

GERONIMO C. VENERACION, PETITIONER, VS. CONGSON ICE PLANT & COLD STORAGE, INC. AND PUBLIC SERVICE COMMISSION, RESPONDENTS.

G.R. Nos. L-31213-14. July 23, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In this appeal by certiorari, the Court sets aside the provisional permit granted ex-parte by respondent Public Service Commission on the ground that the commission in so allowing respondent to install and operate competing ice and cold storage plants deprived petitioner of his right to due process and exceeded its authority in so acting without a clear showing of an urgent public need that had to be met without notice and in disregard of petitioner's right to be heard in opposition as an old operator, willing and able to adequately serve the public need.

The intervening legislative franchise granted to respondent in 1972 under Republic Act No. 6533 may not however be inquired into, much less set aside, by the Court and must be recognized by virtue of Congress' acknowledged power to grant such franchises and the Court's inhibition from inquiring into the wisdom thereof.

Petitioner is the holder of various certificates of public convenience and necessity under which he has long operated ice plants located in General Santos City, Polomolok, Banga, Marbel and Tacurong, as well as a 2,250 cubic meter cold storage plant located in General Santos City, with authority to sell and distribute his ice production in the said city and in the twelve municipalities of Polomolok, Tupi, Koronadal, Banga, Surala, Norala, Isulan, Tacurong, Buluan, Glan, Kiamba and Maasim, all in the province of South Cotabato.

On January 21, 1969, private respondent filed two applications with respondent commission for a certificate of public convenience to install and operate a 40-ton ice plant in General Santos City and to sell and distribute ice within eleven municipalities of South Cotabato (most of which were served by petitioner) and a 5,000-cubic meter cold storage plant in the same city.

Respondent commission issued the required notice for both applications setting the initial trial thereof on February 26, 1969, subsequently reset for March 5, 1969. Petitioner filed written oppositions thereto under date of March 4, 1969, manifesting that his prior application for authority to increase the 15-ton capacity of his two ice plants in General Santos City by another 50-ton unit had already been submitted and was pending decision by respondent commission.[1]

After several postponements (the first at the instance of respondent's counsel not being ready and the second at petitioner's counsel's instance due to a conflict in his trial schedule), the applications were ordered dismissed in open court on May 14, 1969 for failure of respondent-applicant and his attorney to appear at the scheduled hearing.

On August 20, 1969, respondent commission through then associate commissioner Josue L. Cadiao issued an order lifting dismissal and resetting the hearing on August 26, 1969. This date of hearing was postponed first to

September 4, 1969 and then to October 21, 1969 at the instance of respondent's counsel.

Strangely enough, under date of September 16, 1969, respondent filed an ex-parte motion for issuance of a provisional permit to operate the proposed services applied for. Respondent commission without issuing a notice of hearing to petitioner-oppositor proceeded to receive ex-parte through a hearing officer respondent's evidence on September 23, 1969 and under date of October 8, 1969 issued by a 2 to 1 vote the provisional permit in favor of respondent. Then Com-missioner Enrique C. Medina joined associate commissioner Cadiao in issuing the peremptory provisional permit, while the third com-missioner, Gregorio C. Panganiban dissented on the ground that "there is no urgent public need because there is an existing ice and cold storage plant in Gen. Santos." [2]

Upon the filing of the petition on November 26, 1969, the Court issued two days later a temporary restraining order enjoining respondent commission "from approving the plans and specifications for the ice plant and cold storage of respondent Congson subject of the Order of October 8, 1969, in PSC Case Nos. 69-537, 69-538, entitled CONGSON ICE PLANT AND COLD STORAGE, INC., Applicant, and from further receiving any evidence in said PSC cases," and respondent "from continuing with the construction, establishment and operation of the aforementioned ice plant and cold storage in General Santos City."

Hearing on the petition for issuance of a writ of preliminary injunction was set for December 11, 1969 and at the parties' instance, memoranda in lieu of oral argument covering the merits of the petition as well were submitted in compliance with the Court's resolution of December 15, 1969.

Under its resolution of August 4, 1970, the Court ordered the issuance of a writ of preliminary injunction vice its restraining order of November 28, 1969, upon petitioner's filing of a bond of P1,000.00. Such bond was in due course filed by petitioner and the writ of preliminary injunction was issued on August 14, 1970.

I

The Court finds that respondent commission deprived petitioner of his right to due process and exceeded its authority in having granted ex-parte to respondent the provisional permit to operate the competing ice and cold storage plants without a clear showing of an urgent public need and in disregard of petitioner's right to be heard in opposition.

The authority of respondent commission to issue ex-parte a provisional permit to operate proposed public services is not absolute, but is based on the superior and imperative necessity of meeting an urgent public need. Thus, where there clearly existed such an urgent need and the application could not be decided at once or resolution thereof was remote due to delay in the hearings caused by a series of postponements at oppositor's instance, the Court has sanctioned ex-parte provisional permits for public services in order to satisfy the public necessity. [3]

In the present case, however, the existence of such urgent public need that would justify peremptory action on respondent commission's part and disregard of petitioner-oppositor's right to notice and to be heard in opposition is not shown by the record.

The only recital in respondent commission's provisional permit order that "(A)pplicant presented a petition signed by the people living in General Santos City and addressed to the Commission requesting approval of the application filed herein on the ground that the existing ice plant service in General Santos City cannot cope with the needs and demands of the fishermen, establishment and people who need ice," is totally inadequate. Not a single witness was even presented to confirm the contents of the alleged petition or to identify the supposed signatories thereof as persons actually living in General Santos City with great need for the additional services proposed.

As pungently observed by then associate commissioner Pangani-ban in his dissent, the commission could not by

any alchemy simply pronounce the existence of an urgent public need to warrant its ex-parte action in the face of the fact that petitioner has long operated an existing ice and cold storage service in the region. More, petitioner had in no way been remiss in his obligation to satisfy the public need and had already submitted a prior application for a substantial increase of his ice-plant capacity which was already awaiting only the decision of the commission. Hence, if there did exist an urgent public need that would justify the issuance of a provisional permit, such provisional permit should in justice and fairness have been issued in favor of petitioner as the existing operator who had duly applied for an increase ahead of respondent.

Furthermore, as already shown above, there was no justification for respondent to file its application for a provisional permit on September 16, 1969 when its regular applications had long been pending since January 21, 1969 but had been delayed (and dismissed once for non-prosecution) and postponed many times (the last hearing being reset from September 4, 1969 to October 21, 1969) due to its own fault and instance.

The Court has time and again stressed the need of complying with the essential requirement of procedural due process in the proceedings of respondent commission. In the latest case wherein it stressed the importance of the due process requirement, *Dizon vs. Public Service Commission*[4] the Court through Mr. Justice Fernando traced the Court's pronouncements thereon to its earliest decision in 1917.[5]

In the analogous case of *Calalang vs. Estate of Tanjangco*[6] Mr. Justice J. B. L. Reyes pointed out for the Court that "The act of the Commission of hearing and granting respondent Tanjangco's application without as much as allowing petitioner to intervene, oppose, or prove any better rights against it, is not only a deprivation of petitioner's rights without due process of law, but seems calculated to render ineffectual and nugatory the franchise granted to her by the legislature and frustrate the legislative intent behind it. Such act is, therefore, not only a grave abuse of discretion on the part of the Commission, but an overstepping of the powers and jurisdiction conferred upon it by the law."

In *Serrano vs. Public Service Commission*[7] the Court re-iterated the doctrine of *Ang Tibay vs. Court of Industrial Relations*[8] and made clear as to an administrative tribunal such as respondent commission "that while it is 'free from the rigidity of certain procedural requirements,' it does not mean 'that it can, in justiciable cases coming before it, entirely ignore or disregard the fundamental and essential requirement of due process xxx.'"

In *Halili vs. Public Service Commission*[9] the Court held that "even if the Commission is not bound by the rules in judicial proceedings, it must bow its head to the constitutional mandate that no person shall be deprived of a right without due process of law. The 'due process of law' clause of the Constitution binds not only the Government of the Republic of the Philippines, but also each and every one of its branches, agencies, etc. (16 C. J. S., 1149). 'Due process of law may mean accord with the procedure outlined in the law, or, in the absence of express procedure, under such safeguards for the protection of individual rights as the settled maxims of law permit and sanction for the particular class of cases to which the one in question belongs.'"

In *Danan vs. Aspillera*,[10] the Court through Mr. Justice J. B. L. Reyes admonished that "The Public Service Commission is an agency of the government, and should at all times, maintain a due regard for the constitutional rights of parties litigant. Also, the Commissioners (who are not judges in the true sense) would do well to ponder the implications of Article 32, No. 6, of the New Civil Code on the individual responsibility of public officers and employees who impair a person's right against deprivation of property without due process of law."

In fine, petitioner's subsisting certificates of public convenience and necessity and prior application for increase of its ice plant capacity which was already submitted for the commission's decision re-presented valuable property rights which could not be rendered nugatory or impaired without his being given a chance to be heard in

opposition thereto and to present his side of the question.[11] Respondent commission's precipitous ex-parte grant of a provisional permit to respondent under the circumstances at bar amounted to denial of due process.

Respondent commission's order of October 8, 1969 granting respondent the challenged provisional permit must accordingly be set aside.

II

Under date of September 15, 1972, petitioner filed an urgent petition for injunction, informing the Court that H. B. No. 4995 entitled "AN ACT GRANTING CONGSON ICE PLANT AND COLD STORAGE, INC., A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN AN ICE PLANT AND COLD STORAGE FACILITY, AND TO DISTRIBUTE AND SELL ICE SO MANUFACTURED AND FURNISH COLD STORAGE FACILITIES IN THE CITY OF GENERAL SANTOS," passed during the special session of Congress without Presidential certification, had as against the veto recommendations of respondent commission ("patently unfair and discriminatory"), of the Presidential Economic Staff ("a virtual curtailment of the PSC power to determine the proper capacity of a franchise grantee") and of the Malacañang legislative secretary (who had prepared the corresponding veto message, following previous precedents vetoing such legislative franchises as "promoting ruinous and unfair competition" and "curtailing the supervisory and regulatory powers vested in the commission by law"), lapsed into law without Executive approval on July 22, 1972 and is now on the statute books as Republic Act No. 6533.

Oblivious of the subsisting preliminary injunction issued by the Court against respondent commission, petitioner prayed that the same be modified to expressly include an injunction against implementation of the legislative franchise thus granted respondent or that it be supplemented by another restraining order to the same effect.

Respondent filed its opposition citing inter alia the reserved authority of Congress to issue directly legislative franchises and that while the Court may review the challenged actions of respondent commission, it may not review grants of franchises by Congress.

Section 1 of the Act provides that:

"SECTION 1. Subject to the conditions imposed by this Act, there is hereby granted to Congson Ice Plant and Cold Storage, Inc., its successors or assigns, for a period of twenty-five years after the approval of this Act, the right, privilege and authority to construct, operate and maintain an ice plant and cold storage facility in the City of General Santos for the purpose of manufacturing ice and furnishing cold storage, and to sell and distribute the ice so manufactured and render cold storage service therein, and to collect a schedule of rates, prices and charges for the ice so manufactured, distributed and sold, and for the cold storage service furnished, which schedule of rates, prices and charges shall at all times be subject to regulation by the Public Service Commission." [12] (R. A. No. 6533)

The opposition is meritorious.

As stated in *Calalang, supra*, [13] referring to the grant to therein petitioner of a legislative franchise for an additional ice plant service in Hagonoy, Bulacan, "(I)ndeed, when petitioner was granted the franchise in question by the Legislature, we can assume that that body had already made a prima facie finding of a public necessity for the operation of an additional ice plant service in Hagonoy, Bulacan, and of petitioner's possessing the necessary qualifications to operate such service. Under this franchise, petitioner has thus acquired the right to operate an ice plant in the aforementioned municipality, subject only to the conditions mentioned in the franchise Act, among which is that she first obtain a certificate of public convenience from the Public Service Commission, fixing her plant's capacity and the conditions of operation. Otherwise, it must be concluded that the franchise grant was an empty gesture on the part of the Legislature, as the petitioner could have just as well applied to the Commission

itself."

Furthermore, the Court may only inquire into the constitutionality or legality of the Act - not into its wisdom. No claim of illegality or unconstitutionality of the Act is made.

As held by the Court in *Calderon vs. Public Service Commission*,^[14] respondent's right to operate an ice plant and cold storage facility in General Santos City and to sell the ice so manufactured therein (and not in the outlying municipalities, as per the commission's provisional permit) under the terms and conditions of the 25-year legislative franchise granted under Republic Act No. 6533 must be recognized by virtue of such franchise.

III

During the pendency of the case at bar, petitioner filed a motion to have respondent declared in contempt for continuing to operate and sell ice notwithstanding the Court's restraining order of November 28, 1969. Respondent was ordered to show cause and the Court heard the incident on February 11, 1970.

The Court is satisfied that there was no willful disobedience on respondent's part; that whatever ice it had manufactured was for the private use of the deep-sea fishing business of its founder, Demetrio Congson, Jr.; and that after the Court issued its preliminary injunction writ on August 14, 1970 in place of its restraining order, respondent's ice plant and cold storage were duly closed and the engines sealed and padlocked by the city sheriff on August 19, 1970 in compliance therewith, as per said officer's report.^[15]

The incident is declared closed without further pronouncement.

ACCORDINGLY, respondent commission's order of October 8, 1969 granting the provisional permit to respondent is hereby set aside and the writ of preliminary injunction issued on August 14, 1970 against enforcement or implementation of the same is hereby made permanent, save that it shall not apply to respondent's right to operate an ice plant and cold storage facility in General Santos City and to sell therein the ice so manufactured and furnish cold storage service therein by virtue of the legislative franchise granted to respondent under Republic Act No. 6533 which is herein recognized and respondent commission's successor-agency may therefore regulate, act on and approve respondent's schedule of rates, prices and charges as provided by said Act, upon showing of respondent's compliance with the terms and conditions imposed by said Act. Without pronouncement as to costs.

Makalintal, (Acting C.J.,) Ruiz Castro, Makasiar, Antonio, and Esguerra, JJ., concur.

Fernando, J., took no part.

Zaldivar and Barredo, JJ., on leave.

[1] Annex D, petition.

[2] Annex J, petition.

[3] *Javellana vs. La Paz Ice Plant*, 64 Phil 893; *Ablaza Transportation Co. vs. Ocampo*, 88 Phil 412; and *Silva vs. Ocampo*, 90 Phil 777. Cf. *Halili vs. PSC*, 92 Phil 1036, 1040.

[4] G.R. No. L-34820, April 30, 1973.

[5] *Yangco vs. Bd. of Public Utility Commission*, 36 Phil 116.

[6] 110 Phil 270, 275. The analogy to the case at bar is in reverse, for here Congress subsequently granted a legislative franchise to respondent, the very same party unduly favored by the commission, *infra*. In the cited case, the commission sought to favor another at the expense of the legislative grantee.

[7] 24 SCRA 867, 871 (1968).

[8] 69 Phil 635 (1940).

[9] 92 Phil 1036, 1040 (1953).

[10] 6 SCRA 609, 612 (1962). See also *Manila Electric Co. vs. Medina*, 14 SCRA 510, 515 (1965), where the Court cited its previous admonition in *Halili* and again cautioned "That the commission is not a court but an administrative board does not warrant its playing fast and loose with constitutional inhibitions."

[11] Public utility operators are entitled to be protected from ruinous competition, *Halili vs. Cruz*, 23 SCRA 1181 (1968), cited in *Mandbusco, Inc. vs. Francisco*, 32 SCRA 409 (1970). It is indeed a sound rule that old operators must be protected in their investment as long as they are willing and able to serve the public need properly and adequately. *Cruz vs. Marcelo*, 4 SCRA 698 (1962).

[12] Emphasis supplied.

[13] See fn. 6, at pp. 274-275.

[14] 38 SCRA 624, 633 (1971).

[15] *Rollo*, p. 244.

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