

**RUBEN L. VALEBO AND ESTRELLA L. VALERO, PETITIONERS, VS.
THE PUBLIC SERVICE COMMISSION AND DIOSDADO RODRIGUEZ,
RESPONDENTS.***G.R. No.L-19532. March 30, 1963*

Ponente: BARRERA, J.

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On September 9, 1959, Ruben L. Valero and Estrella L. de Valero applied with the Public Service Commission for a certificate of public convenience to install and operate an ice plant with a daily productive capacity of 5 tons in Olongapo, Zambales, proposing to sell the produce thereof in the same place (Case No. 127392). Thereafter, the application was set for hearing, and applicants, were required to publish the same in 2 Manila edited daily newspapers of general circulation in Olongapo, and also to send copies of the order, by registered mail or personal delivery, to the parties appearing in the list furnished them by the Commission. The list above referred to give the names of Alberto A. Galvez and Leonor Asuncion and the Municipal Council of Olongapo, Zambales, as the only parties to be affected by the application. These requirements of publication and notice were duly complied with' by applicants.

After hearing, during which nobody appeared to oppose the application, the Commission granted the same upon finding that applicants are financially capable to install, maintain, and operate the proposed public service and that the prerequisite notice and publication had been made. The decision' was decreed to take effect immediately, although its finality was fixed at 30 days after notice to applicants. Copy of the decision was received by applicants on May 26, 1960.

On June 21, 1960, or within this 30-day period, Diosdado Rodriguez, claiming to be the operator of a 10-ton ice plant. in San Marcelino, Zambales and selling its produce in various places including Olongapo, petitioned the Commission to set aside the decision and re-open the case for the reason that aa an affected party he was not notified of the proceedings held therein. This was opposed by the Valeros on the grounds that Rodriguez, who obtained a certificate of public convenience in Case No. 108844 on August 20, 1959, was not authorized to serve the ice needs of the municipality of Olongapo that even granting that Olongapo was included among the 'places to be served by Rodriguez' ice plant, when the decision granting his application was rendered Olongapo was still a U.S. Naval Reservation and therefore, the Public "Service Commission, was without jurisdiction to authorize the sale of ice therein. The petition to set aside, as well as the opposition thereto, were duly heard.

In its order of February 12, 1962, the Public Service Commission, resolving the, issues raised by the Valeros in their opposition, in part, said:

"1. Olongapo is included in the territory of sale authorized to Diosdado Rodriguez. That this is so is clear both from the opinion of the Commission and Condition No. 1 contained in the decision rendered in. Case.No. 108844 on August 20, 1959 in favor- at Diosdado Rodriguez, as follows:

* * * As to the towns applicant may be authorized to sell his. ice, we believe that.we should not allow him to

sell in the towns of San) Narciso and Iba, where there are already ice plants in operation, except the town of Subic where it clearly appears that the present production of the existing plant is not sufficient for the needs of the public considering the great demand in Olongapo which is a barrio of Subic. We think that the public of Olongapo should be afforded applicant's service to supplement the inadequate ice supply which they can get from the Navy plant in Olongapo. * * *.

* * * CONDITIONS: 1: Applicant Diosdado Rodriguez, shall install, maintain and operate in San Marcelino, Zambales, an ice plant with a daily productive capacity of ten (.10) tons and shall sell the ice produced or manufactured in his plant within the municipality of San Marcelino as well as in the towns of Subic. * * *

"b. An examination of the entire Military Bases Agreement between the Philippines and the United States of America of March 14, 1947 shows that the Philippines did not expressly or by implication give away her jurisdiction, right or authority over public services existing within the bases or which may be authorized therein. Only such jurisdiction, authority or rights which have been expressly or by clear implication transferred by the Philippines to United States by treaty stipulation in the Military Eases Agreement are deemed transferred. *Molina vs. Panaligan*, G. E. L-1Q842, May 27, 1957; *People vs. Acierto*, 49 Off. Gaz., No. 2, 518)

"In contending that the Philippines transferred to the United States its jurisdiction over public services in Olongapo, counsel for, the Valeros, Atty. Vicente Ampil, relies upon Article VII of the Military Bases Agreement which reads:

'ARTICLE' VII—Use of Public Service. It is mutually agreed that the United States may employ and use for United States military forces any and all public utilities, other services and facilities, * * * in the Philippines under conditions no less favorable than those that may be applicable from time to time to the military forces of the Philippines.'

"Counsel's contention, in our opinion, is erroneous for the afora-cited article does nothing more than provide for the United States Military forces equality of right with the Philippine Military forces in the use, among others,, of all public services not only within the bases but in the entire Philippines."

Thus declaring Rodriguez to be an affected party, the decision previously rendered therein was ordered set aside and the case was scheduled for a new hearing to enable them (the applicants and the oppositor) to present their evidence. It is from this order that applicants file the instant petition for review.

It is not disputed that before the case was heard, the Commission's requirement of publication of the order of hearing) and notice to the affected parties appearing in the list furnished them by the Commission, were duly complied with by applicants. That oppositor Diosdado Rodriguez was not so notified, was due to the fact that his name did not appear in said list. However, confronted by this omission and finding that Rodriguez should actually have been brought to the proceedings, the Commission directed the reopening of the case, to enable said party to oppose the application.

Under the above set of facts, there is no reason for us to disturb the ruling of the Commission. The reopening of the case to allow an affected party, who was not properly notified of the application, to present his opposition thereto, is certainly within the scope of the Commission's authority to pass upon and determine ' whether applications for operation of public services would be granted or not. As a matter of fact, it is empowered by law to amend, modify, or revoke even a Certificate of public convenience already issued, at any time, should the facts and circumstances upon which it was issued be found to have been misrepresented or materially changed.¹ In this case, the motion to set aside was filed before the decision to grant a certificate of public convenience to applicants has become final. ' That applicants' failure to notify the oppositor was for cause not attributable to them, does not alter the situation that an affected party was deprived of his day in court. Certainly the action taken by the Public

Service Commission in setting aside its decision which was not yet final, and order to give opportunity to the aggrieved party to be heard, is not only not erroneous but is the proper step to take.

In view of the conclusion herein reached, it is premature to. resolve the question as to whether or not the Public Service Commission had authority to include Olongapo in Rodriguez' certificate of public convenience. This matter, if at all seriously urged, may be taken up again when the case is considered on the merits by the Commission.

Wherefore, the order appealed from, being conformable to law, the petition for a writ of prohibition is denied, with costs against the petitioners. So ordered.

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

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