

ICE AND COLD STORAGE INDUSTRIES OF THE PHILIPPINES, INC., PETITIONER, VS. JOSE M. VALERO AND JOSE SAMSON, RESPONDENTS.

G.R. No. L-1871 and L-1872. November 18, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

In a decision rendered on November 6, 1947, the Public Service Commission granted to the respondent Jose M. Valero a provisional or emergency certificate of public convenience to install and operate an ice plant of 10-ton daily capacity in the municipality of Mandaluyong, Rizal, and to sell ice in said Municipality and in the cities of Manila and Quezon; and to the respondent Jose Samson, a similar certificate of public convenience to install and operate an ice plant of 11-ton daily capacity in the municipality of Mandaluyong, Rizal, and to sell ice in said municipality and in the municipalities of San Juan, Makati, Pasig, Cainta, Taytay, and Antipolo as well as in Manila and Rizal City. Both certificates were to expire on December 31, 1948, without prejudice to extending them in due time upon petition of the parties if they so desired.

The petitioner, Ice & Cold Storage Industries of the Philippines, Inc., which holds a prewar certificate of public convenience to operate an ice plant in the City of Manila and sell ice in said city as well as in various municipalities of the provinces of Rizal, Cavite, and Bulacan, and whose opposition to the applications of Valero and Samson was overruled by the Commission, has brought the case to this court to review and reverse said decision, contending (1) that it is not reasonably supported by the evidence and is contrary to law, and (2) that the Commission erred in not first giving the petitioner a reasonable opportunity to resume and reestablish completely its service, interrupted by the last war, before granting the applications of the respondents.

I. Under its first assignment of error the petitioner-appellant contends that public necessity and convenience do not require the service proposed by the respondents; that the petitioner has been giving and rendering a sufficient and efficient service in the sale of its ice to the inhabitants of Mandaluyong, Rizal, and neighboring municipalities; that there is no necessity for the proposed operation of ice plants in Mandaluyong and, even if such necessity existed, only one applicant was sufficient to properly serve the needs of said municipality; and that the proposed operation of the ice plants by the respondents would only cause ruinous and destructive competition with the established business of the petitioner.

Petitioner-appellant asserts that "there is no conclusive evidence on the record to reasonably support the decision of the Honorable Public Service Commission in granting to the respondents authority to operate and maintain their ice plants in Mandaluyong, Rizal."

After considering the evidence adduced by both parties, the Commission arrived at the conclusion (a) that public interest and convenience required the establishment and operation of the ice plants proposed by the applicants because up to date there was no authorized ice-plant operator in the municipality of Mandaluyong, where the applicants proposed to establish their plants; (b) that said applicants and machineries and equipment ready for

immediate installation as described in their respective applications; and (c) that both applicants are financially able to maintain and render the service proposed by them.

Section 35 of Commonwealth Act No. 146 vests the Supreme Court with jurisdiction "to review any order, ruling, or decision of the Commission and to modify or set aside such order, ruling, or decision when it clearly appears that there was no evidence before the Commission to support reasonably such order, ruling, or decision, or that the same is contrary to law, or that it was without the Jurisdiction of the Commission."

The Commission's findings of fact are conclusive upon this court. We are not authorized to weigh the conflicting evidence and substitute our conclusion for that of the Commission. (*Javellana vs. La Paz Ice Plant & Cold Storage Co.*, 63 Phil., 621; *Philippine Shipowners' Association vs. Public Utility Commissioner*, 43 Phil. 328; *Ynchausti Steamship Co. vs. Public Utility Commissioner*, 44 Phil. 363; *San Miguel Brewery vs. Lapid*, 53 Phil. 539.) We are authorized to modify or set aside a decision of the Public Service Commission only "when it clearly appears that there was no evidence before the Commission to support reasonably" such decision; and upon the record before us it cannot be said that there was clearly no evidence before the Commission to support reasonably its decision.

Petitioner-appellant cites no proof in support of its contention that the operation of ice plants by the respondents-appellees would cause ruinous competition. In order that the opposition based on ruinous competition may prosper, it must be shown that the opponent "would be deprived of fair profits on the capital invested in its business. The mere possibility of reduction in the earnings of a business is not sufficient to prove ruinous competition. It must be shown that the business would not have sufficient gains to pay a fair rate of interest on its capital investment." (*Manila Electric Co. vs. Pasay Transportation Co.*, 6 Phil. 36, 6 L. J. 1117.) Mere allegations by the oppositor that its business would be ruined by the establishment of the ice plants proposed lay the applicants "are not sufficient to warrant this court to revoke the order of the Public Service Commission." (*Teodora Santos Vda. de Pilares vs. Consuelo Arranz*, G.R. No. 45462, July 28, 1938.)

II. Upon the contention that the decision of the Public Service Commission is contrary to law, and particularly that the Commission erred in not first giving the petitioner a reasonable opportunity to resume and re-establish completely its service, interrupted by the last war, before granting the applications of the respondents, we find, on the contrary, that said decision is supported by a long line of decisions of this court on the same subject.

In *San Miguel Brewery vs. Lapid*, supra, this court said:

"Although we can conceive that the San Miguel Brewery is able to supply ice for the consumption of the whole province of Cavite, the fact, however, is that said company does not really operate in that province under a certificate issued by the Public Service Commission. Said establishment operates its ice factory in the City of Manila and sells its ice in the Province of Cavite through its agents. Said agents or dealers in ice are not subject to the rules which the commission may prescribe as to the price for which they sell this article to the consumers, and naturally they have to fix a higher price in view of the waste of the ice from the time it is taken from the factory and the cost of transportation, expenses which, in the last analysis, the consumer has to pay."

In *San Miguel Brewery vs. Espiritu*, 60 Phil. 752) we held:

"The fact that one or several ice plants established in another municipality or municipalities are authorized to sell ice in another municipality where no ice plant exists, does not prevent the authorization to establish an ice plant in the latter municipality when the public convenience and necessity so demand."

(See also *Angel T. Limjoco vs. San Miguel Brewery*, G.R. No. 47299, Dec. 21, 1940, 40 O.G. 10th Supp., 135; [1] *Fortunate F. Halili vs. Ice and Cold Storage Industries of the Philippines, Inc.*, G.R. Nos. L-336 and L-343, January 25, 1947, 44 O.G. 1151.)[2]

In re Quirino G. Gregorio, 44 O.G. 1216,[3] It was held:

"Judicial notice may be taken of the fact that, as a result of the destruction of the various ice plants in Manila and its environs during the war and the use by the United States Army of what was left of the ice and cold storage, there was an acute shortage of ice on the advent of liberation. The Public Service Commission did not abuse its authority when, to ease this situation, applicants who had facilities for making ice were granted certificates of public convenience good up to December 31, 1948, and applications of those who had not were dismissed."

In Joaquin Ma. Joson vs. Ildefonso Santos, G.R. No. L-455, 45 O.G. 1740, 1743,[4] we said:

"*** Both reason and equity approve the issuance of the temporary license. In these days of reconstruction, and rehabilitation there is a crying need to establish public services destroyed by the war. As always, the people's convenience and welfare should be of paramount importance. It is not in keeping with this view for prewar operators to adopt a dog-in-the-manger policy, opposing the rendition by others of these services which they cannot actually and immediately perform."

The decision of the Public Service Commission, being reasonably supported by the evidence and not being contrary to law is hereby affirmed, with costs against the petitioner.

Moran, C.J., Paras, Bengzon, Padilla, Tuason, Montemayor, Reyes and Torres, JJ., concur

[1] 71 Phil., 189.

[2] 77 Phil., 823.

[3] 77 Phil., 906.

[4] 79 Phil., 381.

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