

ANGELES C. VDA. DE LAT, CAROLINA LAT PEREZ DE TAGLE, AND PEDRO C. LAT, JR., PETITIONERS, VS. THE PUBLIC SERVICE COMMISSION AND ROBERTO C. DIAZ, RESPONDENTS.

G.R. No. L-34978. February 26, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This is a petition for the review of a Decision of the Public Service Commission, dated February 24, 1972, granting the application of the herein private respondent, Roberto C. Diaz, for a Certificate of Public Convenience.

The facts of the case are as follows:

On May 11, 1970, the herein private respondent Roberto C. Diaz filed an application with the respondent Public Service Commission for a Certificate of Public Convenience and Necessity to operate and maintain an ice plant service in Davao City alleging among others that he is financially capable to operate and maintain the proposed service, and that public necessity and convenience will be promoted in a proper and suitable manner with the approval of his application.[1] Said application was published in two newspapers of general circulation namely: *El Debate* and *The Philippine Herald*, and copies thereof were sent to affected operators including the herein petitioners Angeles C. Vda. de Lat, Carolina Lat Perez de Tagle and Pedro C. Lat, Jr. Only the petitioners filed an Opposition to the Application and the same was submitted on July 3, 1970.

By agreement of the parties, the hearing of the Application and the Opposition was set by the respondent Commission for August 17, 1970 at 9 o'clock in the morning. However, when the case was called for hearing as late as 10 o'clock in the morning on the said date, neither the oppositors nor their counsel was present. Hence, the respondent Commission declared the case uncontested and received the evidence of the private respondent.

In this petition, the petitioners contend that they filed an Urgent Motion for Postponement and of Hearing on August 17, 1970, with the respondent Commission on the ground that their counsel made the mistake of noting down in his calendar the hearing on August 16, 1970, a Sunday and that it was already too late when he discovered the said mistake.[2] On August 18, 1970, the petitioners filed a motion for reopening of the case and allowance to present evidence but unfortunately, on the same date respondent Commission issued an Order granting the private respondent provisional authority to operate the ice plant for six (6) months. This was based on the finding of the Commission that there was indeed an urgent need for an ice plant in Davao City as its population has increased tremendously. Petitioners then filed a motion for reconsideration but this was denied in a Resolution signed by all the members of the respondent Commission, said motion having been heard by the Commission en banc.[3]

The above-mentioned provisional authority granted to the private respondent was extended twice. The first extension was given on February 12, 1971 and the second, on December 10, 1971. Finally on February 24, 1972, the respondent Commission handed down a Decision approving the Application of the private respondent and

granting him a Certificate of Public Convenience to operate a 2-ton ice plant in Davao City.

In this petition for review, the petitioners are asking that the Decision rendered by the respondent Commission on February 24, 1972 be set aside and declared null and void, as it has been rendered without due process. Their claim is that they were deprived of their day in court when they were not allowed to cross-examine the witnesses of the private respondent and to present their evidence in support of their Opposition.[4] Furthermore, they submit that the decision awarding the Certificate of Public Convenience to the private respondent was based merely on the latter's uncorroborated testimony and would amount to competition that would damage their business.[5]

Two issues are raised in this petition. The first is whether or not the petitioners were deprived of their day in Court to make the proceeding in the respondent Public Service Commission null and void. And the other is whether or not the private respondent was validly awarded the questioned Certificate of Public Convenience to operate an ice plant in Davao City.

As regards the first issue, We reject the petitioner's assertion that their right to due process was violated. It is very clear from the records that the petitioners were given notice and opportunity to be heard negating the petitioners' declaration that they were deprived of their day in court.

Going back to the facts of this Case, We find, as the respondent Commission did,[6] that the private respondent duly complied with the required notice of hearing. There was publication.[7] The petitioners could not have been denied the right to be heard because as their counsel even admits, he agreed to the setting of the hearing of the case for August 19, 1970 at 9 o'clock in the morning.[8]

The Petitioners should have known about the date of the hearing. Yet, when the case was called, neither they nor their counsel showed up. There was not even any word from them. Their lame excuse that their lawyer made the mistake of noting down the hearing on a Sunday instead of a Monday is unacceptable. There were three of them who presented themselves as oppositors. It is unbelievable that not one of them found out about the mistake of their counsel had they shown any slight interest in the case. Their negligence cannot now be passed on to the respondent Commission which only did the right thing of proceeding with the case, which had become uncontested.

Nor it can be said that the Decision of the respondent Commission is arbitrary. The application was not outrightly approved upon reception of the evidence of the private respondent. On the contrary, the respondent Commission took time to consider and weigh such evidence as can be seen from the fact that the private respondent was granted only a provisional authority on August 18, 1970, which was twice extended, before the case was finally determined on February 24, 1972.

We are convinced that the private respondent deserves to be awarded the Certificate of Public Convenience. He was able to fully satisfy the requisites before such a certificate may be granted, namely: (1) the applicant must be a citizen of the Philippines, or a corporation or co-partnership, association or joint-stock company constituted and organized under the laws of the Philippines, 60 per centum at least of the stock or paid-up capital of which belong entirely to citizens of the Philippines; (2) the applicant must be financially capable of undertaking the proposed service and meeting the responsibilities incident to its operation; and (3) the applicant must prove that the operation of the public service proposed and the authorization to do business will promote the public interest in a proper and suitable manner.[9]

There is no question that the private respondent is a Filipino Citizen. Regarding his financial capacity and public necessity for the ice plant, the finding of the Public Service Commission on these are relevant, to wit:

"It appears from the evidence adduced by the applicant, that he is a co-owner of a parcel of land situated Barrio

Magugpo, Tagum, Davao (Exhibit "F" & "F-1") with an area of 15,738 square meters and having a present market value of P25,000.00 (Exhibits "G" & "G-1") with the Bank of the Philippine Islands; and that, he is engaged in the fishing business with an investment of P10,000.00 to P15,000.00 and from which he earns a monthly income of P2,000.00 to P3,000.00. As regards the necessity for the service applied for, applicant testified that the only oppositors here are serving almost 1/3 of the population of Davao; that Davao City is a tourist belt and the population has increased from 225.7 in 1960 to 389.3 in 1970, as evidence by Exhibit "1"; that there are two (2) or (3) three barrios in said city; that being a fishing ground, there are plenty of fish wherein ice is very much needed in order to preserve them; that he received a request from the Barrio Captain of Bo. Buhangin,, Davao City (Exhibit "j") clamoring for ice in behalf of its 9,431 inhabitants; and that there is an urgent need for an ice plant in Davao City, to serve the requirements for ice in the said city"[10]

Before We end, it is apt to stress the principle that nobody has the exclusive right to secure a franchise or a Certificate of Public Convenience. The paramount consideration should always be the public interest and public convenience.[11]

Furthermore, the allegation of the petitioners that the grant of Certificate of Public Convenience to the private respondent would result in ruinous competition amounting to damage of their business[12] is unconvincing. The grant is for the operation of a mere 2-ton ice plant and only in Davao City whereas the petitioners are big operators producing no less than 63 tons of ice daily and who are authorized to operate ice plants not only in the City of Davao but also in the three Davao provinces. And We have held before, in order that the opposition based on ruinous competition may prosper, it must be shown that the opponent would be deprived of their 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 investments.[13]

WHEREFORE, the decision of the Public Service Commission appealed from is hereby **AFFIRMED**, with costs against the petitioners.

SO ORDERED.

Narvasa, Cruz, and Griño-Aquino, JJ., concur.
Teehankee, C.J., did not take part in the deliberation.

[1] Page 13, Rollo, Annex A.

[2] Page 7, Rollo.

[3] Page 9, Rollo.

[4] Page 11, Rollo.

[5] Page 15, Rollo.

[6] Page 38, Rollo; Decision.

[7] Page 38, Rollo; Decision.

[8] Page 6, Rollo; Petition.

[9] P. 368, Martin, Commentaries and Jurisprudence on the Philippine Commercial Laws, Vol. 3, 1986 Ed.

[10] Page 39, Rollo.

[11] Rizal Light and Ice Co., Inc. vs. Mun. of Morong, Rizal, 25 SCRA 286.

[12] Page 14, Rollo; Opposition.

[13] Halili vs. Daplas, 14 SCRA 14.

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