic Telephone Company, that Santiago controls, was already operating telephone systems in many other municipalities, citing *Benitez vs. Santos*, 107 Phil., 167, to the effect that "a monopolistic trend with its concomitant evils, can only serve to prejudice public interest." Reflection upon recent experience, of which this Court may well take notice, shows that however valid the doctrine in the *Benitez vs. Santos* case should be in connection with the fields of transportation and merchandising, it is less valid in the sphere of telephone communication. Here, the desirability of the service rendered lies in the ability of every subscriber to obtain fast and reliable connection with every other subscriber at any given time and place; and experience has shown that the main obstacle to such efficiency is the existence and multiplicity of independent systems. Interconnection between them is difficult, laborious and time-consuming. One need only recall the persistent complaints of the public concerning the hardships and delays in obtaining interconnections between say, the Philippine Long Distance Telephone and the Government Telephone Systems, or between customers served by the former and those of the Republic Telephone Company in Marikina or other outlying communities, in order to realize to what extent inter-system jealousies and differences in technical equipment can block fast intercommunication, to the prejudice of the general public. The difficulties described would be greatly compounded were the certificate granted Ernesto Papa, in view of the existing grant of a legislative franchise to the Republic Telephone Company (Rep. Act No. 3662) for the same reasons of public convenience (as distinguished from the interest of the operators) could justify the splitting of a small community between two separate telephone systems, each understandably intent in satisfying its own subscribers and reluctant to favor those of its rival. The unfortunate experience of the independent systems operating in Manila would be then merely repeated.

In view of the foregoing factors, and considering the clear superiority of applicant Santiago, vis-a-vis his opponent, from the standpoint of financial means, technical resources and experience, as determined by the Public Service Commission; and bearing in mind the long standing doctrine of this Court not to interfere with the judgment of the Commission so long as it is supported by the evidence, a doctrine constantly adhered to from *Ynchausti vs. Public Utility Commission*, 44 Phil., 363 (1923) down to *Red Line Transportation Co. vs. Santo Tomas*, L-18472, January 30, 1967), we are left with no alternative but to conclude that the reversal of the Commission's award in our former decision was without adequate justification.

Wherefore, our previous decision is hereby reconsidered and set aside, and another one shall be entered, affirming the appealed judgment of the Public Service Commission, in its cases Nos. 94119 and 101261. Without costs. So ordered.

Concepcion, C. J., Dizon, Regala, Makalintal, Bengzon, Zaldivar, and Sanchez, JJ., concur.

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