

TERESA ELECTRIC AND POWER CO., INC., PETITIONER, VS. PUBLIC SERVICE COMMISSION AND FILIPINAS CEMENT CORPORATION, RESPONDENTS.

G.R. No. L-21804. September 25, 1967

Ponente: DIZON, J.

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DIZON, J.:

This is a petition to review and set aside the decision of the Public Service Commission dated March 15, 1963 in Case No. 62-3521 granting to the Filipinas Cement Corporation - hereinafter referred to as Filipinas - a certificate of public convenience and necessity to establish, maintain and operate an electric plant in its factory site at Teresa, Rizal, for period of fifty years from June 26, 1958. By resolution of September 11, 1963, we denied petitioners petition for the issuance of a writ of preliminary mandatory and prohibitory injunction restrain-ing the Commission from enforcing its decision during the pendency of the appeal.

The Teresa Electric Light and Power Co., Inc., - here-inafter referred to as petitioner - is a domestic corporation operating an electric plant in Teresa, Rizal, under a sub-sisting certificate of public convenience and necessity issued on June 2, 1960 (PSC Case No. 129940), while the respondent Filipinas is likewise a domestic corporation engaged in the manufacture and sale of cement.

On May 24, 1962 Filipinas filed an application with the Public Service Commission for a certificate of public convenient to install, maintain and operate an electric plant in Sitio Kaysapon of barrio Pamanaan, municipality of Teresa, Rizal, for the purpose of supplying electric power and light to its cement factory and its employees living within its compound.

Petitioner filed its written opposition alleging: that it is the duly authorized operator of an electric light, heat and power service in Teresa, Rizal; that Filipinas is not authorized by its articles of incorporation to operate an electric plant; that the Municipal Council of Teresa had not authorized it neither to operate the proposed service; that it is willing to supply Filipinas' need for electricity; and that Filipinas' prin-cipal business does not come within the jurisdiction of the respondent Commission.

Answering the opposition, Filipinas averred that, under paragraph 7 of its articles of incorporation, it is authorized to operate the proposed electric plant; that there is no need for securing the approval of the Muni-cipal Council before operating its electric plant as this is not a necessary requisite for the issuance of a cer-tificate of public convenience inasmuch as it already possesses the 3 basic requirements of law, namely: Fili-pino citizenship, financial capacity and the need for the service in the interest and convenience of the consuming public.

During the hearings before the Commission Filipinas presented its evidence and petitioner's counsel cross-examined the witnesses. Upon the resumption of the hear-ing on December 17, 1962, petitioners counsel filed an urgent motion for the postponement of the presentation of its evidence that day alleging that he was to attend a preliminary hearing at Caloocan City. As the date agreed upon by the parties was set only after the attorneys for the parties had consulted their respective calendar, the Commission, in open court, denied said

motion and considered the application as submitted for resolution.

Upon consideration of the evidence, oral and documentary, adduced by Filipinas to the effect that the proposed electric service will be limited to the exclusive needs of its cement factory and to give light facilities to its employees living in the compound only, without adversely affecting the interests and services of petitioner; that like the latter, Filipinas will not generate its own electric current but buy it from the MERALCO; and that no municipal streets will be traversed by its electric wires and posts except small portions of private properties, the Commission, pursuant to section 15 of Commonwealth Act 146, as amended, issued a certificate of public convenience to it on March 15, 1963, subject to the conditions set forth therein.

Petitioner filed a motion to set aside the above decision and re-open the case but the same was denied en banc on August 12, 1963. Hence the instant petition for review filed on September 9 of the same year.

Considering the assignment of errors made in petitioner's brief, the following are the questions to be resolved in this appeal: firstly, whether or not Filipinas should have secured either a municipal or legislative franchise before it could be entitled to a certificate of public convenience and necessity to operate and maintain an electric plant; secondly, whether under its articles of incorporation Filipinas is authorized to operate and maintain an electric plant; and lastly, whether Filipinas could be granted a certificate of public convenience and necessity to operate and maintain an electric plant notwithstanding the existence of an electric plant operator in the same municipality.

In relation to the first question petitioner contends that under the provisions of Act No. 667 of the Philippine Commission, a municipal or legislative franchise is a condition precedent to the granting to Filipinas of a certificate of public convenience and necessity to operate and maintain an electric plant.

Section 1 of the act mentioned above requires the filing of a formal application with the Council of the municipality in which or through which the petitioner desires to construct or maintain its line, stating, among other things, the rate per month to be charged for electric light by lamp of specified standard candle-power, and by amount of electricity consumed where a meter is used, and the rate per centum of the gross receipts which petitioner is willing to pay into the provincial treasury for the franchise. Paragraphs 2 and 3, section 2 of the same act also provide that not less than one-half of one per centum of the gross earnings shall be paid into the provincial treasury, and that the rates to be charged shall always be subject to regulations by act of the Philippine Commission or the legislative body of the Islands.

The above requirements show that the act was intended to apply exclusively to any person or corporation who desires a franchise to construct and maintain an electric line or power plant and line for business purposes, that is, to render service to the general public at such rate of compensation as may be approved and regulated by the government. Clearly, therefore, it should not be made to apply to Filipinas who applied for a certificate of public convenience and service to operate and maintain an electric plant exclusively for its own use in connection with the operation of its cement factory and for the use of its employees living within the compound of the factory - the latter to service free of charge.

It is, consequently, our view that all that Filipinas needs for the purpose above mentioned is a certificate of public convenience and necessity such as the one granted to it by the respondent Public Service Commission.

In relation to the second question, it appears that the Articles of Incorporation of Filipinas (paragraph 7) provide for authority to secure from any governmental, state, municipality, or provincial, city or other authority and to utilize and dispose of any lawful manner, rights, powers, privileges, franchises and concessions - obviously necessary or at least related to the operation of its cement factory. Moreover, said Articles of Incorporation also

provide that the corporation may generally perform any and all acts connected with the business of manufacturing portland cement or arising therefrom or incidental thereto.

It can not be denied that the operation of an electric light, heat and power plant is necessarily connected with the business of manufacturing cement. If in the modern world where we live today electricity is virtually a necessity for our daily needs, it is more so in the case of industries like the manufacture of cement.

Upon the last question, petitioner claims that Filipinas is not entitled to a certificate of public convenience to maintain and operate electric service for its cement plant and its employees because petitioner is operating an electric plant in the same municipality where Filipinas cement plant is located.

While it is true that operators of public convenience and service deserve some protection from unnecessary or unlawful competition, yet the rule is that nobody has any exclusive right to secure a franchise or a certificate of public convenience. Above any or all considerations, the grant of franchises and certificates of public convenience and service should be guided by public service and interest; the latter are the primordial considerations to be taken into account.

Moreover, it has been established in this case that petitioner was in no condition to supply the power needs of Filipinas, because its load capacity was only 200 Kilowatts while Filipinas was in need of 6,000 Kilowatts power to operate its cement factory.

IN VIEW OF THE FOREGOING, the decision appealed from is affirmed, with costs.

Concepcion, C.J., Reyes, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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