

CONSUELO S. CALALANG, PETITIONER, VS. ENRIQUE MEDINA, ETC., ET AL., RESPONDENTS.*G.R. No. L-24560. May 21, 1968*

Ponente: CONCEPCION, C.J.

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This is a petition for mandamus against the Commissioner of Public Service and the Associate Commissioners of Public Service, as well as for the recovery of damages.

It appears that, on June 19, 1959, Republic Act No. 2290, granting Consuelo S. Calalang a franchise to construct, operate and maintain an ice plant and cold storage in Hagonoy, Bulacan, subject to certain conditions, was approved. Accordingly, on August 17, 1959, Mrs. Calalang filed with the Public Service Commission - hereinafter referred to as PSC - an application docketed as PSC Case No. 126911, for the corresponding certificate of public convenience. Prior thereto, or on July 17, 1959, Auro Tanjangco, as administratrix of the estate of her deceased husband Gervacio Tanjangco, operator of an old ice plant in the same town of Hagonoy, had filed with the Commission an application, docketed as PSC Case No. 126537, for increase in the capacity of said old ice plant, from ten (10) to forty (40) tons daily. Mrs. Calalang objected to this petition for increase and prayed that the two cases – Nos. 126537 and 126911 - be jointly heard. By an order dated September 10, 1959, PSC Associate Commissioner Aspillera overruled Mrs. Calalang's opposition to said petition and denied the motion for a joint hearing.

Her motion for the reconsideration of said order having, likewise, been denied by Commissioner Aspillera, Mrs. Calalang instituted in this Court Cause L-16068, against the Intestate Estate of Gervacio Tanjangco and Commissioner Aspillera, for a writ of certiorari, upon the ground that said Commissioner had gravely abused his discretion and exceeded his jurisdiction in overruling said opposition and in denying the motion for a joint trial, as well as the motion for reconsideration, without submitting the latter to the Commission en banc. Upon the posting of the bond required therefor, we issued an order restraining Commissioner Aspillera from promulgating any decision in Case No. 126537, until further orders from this Court. This order, however, came too late, for on September 28, 1959, Commissioner Aspillera had rendered his decision in said case authorizing Mrs. Tanjangco to increase the capacity of her ice plant from ten (10) to thirty (30) tons daily. Accordingly, on November 21, 1959, Mrs. Calalang filed with this Court a supplemental petition praying for another injunctive order, to restrain the execution of said decision until the final disposition of case L-16068. Upon the filing of an additional bond by Mrs. Calalang, the writ of preliminary injunction prayed for in the supplemental petition therein was issued on December 3, 1959.

Meanwhile, or on September 26, 1960, her application in Case No. 126911 was denied by the Commission. Pending resolution of Mrs. Calalang's motion for reconsideration of the decision therein rendered, or on November 29, 1960, this Court rendered judgment in L-16068 reversing the order of the Commission in Case No. 126537 dated September 10, 1959; setting aside the hearing held and the judgment rendered in that case; declaring that Mrs. Calalang's opposition to the petition therein should be admitted; and ordering the Commission to jointly

try cases Nos. 126537 and 126911 and to thereafter render a new judgment in accordance with the law and the evidence, as well as making permanent the writ of preliminary injunction issued on December 3, 1959.

Relying upon our aforementioned decision in L-16068, Mrs. Calalang subsequently filed in Case No. 126911 a supplemental motion for reconsideration of the decision therein rendered on September 26, 1960. After due hearing and the filing of memoranda by the parties therein, said motion was submitted for resolution on August 15, 1963. The Commission having taken no action on said motion for reconsideration, despite her petitions of December 7, 1963 and April 7, 1964, urging the resolution thereof, on May 24, 1965, Mrs. Calalang commenced the present action against the Commissioner of Public Service and the Assistant Commissioners of Public Service to compel them to act on her aforementioned motion for reconsideration and supplemental motion for reconsideration of the decision in Case No. 126911, as well as to recover the sum of P100,000.00 as damages allegedly suffered by her from 1962 to the present. Twenty (20) days later, or on June 14, 1965, the Commission issued an order setting aside its decision in Case No. 126911 and setting said case and Case No. 126537 for joint trial. As a consequence, the herein petition for mandamus has become moot.

This notwithstanding, Mrs. Calalang presses her claim for damages allegedly incurred on account of the undue delay in the resolution of her motion for reconsideration and supplemental motion for reconsideration in Case No. 126911.

It should be noted, however, that her claim for damages is incidental to the petition for mandamus, without which we would have no original jurisdiction to entertain said claim. It is thus debatable, to say the least, whether or not we can pass upon said claim, once the principal action for mandamus has become moot. At any rate, there is, as yet, no means by which to ascertain the amount of the damages allegedly sustained by Mrs. Calalang, assuming that respondents may be held liable therefor, on which we need not and do not express any opinion. Indeed, unless and until a final judgment has been rendered fixing the conditions under which Mrs. Calalang may operate the ice plant and cold storage covered by her franchise, and, particularly, the capacity thereof, it is legally impossible to determine amount of said damages.

WHEREFORE, the petition herein is hereby dismissed, without special pronouncement as to costs.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

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