

NEGROS ICE HOUSE CORPORATION, PETITIONER, VS. INOCENCIO CHUA AND THE PUBLIC SERVICE COMMISSION, RESPONDENTS.

G.R. No. L-31105. October 16, 1970

Ponente: REYES, J.B.L., Acting C.J.

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REYES, J.B.L., Acting C.J.:

Petitioner Negros Ice House Corporation seeks a review of the order of the Public Service Commission granting private respondent Inocencio Chua a provisional permit to operate an ice cube factory in Bacolod City. The order granting the provisional permit was issued by the Commission on 25 August 1969 in its Case No. 69-2683.

The petition charges abuse of discretion in that the contested permit was issued (a) without a notice and hearing despite the fact that in form and substance it is a certificate of public convenience and necessity; (b) in that applicant Inocencio Chua was of unproven citizenship, and failed to establish his financial ability to operate; (c) that there was no proof of urgent need for the service applied for; and (d) that the issued order would deprive the prior established operators of their property without due process of law. We issued a preliminary injunction upon a bond of P5,000.00 that was duly posted.

The answer traversed the charges and pleaded in defense that respondent Chua is a Filipino citizen, and that the disputed order was issued only after Chua had completed presentation of his evidence before the Public Service Commission. Subsequently, respondent Chua asked for the dismissal of the petition on the ground of its belated presentation in this Court, invoking the provisions of Section 36 of the Public Service Act (Commonwealth Act No. 146) that prescribes the following:

"SEC. 36. Any order, ruling, or decision of the Commission may be reviewed on the application of any person or public service affected thereby, by certiorari in appropriate cases, or by petition, to be known as Petition for Review, which shall be filed within thirty days from the notification of such order, ruling, or decision or, in case a petition for the reconsideration of such order, ruling, or decision is filed in accordance with the preceding section and the same is denied, it shall be filed within fifteen days after notice of the order denying reconsideration. Said petition shall be placed on file in the Office of the Clerk of the Supreme Court who shall furnish copies thereof to the Secretary of the Commission and other parties interested."

Petitioner corporation failed to register its opposition to the motion to dismiss, although it was granted several extensions of time to do so, at its behest.

Examination of the record discloses that petitioner corporation received notice of the controverted order of the Public Service Commission on 16 September 1969 (Petition, Ch. IV, paragraph 6, page 5) and that the present petition for review was only docketed in this Court on 18 October 1969, i.e., 32 days after receipt of notice of the order under attack. Clearly, the petition for review was filed late and did not confer jurisdiction upon this Court except to dismiss it, since the Commission's order had become unreviewable on 16 October 1969, subject of course to the final decision on the merits.

FOR THE FOREGOING REASON, the petition is hereby dismissed, and the preliminary injunction, heretofore

issued, is dissolved. Costs against petitioner Negros Ice House Corporation.

Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.
Concepcion, C.J., and Villamor, J., on official leave.

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