

**DOMINADOR DANAN AND ADORACION FERNANDEZ, PETITIONERS,
VS. HON. A. H. ASPILLERA AND HON. ALEJANDRO A. GALANG,
COMMISSIONERS OF PUBLIC SERVICE COMMISSION AND CORTISAN
& COMPANY, I...**

G.R. No. L-17305. November 28, 1962

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

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REYES, J.B.L., J.:

Petitioner spouses were holders of a certificate of public convenience for the installation, maintenance, and operation of a 4-ton ice plant in Orion, Bataan, issued to them by the Public Service Commission in 1958, which ice plant was acquired by purchase from third persons.

However, for abandonment or non-operation, the said certificate was cancelled and revoked on 2 February 1960, in an order in Case No. 107481, quoted hereunder, to wit:

"It appearing from the report, dated February 1, 1960, of the engineer of this Commission who inspected applicants ice plant in the municipality of Orion, Bataan, on January 29, 1960, that applicants stopped the operation of their ice plant since October 1956, and have not resumed operation of the plant up to the time of inspection, so that there has been abandonment of service for almost three (3) years, it is ordered that the certificate of public convenience for the installation, maintenance, and operation of a 4-ton ice plant in Orion, Bataan, issued to applicants by virtue of the decision rendered in this case on January 17, 1958, be, as it is hereby, CANCELLED and REVOKED for abandonment of service."

Two days thereafter, or on 4 February 1960, the Commission, in Case No. 129277, granted to respondent Cortisan & Co., Inc., a certificate of public convenience to install and operate a 10-ton ice plant in the same municipality of Orion, Bataan, after trial and with due notice to herein petitioners. The latter failed to appear during the hearing on 4 February 1960 due to an alleged accident they met on their way to Manila. In this connection, petitioners' motion for reconsideration was denied on 12 February 1960, for which reason the permit granted to Cortisan & Co., Inc., remained in full force and effect.

Again petitioners filed a joint motion (1) for reconsideration of the aforequoted order dated 2 February 1960 and (2) for the reopening of Case No. 129277 which motion was set for formal hearing on 29 March 1960. Counsels for both parties appeared, and the motion was heard.

Thereafter, the petitioners' joint motion for the reconsideration of the Commissioner's order dated 2 February 1960, in Case No. 107481, as well as their motion for the reopening of Case 129277, were both denied in received by petitioners on 21 July 1960.

The instant "Petition For Review", docketed as G. R. No. L-17305, was filed before this Tribunal at 11:07 a. m. on 22 August 1960 or thirty-two (32) days after petitioners admittedly received a copy of the said order denying their joint motion for reconsideration and reopening previously adverted to. Section 36 of Commonwealth Act

No. 146, which reorganized the Public Service Commission, provides:

"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." (*Italics supplied*)

Section 1, Rule 43, of the Rules of Court states:

"SEC. 1. Petition for Review.—Within thirty (30) days from notice of an order or decision issued by the Public Service Commission * * * any party aggrieved thereby may file, in the Supreme Court, a written petition for the review of such order or decision."

It goes without saying that both the orders of the Public Service Commission, dated 2 February 1960, cancelling and revoking the certificate of public convenience of herein petitioners to operate a 4-ton ice plant and the subsequent certificate of public convenience granted to Cortisan & Company, Inc., in case No. 129277 of the Commission have already become final, irrevocable, and executory, inasmuch as the herein "Petition for Review", G. R. No. L-17305, was filed beyond the reglementary period.

This Court, however, can not help expressing its concern for the Commission's *ex parte* revocation of certificates without giving the operator previous notice and opportunity to explain their side. This practice violates the due process clause of the Constitution, the express provisions of section 16 (n) of the Public Services Act, and the doctrines of this Court (*Bohol Land Trans, vs. Jureidini*, 53 Phil. 560; *Pangasinan Trans, vs. Halili* 95 Phil. 694; *Collector vs. Buan*, L-11438, 31 July 1958). The Public Service Commission is an agency of the government, and should, at all times, maintain a due regard for the constitutional rights of parties litigant. Also, the Commissioners (who are not judges in the true sense) would do well to ponder the implications of Article 32, No. 6, of the New Civil Code on the individual responsibility of public officers and employees who impair a person's right against deprivation of property without due process of law.

The petition for review is hereby denied for having been filed beyond the reglementary period, the orders complained of having thereby become final. Costs against petitioners.

Padilla, Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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