

ELISEO SILVA, PETITIONER, VS. THE HONORABLES FELICIANO OCAMPO, GABRIEL P. PRIETO, AND QUINTIN PAREDES, JR., IN THEIR CAPACITIES AS COMMISSIONERS OF THE PUBLIC SERVICE COMMISSION...

G.R. No. L-5162. January 31, 1952

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for certiorari wherein it is prayed that, pending hearing, a writ of preliminary injunction be issued to restrain the respondent Belen Cabrera from operating her ice plant and that, after hearing, the order granting said respondent a provisional permit to operate her ice plant be declared null and void.

Belen Cabrera filed in the Public Service Commission an application for a certificate of public convenience to install, maintain and operate in the City of Lipa an ice plant with a 10-ton daily productive capacity and to sell the produce of said plant in said city as well as in several municipalities of the province of Batangas. Eliseo Silva opposed the application on the ground that his ice plant was adequate to meet the needs of the public and that public convenience did not require the operation of another ice plant. Commissioner Feliciano Ocampo commissioned Attorney Antonio H. Aspillera, chief of the legal division, to receive the evidence. Based on the evidence received by Aspillera, the Commission granted the application. On appeal, however, the Supreme Court held that the proceedings had before Attorney Aspillera were null and void being in violation of section 3 of the Public Service Act, as amended, and set aside the decision of the Commission and ordered that the case be returned for re-hearing.

At the re-hearing before Commissioner Ocampo, counsel for the applicant offered to re-submit all the evidence presented by her at the hearing before Attorney Aspillera. Counsel for oppositor objected to the re-submission contending that said evidence can only be re-submitted if both parties agree to do so. Commissioner Ocampo ruled that the evidence could be re-submitted subject only to a revision by the Commissioner of the rulings made by Attorney Aspillera, and Commissioner Ocampo in fact revised said rulings and found them to be correct. In the opinion of Commissioner Ocampo, the applicant has the right either to re-submit her former evidence or to present evidence *do novo* and that it is not intended by the decision of this Court to curtail her right to choose between these two alternatives. On the basis of this evidence, Commissioner Ocampo granted to the applicant a provisional permit subject to the condition that it may be cancelled or revoked at any time and without prejudice to whatever final decision may be rendered in the case. The motion for reconsideration of oppositor having been denied, he filed this petition for certiorari.

The dispositive part of the decision invoked by petitioner in opposing the resubmission by the applicant of her evidence says in part as follows:

"Setting aside the decision appealed from, let this case be returned to the Public Service Commission so that evidence may be submitted by the parties in a hearing or hearings before the Commission in banc or before any

of the Commissioners if properly authorized, unless of course, said parties agree at said hearing or hearings to re-submit the evidence already presented and taken down, with such modifications and under such conditions as they may agree upon, including such other evidence which they may wish to present." (G. R. No. L-3629).

Petitioner contends that Commissioner Ocampo acted in a manner contrary to the ruling of the Supreme Court when he allowed the re-submission of the evidence of the applicant, instead of requiring her to present her evidence de novo, over the objection of the petitioner. For this reason, petitioner contends, the decision of Commissioner Ocampo should be set aside and rendered without effect.

The interpretation placed on the above ruling of this Court by Commissioner Ocampo is indeed erroneous, as it fails to grasp its real import and significance. The rationale of the rule is none other than to make the Commission, or any of the Commissioners who may be authorized for this purpose, to try the case or, receive the evidence itself, as the law requires, so that it may have the necessary opportunity for observation and appreciation of the evidence to enable it to reach an accurate and intelligent conclusion. Mere re-submission of the evidence already presented would not meet this compelling objective, the only exception being when the opposing parties agree to such re-submission. This is a privilege that they can exercise or waive in the use of their discretion. Inasmuch as Commissioner Ocampo has not observed the directive contained in the decision adverted to, and it appearing that this decision has been concurred in by the other two Commissioners, we are of the opinion that the respondent Commission has committed an abuse of discretion in over-ruling the objection of petitioner to the re-submission of the evidence presented by the applicant before Attorney Aspillera.

We notice, however, that the incident relative to the resubmission of the evidence of the application took place in connection only with the hearing set by the Commission for the purpose of determining if said applicant, could be given a provisional permit or authority to continue operating her 10-ton ice plant in Lipa City pending hearing and final determination of the case. The hearing was set at the express instance of the applicant in view of the attitude of the oppositor in asking for an indefinite postponement of the hearing on the merits. The Commission found that the applicant had made considerable investment to acquire and install her 10-ton ice plant in the city of Lipa and that there was an urgent need for ice not only by the people of that city but also of the towns of Cuenca, Alitagtag and Ibaan, which condition had existed and continued to exist since the original decision in this case had been rendered, for which reasons the Commission found sufficient ground to warrant the issuance of a provisional permit. In so granting such provisional permit, the Commission partly said: "If the best interests and convenience of the public are to be subserved, applicant should be granted a provisional permit, to continue operating her plant while this case is being litigated. To order the closing down of applicant's plant in the face of the evidence showing that the public needs her service would be a disservice to the public. This provisional authority should be granted because the public's need for the service is urgent and the hearing and final determination of this case will necessarily take time."

We are of the opinion that while the evidence presented by the applicant has been admitted in violation of the directive of this Court, however, such evidence may serve as justification, if the Commission so finds it, to warrant the issuance of a provisional permit. There is nothing in the law which prohibits the Commission from receiving any pertinent evidence for the purpose of acting on a petition for provisional permit. The law is silent as to the procedure to be followed with regard to provisional permit. The law even empowers the Commission to act, without hearing, on certain matters of public interest, "subject to established limitations and exceptions and saving provisions, to the contrary" (section 17, Com. Act 146, as amended). There being no express prohibition in the law, nor any provision to the contrary, we hold that the resubmitted evidence may serve as basis for the issuance of a provisional permit to the applicant.

A case in point is *Peck vs. Public Utilities Commission*, 170 N.E. 364. In this case, certificates 82 and 83, for

interstate bus transportation between Toledo and Sylvania, Ohio, were owned by the Black Hawk Lines, Inc., and such company was conducting operations thereunder. Upon the application of certain creditors, a receiver was appointed. Later, Michigan-Ohio Bus Lines, Inc., filed an application for an extension of its certificate No. 84 to cover the same route theretofore operated on under certificates 82 and 83 by the Black Hawk Lines, Inc. The Commission, without notice to the receiver or to the Black Hawk Lines, Inc., issued an order granting temporarily an extension of certificate No. 847 to operate over what had theretofore been routes 82 and 83. On appeal, the grant of this temporary permit was assigned as error. The Supreme Court of Ohio justified the action of the Commission saying on this point as follows:

"Believing in good faith that the public living along the line of this route was without transportation service, that the transportation company then holding the certificate serving such territory did not provide the service required or the particular kind of equipment necessary to furnish such service, and that the public was practically without transportation, we cannot find that such temporary order, issued as an emergency measure, violated the letter or spirit of section 614-87, General Code". (Peck vs. Public Utilities Commission, 170 N. E. 366).

As regards the contention of petitioner that the Public Service Commission has no power to grant temporary or provisional permit under the law, it suffices for us to state that the Commission has such power when the purpose of the permit is to meet an urgent public necessity (Javellana vs. La Paz Ice Plant & Cold Storage Co., 64 Phil., 893; Ablaza Transportation Co., Inc., vs. Pampanga Bus, Inc., 88 Phil., 412).

Wherefore, the petition is denied with costs against the petitioner.

It is ordered that the Public Service Commission immediately set the hearings of this case for trial de nova in line with the ruling of this Court in G. R. No. L-3629.[*]

Paras, C. J., Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Jugo, JJ., concur.

* Silva vs. Cabrera, 88 Phil., 381.

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