

NATIVIDAD ARIAGA, PETITIONER, VS. ELPIDIO JAVELLANA, RESPONDENT.

G.R. No. L-4821. December 17, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for review of the order of Commissioner Gabriel P. Prieto dated January 29, 1951, and the order of Commissioner Quintin Paredes, Jr., dated February 1, 1951, entered upon a motion for reconsideration filed by oppositor Elpidio Javellana, which modified the decision in bane of the Public Service Commission dated March 28, 1950, by holding that the ice plants applied for in cases Nos. 46997, 48871 and 49378 should be established not within the city of Iloilo but somewhere within the Province of Iloilo in the place or places where the applicants may wish to establish them provided that they so notify the Commission by amending their applications. These orders were maintained in subsequent resolutions issued respectively by said Commissioners on May 11, 1951.

This petition stems from three applications filed separately by Mariano Cacho, Juan Salvador and Natividad Ariaga with the Public Service Commission in which the applicants ask for a certificate of public convenience to install, maintain and operate a 30-ton ice plant with a cold storage service in the city of Iloilo and with the right and authority to sell ice not only within the said city but as well in all the municipalities of the Province of Iloilo. These three applications were opposed by Elpidio Javellana and La Paz Ice Plant and Cold Storage Co., Inc., two old ice plants operators in the city and Province of Iloilo.

The three applications were, by agreement of the parties, heard jointly, and on March 28, 1950, the Public Service Commission rendered a joint decision, penned by Hon. Feliciano Ocampo and concurred in by Associate Commissioners Gabriel P. Prieto and Quintin Paredes, Jr., granting to the three applicants, including petitioner herein, a certificate of public convenience to install and operate an ice plant of 15-ton daily capacity and a cold storage room of 10,000 cubic feet within the City of Iloilo and with authority and right to sell their produce not only in the City of Iloilo but also in the Province of Iloilo. Oppositor Elpidio Javellana filed a motion for reconsideration on April 25, 1950, whereas La Paz Ice Plant and Cold Storage Co., Inc., filed with the Supreme Court a petition for review of the decision rendered on March 28, 1950. Upon being advised of the pendency of said petition for review, the Public Service Commission refrained from acting on the motion for reconsideration because it did not consider it proper to act on it until the matter had been finally acted upon by the Supreme Court.

In the meantime, the La Paz Ice Plant and Cold Storage Co., Inc., withdrew its appeal, and so Elpidio Javellana asked the Commission to act on his motion for reconsideration. This move was again denied which forced Elpidio Javellana to file with the Supreme Court a petition for mandamus. In a decision promulgated on December 21, 1950, the Supreme Court held that the petition for review filed by the La Paz Ice Plant and Cold Storage Co., Inc., did not have the effect, insofar as Elpidio Javellana is concerned, of withdrawing the cases from the jurisdiction of the respondent Commission, or of depriving it of its jurisdiction, so that it could act if it wanted to on the motion for reconsideration filed by Elpidio Javellana on April 25, 1950, and, accordingly, it ordered said Commission to

act on said motion for reconsideration as prayed for.

By virtue of the directive of this court, the Public Service Commission acted upon the petition for reconsideration of Elpidio Javellana, but in so doing three separate orders were entered: one issued by Hon. Feliciano Ocampo dated January 11, 1951, wherein he found that the motion for reconsideration has no merit, and, therefore, there is no reason to alter or modify the decision of the court in banc dated March 28, 1950; another entered by Hon. Gabriel P. Prieto dated January 29, 1951, wherein he maintained the view that the decision of the Commission should be modified in the sense of granting the applicants the right to install, operate and maintain their ice plants only within the Province of Iloilo; and the third one issued by Hon. Quintin Paredes, Jr. dated February 1, 1951, wherein he concurred in the opinion of Commissioner Prieto but with the modification that the ice plants which applicants are allowed to operate should be installed in the places that may be designated by said applicants within the Province of Iloilo.

On February 20, 1951, Natividad Ariaga, petitioner herein, filed a motion for reconsideration of the orders entered by Commissioners Gabriel P. Prieto and Quintin Paredes, Jr. on January 29, 1951 and February 1, 1951, respectively, setting forth therein the reasons lie is invoking why the original decision of the Commission should be maintained, but this petition, as well as those filed by the other applicants who are affected thereby, were denied by the Public Service Commission by split vote as follows: Commissioners Prieto and Paredes, Jr. voted to deny the petition for reconsideration, and Commissioner Ocampo voted to approve it and to maintain the original decision of the Commission dated March 28, 1950. This split vote gave rise to the present petition for review.

The main purpose of the present petition for review is to seek the nullification of the orders of Commissioners Prieto and Paredes, Jr. wherein they modified the decision in banc dated March 28, 1950, in the sense of allowing the applicants the right to install their ice plants somewhere within the Province of Iloilo and not within the city as allowed them in the original decision. Petitioner maintains that this modification is unfair and prejudicial to her interest not only because of the heavy investment already made by her in line with the express authority granted by the Public Service Commission but also because said modification is not justified by the pleadings nor by the evidence submitted by the parties in the three cases that were joined herein, which all point to the necessity of establishing the ice plants in the City of Iloilo.

We believe that the present petition is well taken. There is one development that should be mentioned here which in our opinion disposes of this case in support of the stand taken by the petitioner. We refer to the petition for certiorari interposed by the La Paz Ice Plant and Cold Storage Co., Inc., in the three cases herein involved on August 22, 1950, wherein said company sought the reversal of the unanimous decision of the Public Service Commission dated March 28, 1950, not only on procedural grounds, but on the strength of the evidence submitted by the parties (G. R. Nos. L-4053-4055). The questions therein raised, among others, were: (a) that the decision of the Public Service Commission dated March 28, 1950, which authorizes three new operators to produce a total of 45 tons of ice, in addition to the 80 tons already authorized in 'the City of Iloilo, tends to and will surely ruin the business of the two existing operators contrary to the doctrine laid down in the case of *San Miguel Brewery vs. Lapid*, 53 Phil., 539, and (b) that the applicants .Natividad Ariaga, Juan Salvador and Mariano Cacho have not yet made any investment as a result of said decision and that the immediate implementation of the provisions thereof might entail huge losses on the part of said operators and would cause grave and irreparable injury to their rights as operators for which reason petitioner asks that the execution of said decision be suspended upon petitioner's filing a bond in the amount that the court may deem just to fix to answer for any damages that the applicants might suffer as a result of said suspension.

And in passing on this petition for certiorari, this court practically reaffirmed the unanimous decision of the Public Service Commission dated March 28, 1950. This court found said decision justified after considering the evidence

presented by the parties and the findings of fact made thereon by the Commission. The court even quoted with approval a substantial portion of the decision containing these findings of fact. And in connection with the huge investment already made by the applicants, including petitioner herein Natividad Ariaga, this Court said:

"Es justo que ellos sean castigados a la inacción y que quedan obligados a revender las maquinarias acaso a precio bajo. Estos capitalistas han hecho las coropras en virtud de la decisión dictada por la Comisión de Utilidades Públicas y porque este Tribunal, no encontrando razón suficiente, no impidió la inmediata ejecución de la sentencia, como solicitaba la recurrente. No es justo denegar la solicitud de las tres solicitantes (hoy recurridos) solamente para proteger el negocio de la recurrente que ya ha estado explotando la planta por bastante tiempo y que no podía abastecer la cantidad de hielo que el público de Iloilo necesitaba. La pesca en alta mar, industria que antes de la guerra estaba bajo el absoluto control de los japoneses y ahora en manos filipinas, debe ser propulsada en vez de castigada: es veneno de riqueza nacional que debe ser fomentada a toda costa, especialmente hoy que el pescado en conserva va desapareciendo del mercado por imperativos del elevado impuesto de la exportación del dinero."

It is interesting to note that respondent does not now dispute the finding of the Commission to the effect that public necessity and convenience demand that the applicants be allowed to install a 15-ton ice plant each considering the increase of the population in the city and province of Iloilo after the liberation of the Philippines. This increase was found justified by statistics. On this point the three Commissioners are agreed. Where the divergence arose is with regard to the place where the new ice plants should be installed. Commissioner Ocampo maintains that they should be installed within the City of Iloilo; Commissioners Prieto and Paredes, Jr. hold that they should be installed somewhere within the Province of Iloilo. And this divergence came to a head only after the filing of a motion for reconsideration. This divergence gave rise to a confusion and brought about the present petition for review.

We are of the opinion that this modification cannot now be made in the face of the circumstances obtaining in the cases before us. Here the three applicants have come before the Public Service Commission to ask for a permit to install an ice plant and cold storage each within the City of Iloilo and at the hearing of their applications they submitted voluminous evidence to establish the necessity of such installation. All the evidence they have presented was all aimed at establishing and convincing the Commission that public necessity and convenience warranted that the ice plant be installed in said city. No effort has been made by the oppositors to show that any particular town or municipality in the Province of Iloilo could offer enough demand to warrant the operation of an ice plant of 15-ton capacity in order to make worthwhile a huge investment in that place. Even in the motion for reconsideration of oppositor Elpidio Javellana of April 25, 1950, which gave rise to the amendatory orders, the place where the ice plants should be established was not put at issue as said motion only sought to set aside the unanimous decision of March 28, 1950, by alleging, as only ground, that there is no shortage of ice in view of the present requirements in Iloilo and that if there is need for additional services resulting from the existence of such shortage, he has the preferential right to put up said additional services. That the place of the establishment of the ice plant is something which was never brought out in the pleadings or in the evidence can be further gleaned from the very suggestion made by Commissioner Paredes, Jr. in his disputed order that the applications filed by the petitioner and other applicants be amended in order that they may specify therein the places where they may desire to establish their ice plants. This situation is further reflected in the following portion of the order of Commissioner Ocampo dated May 14, 1950:

"The ruling of my colleagues that applicants' plants should be installed in an undetermined place outside of the City of Iloilo finds no support nor basis whatsoever in the evidence of record. It is a cardinal and fundamental rule in Commission cases that the Commission must base its decision on the evidence presented. In default of evidence, the Commission can not issue any certificate of public convenience, and the Supreme Court has repeatedly ruled on this principle. Every bit of evidence presented in these cases refers to the question of

whether or not it is necessary to install and operate applicants' plants in the City of Iloilo and not elsewhere outside the city, so that the ruling that these plants must be installed outside Iloilo City has no foundation whatsoever in the evidence presented in these cases. The Commission knew at the time it promulgated its unanimous decision of March 28, 1950, authorizing the installation of applicants plants in the City of Iloilo of the existence of two other ice plants therein. While it is true that the Commission is empowered by law to modify its decision on any case after a hearing on a motion for reconsideration, such power is not unlimited but is subject to the fundamental rule that whatever modification is made must be based on the evidence presented in the case. Upon these considerations, it results that the ruling in the majority opinion to require applicants' plants to be installed in undetermined places outside the City of Iloilo is arbitrary and unjust to the applicants."

While the view entertained by Commissioners Prieto and Paredes, Jr. is plausible, being in line with the decision of this court in the San Miguel Brewery case (*San Miguel Brewery vs. Espiritu*, 60 Phil., 745), we hold that the same does not find proper application here considering the nature of the evidence presented. Moreover, the record shows that the petitioner has already made huge investment by acquiring the necessary site for the ice plant and the buildings and machineries to complete the factory, which investment was made in line with the unanimous decision of the Commission dated March 23, 1950. other words, the investment was made in good faith prompted merely by the desire of the petitioner to be of immediate service to the needs of the public. To modify now the decision of the Commission in the sense of requiring petitioner to move her plant to any other place within the Province of Iloilo which is uncertain and indefinite would be most unfair and unjust as it would be tantamount to ignoring the big investment already made by petitioner. This would be tantamount to a punishment which petitioner does not deserve. Under the circumstances, this court finds no sufficient justification in law as well as in fact for the modification wrought into the decision by Commissioners Gabriel P. Prieto and Quintin Paredes, Jr.

Wherefore, the court hereby sets aside the orders appealed from and maintains in toto the decision of the Public Service Commission dated March 28, 1950, with costs.

Paras, C. J., Pablo, Bengzon, Padilla, Jugo, and Labrador, JJ., concur.

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