

RIZAL LIGHT & ICE CO., INC., PETITIONER, VS. THE MUNICIPALITY OF MORONG, RIZAL AND THE PUBLIC SERVICE COMMISSION, RESPONDENTS. RIZAL LIGHT & ICE CO., INC., PETITIONER, VS. THE P...

G.R. Nos. L-20993 & 212211. September 28, 1968

Ponente: ZALDIVAR. J.

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ZALDIVAR. J.:

These two cases, being interrelated, are decided together.

Case G.R. No. L—20993 is a petition of the Rizal Light & Ice Co. Inc. to review and set aside the orders of respondent Public Service Commission[1], dated August 20, 1962 and February 15, 1963, in PSC Case No. 39715, cancelling and revoking the certificate of public convenience and necessity and forfeiting the franchise of said petitioner. In the same petition, the petitioner prayed for the issuance of a writ of preliminary injunction ex parte suspending the effectivity of said orders and/or enjoining respondents Commission and/or Municipality of Morong, Rizal, from enforcing in any way the cancellation and revocation of petitioner's franchise and certificate of public convenience during the pendency of this appeal. By resolution of March 12, 1963, this Court denied the petition for injunction, for lack of merit.

Case G.R. No. L-21221 is likewise a petition of the Rizal Light & Ice Co., Inc. to review and set aside the decision of the Commission dated March 13, 1963 in PSC Case No. 62-5143 granting a certificate of public, convenience and necessity to respondent Morong Electric Co., Inc.[2] to operate an electric light, heat and power service in the municipality of Morong, Rizal. In the petition Rizal Light & Ice Co., Inc. also prayed for the issuance of a writ of preliminary injunction ex parte suspending the effectivity of said decision. Per resolution of this Court, dated May 6, 1963, said petition for injunction was denied.

The facts, as they appear in the records of both cases, are as follows:

Petitioner Rizal Light & Ice Co., Inc. is a domestic corporation with business address at Morong, Rizal. On August 15, 1949, it was granted by the Commission a certificate of public convenience and necessity for the installation, operation and maintenance of an electric light, heat and power service in the municipality of Morong, Rizal.

In an order dated December 19, 1956, the Commission required the petitioner to appear before it on February 18, 1957 to show cause why it should not be penalized for violation of the conditions of its certificate of public convenience and the regulations of the Commission, and for failure to comply with the directives to raise its service voltage and maintain them within the limits prescribed in the Revised Order No. 1 of the Commission, and to acquire and install a kilowattmeter to indicate the load in kilowatts at any particular time of the generating unit.

For failure of the petitioner to appear at the hearing on February 18, 1957, the Commission ordered the cancellation and revocation of petitioner's certificate of public convenience and necessity and the forfeiture of its

franchise. Petitioner moved for reconsideration of said order on the ground that its manager, Juan D. Francisco, was not aware of said hearing. Respondent municipality opposed the motion, alleging that petitioner has not rendered efficient and satisfactory service and has not complied with the requirements of the Commission for the improvement of its service. The motion was set for hearing and Mr. Pedro S. Talavera, Chief, Industrial Division of the Commission, was authorized to conduct the hearing for the reception of the evidence of the parties.[3]

Finding that the failure of the petitioner to appear at the hearing set for February 18, 1957—the sole basis of the revocation of petitioner's certificate—was really due to the illness of its manager, Juan D. Francisco, the Commission set aside its order of revocation. Respondent municipality moved for reconsideration of this order of reinstatement of the certificate, but the motion was denied.

In a petition dated June 25, 1958, filed in the same case, respondent municipality formally asked the Commission to revoke petitioner's certificate of public convenience and to forfeit its franchise on the ground, among other things, that it failed to comply with the conditions of said certificate and franchise. Said petition was set for hearing jointly with the order to show cause. The hearings had been postponed several times.

Meanwhile, inspections had been made of petitioner's electric plant and installations by the engineers of the Commission, as follows: April 15, 1958 by Engineer Antonio M. Alii; September 18, 1959, July 12-13, 1960, and June 21-24, 1961, by Engineer Meliton S. Martinez. The inspection on June 21-24, 1961 was made upon the request of the petitioner who manifested during the hearing on December 15, 1960 that improvements have been made on its service since the inspection on July 12-13, 1960, and that, on the basis of the inspection report to be submitted, it would agree to the submission of the case for decision without further hearing.

When the case was called for hearing on July 5, 1961, petitioner failed to appear. Respondent municipality was then allowed to present its documentary evidence, and thereafter the case was submitted for decision.

On July 7, 1961, petitioner filed a motion to reopen the case upon the ground that it had not been furnished with a copy of the report of the June 21-24, 1961 inspection for it to reply as previously agreed. In an order dated August 25, 1961, petitioner was granted a period of ten (10) days within which to submit its written reply to said inspection report, on condition that should it fail to do so within the said period the case would be considered submitted for decision. Petitioner failed to file the reply. In consonance with the order of August 25, 1961, therefore, the Commission proceeded to decide the case. On July 29, 1962 petitioner's electric plant was burned.

In its decision, dated August 20, 1962, the Commission, on the basis of the inspection reports of its aforementioned engineers, found that the petitioner had failed to comply with the directives contained in its letters dated May 21, 1954 and September 4, 1954, and had violated the conditions of its certificate of public convenience as well as the rules and regulations of the Commission. The Commission concluded that the petitioner "cannot render the efficient, adequate and satisfactory electric service required by its certificate and that it is against public interest to allow it to continue its operation." Accordingly, it

ordered the cancellation and revocation of petitioner's certificate of public convenience and the forfeiture of its franchise.

On September 18, 1962, petitioner moved for reconsideration of the decision, alleging that before its electric plant was burned on July 29, 1962, its service was greatly improved and that it had still existing investment which the Commission should protect. But eight days before said motion for reconsideration was filed, or on September 10, 1962, Morong Electric, having been granted a municipal franchise on May 6, 1962 by respondent municipality to install, operate and maintain an electric heat, light and power service in said municipality—approved by the Provincial Board of Rizal on August 31, 1962—filed with the Commission an application for a certificate of public

convenience and necessity for said service. Said application was entitled "Morong Electric Co., Inc., Applicant", and docketed as Case No. 62-5143.

Petitioner opposed in writing the application of Morong Electric, alleging among other things, that it is a holder of a certificate of public convenience to operate an electric light, heat and power service in the same municipality of Morong, Rizal, and that the approval of said application would not promote public convenience, but would only cause ruinous and wasteful competition. Although the opposition is dated October 6, 1962, it was actually received by the Commission on November 8, 1962, or twenty four days after the order of general default was issued in open court when the application was first called for hearing on October 15, 1962. On November 12, 1962, however, the petitioner filed a motion to lift said order of default. But before said motion could be resolved, petitioner filed another motion dated, January 4, 1963, this time asking for the dismissal of the application upon the ground that applicant Morong Electric had no legal personality when it filed its application on September 10, 1962, because its certificate of incorporation was issued by the Securities and Exchange Commission only on October 17, 1962. This motion to dismiss was denied by the Commission in a formal order issued on January 17, 1963 on the premise that applicant Morong Electric was a de facto corporation.

Consequently, the case was heard on the merits and both parties presented their respective evidence. On the basis of the evidence adduced, the Commission, in its decision dated March 13, 1963, found that there was an absence of electric service in the municipality of Morong and that applicant Morong Electric, a Filipino-owned corporation duly organized and existing under the laws of the Philippines, has the financial capacity to maintain said service. These circumstances, considered together with the denial of the motion for reconsideration filed by petitioner in Case No. 39715 on February 15, 1963, such that as far as the Commission was concerned the certificate of the petitioner was already declared revoked and cancelled, the Commission approved the application of Morong Electric and ordered the issuance in its favor of the corresponding certificate of public convenience and necessity.

On March 8, 1963, petitioner filed with this Court a petition to review the decision in Case No. 39715 (now G.R. No. L-20993). Then on April 26, 1963, petitioner also filed a petition to review the decision in Case No. 62-5143 (now G.R. No. L-21221).

In questioning the decision of the Commission in Case No. 39715, petitioner contends: (1) that the Commission acted without or in excess of its jurisdiction when it delegated the hearing of the case and the reception of evidence to Mr. Pedro S. Talavera who is not allowed by law to hear the same; (2) that the cancellation of petitioner's certificate of public convenience was unwarranted because no sufficient evidence was adduced against the petitioner and that petitioner was not able to present evidence in its defense; (3) that the Commission failed to give protection to petitioner's investment; and (4) that the Commission erred in imposing the extreme penalty of revocation of the certificate.

In questioning the decision in Case No. 62-5143, petitioner contends: (1) that the Commission erred in denying petitioner's motion to dismiss and proceeding with the hearing of the application of the Morong Electric; (2) that the Commission erred in granting Morong Electric a certificate of public convenience and necessity since it is not financially capable to render the

service; (3) that the Commission erred when it made findings of facts that are not supported by the evidence adduced by the parties at the trial; and (4) that the Commission erred when it did not give to petitioner protection to its investment a reiteration of the third assignment of error in the other case.

We shall now discuss the appeals in these two cases separately.

G. R. No. L-20993

- Under the first assignment of error, petitioner contends that while Mr. Pedro S. Talavera, who conducted the hearings of the case below, is a division chief, he is not a lawyer. As such, under Section 32 of Commonwealth Act No. 146, as amended, the Commission should not have delegated to him the authority to conduct the hearings for the reception of evidence of the parties.

We find that, really, Mr. Talavera is not a lawyer.[4] Under the second paragraph of Section 32 of Commonwealth Act No. 146, as amended,[5] the Commission can only authorize a division chief to hear and investigate a case filed before it if he is a lawyer. However, the petitioner is raising this question for the first time in this appeal. The record discloses that petitioner never made any objection to the authority of Mr. Talavera to hear the case and to receive the evidence of the parties. On the contrary, we find that petitioner had appeared and submitted evidence of the hearings conducted by Mr. Talavera, particularly the hearings relative to the motion for reconsideration of the order of February 18, 1957 cancelling and revoking its certificate. We also find that, through counsel, petitioner had entered into agreements with Mr. Talavera, as hearing officer, and the counsel for respondent municipality, regarding procedure in order to abbreviate the proceedings.[6] It is only after the decision in the case turned out to be adverse to it that petitioner questioned the proceedings held before Mr. Talavera.

This court in several cases has ruled that objection to the delegation of authority to hear a case filed before the Commission and to receive the evidence in connection therewith is a procedural, not a jurisdictional point, and is waived by failure to interpose timely the objection and the case had been decided by the Commission.[7] Since petitioner has never raised any objection to the authority of Mr. Talavera before the Commission, it should be deemed to have waived such procedural defect, and consonant with the precedents on the matter, petitioner's claim that the Commission acted without or in excess of jurisdiction in so authorizing Mr. Talavera should be dismissed.[8]

- Anent the second assigned error, the gist of petitioner's contention is that the evidence—consisting of inspection reports—upon which the Commission based its decision is insufficient and untrustworthy in that (1) the authors of said reports had not been put to test by way of cross-examination; (2) the reports constitute only one side of the picture as petitioner was not able to present evidence in its defense; (3) judicial notice was not taken of the testimony of Mr. Harny B. Bernardino, former mayor of respondent municipality, in PSC Case No. 62-5143 (the other case, G.R. No. L-21221) to the effect that the petitioner had improved its service before its electric power plant was burned on July 29, 1962—which testimony contradicts the inspection reports; and (4) the Commission acted both as prosecutor and judge—passing judgment over the very same evidence presented by it as prosecutor—a situation "not conducive to the arrival at just and equitable decisions."

Settled is the rule that in reviewing the decision of the Public Service Commission this Court is not required to examine the proof de novo and determine for itself whether or not the preponderance of evidence really justifies the decision. The only function of this Court is to determine whether or not there is evidence before the Commission upon which its decision might reasonably be based. This Court will not substitute its discretion for that of the Commission on questions of fact and will not interfere in the latter's decision unless it clearly appears that there is no evidence to support it.[9] Inasmuch as the only function of this Court in reviewing the decision of the Commission is to determine whether there is sufficient evidence before the Commission upon which its decision can reasonably be based, as it is not required to examine the proof de novo, the evidence that should be made the basis of this Court's determination should be only those presented in this case before the Commission. What then was the evidence presented before the Commission and made the basis of its decision subject of the present appeal? As stated earlier, the Commission based its decision on the inspection reports submitted by its engineers who conducted the inspection of petitioner's electric service upon orders of the Commission.[10] Said

inspection reports specify in detail the deficiencies incurred, and violations committed, by the petitioner resulting in the inadequacy of its service. We consider that said reports are sufficient to serve reasonably as bases of the decision in question. It should be emphasized, in this connection that said reports, are not mere documentary proofs presented for the consideration of the Commission, but are the results of the Commission's own observations and investigations which it can rightfully take into consideration,[11] particularly in this case where the petitioner had not presented any evidence in its defense, and speaking of petitioner's failure to present evidence, as well as its failure to cross-examine the authors of the inspection reports, petitioner should not complain because it had waived not only its right to cross-examine but also its right to present evidence. Quoted hereunder are the pertinent portions of the transcripts of the proceedings where the petitioner, through counsel, manifested in clear language said waiver and its decision to abide by the last inspection report of Engineer Martinez:

Proceedings of December 15, 1960

"COMMISSION:

"It appears at the last hearing of this case on September 23, 1960, that an engineer of this Commission has been ordered to make an inspection of all electric services in the province of Rizal and on that date the engineer of this Commission is still undertaking that inspection and it appears that the said engineer had actually made that inspection on July 12 and 13, 1960. The engineer has submitted his report on November 18, 1960 which is attached to the records of this case.

"ATTY. LUQUE (Counsel for Petitioner):

"... (W)e respectfully state that while the report is, as I see it attached to the records, clear and very thorough, it was made sometime July of this year and I understand from the respondent that there is some improvement since this report was made we respectfully request that an up-to-date inspection be made An inspector of this Commission can be sent to the plant and considering that the engineer of this Commission, Engineer Meliton Martinez, is very acquainted to the points involved we pray that his report will be used by us for the reason that he is a technical man and he knows well as he has done a good job and I think our proposition would expedite the matter. We sincerely believe that the inspection report will be the best evidence to decide this matter.

"ATTY. LUQUE:

"... This is a very important matter and to show the good faith of respondent in this case we will not even cross-examine the engineer when he makes a new report. We will agree to the findings and, your honor please, considering as we have manifested before that Engineer Martinez is an experienced engineer of this Commission and the points reported by Engineer Martinez on the situation of the plant now will prevent the necessity of having a hearing, of us bringing new evidence and complainant bringing new evidence. . . .

...

Q

"Does the Commission understand from the counsel for applicant that if the motion is granted he will submit this order to show cause for decision without any further hearing and the decision will be based on the report of the engineer of this Commission?"

A

"We respectfully reply in this manner that we be allowed or be given an opportunity just to read the report and 99% we will agree that the report will be the basis of that decision. We just want to find out the contents of the report, however, we request that we be furnished with a copy of the report before the hearing so that we will just make a manifestation that we will agree."

"COMMISSION (to Atty. Luque):

Q

"In order to prevent the delay of the disposition of this case the Commission will allow counsel for the applicant to submit his written reply to the report that the engineer of this Commission. Will he submit this case without further hearing upon the receipt of that written reply?"

A "Yes, your honor."

Proceedings of August 25, 1961

"ATTY. LUQUE (Counsel for petitioner)

"In order to avoid any delay in the consideration of this case we are respectfully move (sic) that instead of our witnesses testifying under oath that we will submit a written reply under oath together with the memorandum within fifteen (15) days and we will furnish a copy and upon our submission of said written reply under oath and memorandum we consider this case submitted. This suggestion is to abbreviate the necessity of presenting witnesses here which may prolong the resolution of this case."

"ATTY. OLIVAS: (Counsel for respondent municipality)

"I object on the ground that there is no resolution by this Commission on the action to reopen the case and second this case has been closed."

"ATTY. LUQUE:

"With regard to the testimony on the ground for opposition we respectfully submit to this Commission our motion to submit a written reply together with a memorandum. Also as stated to expedite the case and to avoid further hearing we will just submit our written reply. According to our records we are furnished with a copy of the report of July 17, 1961. We submit your honor."

"COMMISSION:

"To give applicant a chance to have a day in court the Commission grants the request of applicant that it be given 10 days within which to submit a written reply on the report of the engineer of the Commission who inspected the electric service, in the municipality of Morong, Rizal, and after the submission of the said written reply within 10 days from today this case will be considered submitted for decision."

The above-quoted manifestations of counsel for the petitioner, specifically the statement referring to the inspection report of Engineer Martinez as the "best evidence to decide this matter," can serve as an argument against petitioner's claim that the Commission should have taken into consideration the testimony of Mr. Bernardino. But the primary reasons why the Commission could not have taken judicial cognizance of said testimony are: first, it is not a proper subject of judicial notice, as it is not a "known" fact—that is, well established and authoritatively settled, without qualification and contention;^[12] second, it was given in a subsequent and distinct case after the petitioner's motion for reconsideration was heard by the Commission en banc and submitted for decision;^[13] and third, it was not brought to the attention of the Commission in this case through an appropriate pleading.^[14]

Regarding the contention of petitioner that the Commission had acted both as prosecutor and judge, it should be considered that there are two matters that had to be decided in this case, namely, the order to show cause dated December 19, 1956, and the petition or complaint filed by respondent municipality dated June 25, 1958. Both matters were heard jointly, and the record shows that respondent municipality had been allowed to present its evidence to substantiate its complaint. It can not be said, therefore, that in this case the Commission had acted as prosecutor and judge. But even assuming, for the sake of argument, that there was a commingling of the prosecuting and investigating functions, this exercise of dual functions, is authorized by Section 17(a) of Commonwealth Act No. 146, as amended, under which the Commission has power "to investigate, upon its own initiative, or upon complaint in writing, any matter concerning any public service as regards matters under its jurisdiction; to require any public service to furnish safe, adequate, and proper service as the public interest may require and warrant; to enforce compliance with any standard, rule, regulation, order or other requirement of this Act or of the Commission, ..." Thus, in the case of *Collector of Internal Revenue vs. Estate of F.P. Buan*, L-1438, July 31, 1958, this Court held that the power of the Commission to cancel and revoke a certificate of public convenience and necessity may be exercised by it even without a formal charge filed by any interested party, with the only limitation that the holder of the certificate should be given his day in court.

It may not be amiss to add that when prosecuting and investigating duties are delegated by statute to an administrative body, as in the case of the Public Service Commission, said body may take steps it believes appropriate for the proper exercise of said duties, particularly in the manner of informing itself whether there is probable violation of the law and/or its rules and regulations. It may initiate an investigation, file a complaint, and then try the charge as preferred. So long as the respondent is given a day in court, there can be no denial of due process, and objections to said procedure cannot be sustained.

- In its third assignment of error, petitioner invokes the "protection-of-investment rule" enunciated by this Court in *Batangas Transportation Co. vs. Orlanes*^[15] in this wise:

"The Government having taken over the control and supervision of all public utilities, so long as an operator under a prior license complies with the terms and conditions of his license and reasonable rules and regulations for its operation and meets the reasonable demands of the public, it is the duty of the Commission to protect rather than to destroy his investment by the granting of the second license to another person for the same thing

over the same route of travel. The granting of such a license does not serve its convenience or promote the interests of the public."

The above-quoted rule, however, is not absolute, for nobody has exclusive right to secure a franchise or a certificate of public convenience.[16] Where, as in the present case, it has been shown by ample evidence that the petitioner, despite ample time and opportunity given to it by the Commission, had failed to render adequate, sufficient and satisfactory service and had violated the important conditions of its certificate as well as the directives and the rules and regulations of the Commission, the rule cannot apply. To apply that rule unqualifiedly is to encourage violation or disregard of the terms and conditions of the certificate and the Commission's directives and regulations, and would close the door to other applicants who could establish, operate and provide adequate, efficient and satisfactory service for the benefit and convenience of the inhabitants. It should be emphasized that the paramount consideration should always be the public interest and public convenience. The duty of the Commission to protect the investment of a public utility operator refers only to operators of good standing—those who comply with the laws, rules and regulations—and not to operators who are unconcerned with the public interest and whose investments have failed or deteriorated because of their own fault.[17]

- The last assignment of error assails the propriety of the penalty imposed by the Commission on the petitioner — that is, the revocation of the certificate and the forfeiture of the franchise. Petitioner contends that the imposition of a fine would have been sufficient, as had been done by the Commission in cases of a similar nature.

It should be observed that Section 16 (n) of Commonwealth Act No. 146, as amended, confers upon the Commission ample power and discretion to order the cancellation and revocation of any certificate of public convenience issued to an operator who has violated, or has willfully and contumaciously refused to comply with, any order, rule or regulation of the Commission or any provision of law. What matters is that there is evidence to support the action of the Commission. In the instant case, as shown by the evidence, the contumacious refusal of the petitioner since 1954 to comply with the directives, rules and regulations of the Commission, its violation of the conditions of its certificate and its incapability to comply with its commitment as shown by its inadequate service, were the circumstances that warranted the action of the Commission in not merely imposing a fine but in revoking altogether petitioner's certificate. To allow petitioner to continue its operation would be to sacrifice public interest and convenience in favor of private interest.

"A grant of a certificate of public convenience confers no property rights but is a mere license or privilege, and such privilege is forfeited when the grantee fails to comply with his commitments behind which lies the paramount interest of the public, for public necessity cannot be made to wait, nor sacrificed for private convenience." (Collector of Internal Revenue vs. Estate of F.P. Buan, et al., L-1 1438 and Santiago Sambrano, et al., v. PSC, et al., L-11439 & L-11542-46, July 31, 1958)

"(T)he Public Service Commission, . . . has the power to specify and define the terms and conditions upon which the public utility shall be operated, and to make reasonable rules and regulations for its operation and the compensation which the utility shall receive for its services to the public, and for any failure to comply with such rules and regulations or the violation of any of the terms and conditions for which the license was granted, the Commission has ample power to enforce the provisions of the license or even to revoke it, for any failure or neglect to comply with any of its terms and provisions." (Batangas Trans. Co. v. Orlanes, 52 Phil. 455, 460; Italics supplied.)

Presumably, the petitioner has in mind Section 21 of Commonwealth Act No. 146, as amended, which provides that a public utility operator violating or failing to comply with the terms and conditions of any certificate, or any orders, decisions or regulations of the Commission, shall be subject to a fine and that the Commission is authorized and empowered to impose such fine, after due notice and hearing. It should be noted, however, that the

last sentence of said section states that the remedy provided therein "shall not be a bar to, or affect any other remedy provided in this Act but shall be cumulative and additional to such remedy or remedies." In other words, the imposition of a fine may only be one of the remedies which the Commission may resort to, in its discretion. But that remedy is not exclusive of, or has preference over, the other remedies. And this Court will not substitute its discretion for that of the Commission, as long as there is evidence to support the exercise of that discretion by the Commission.

G. R. No. L-21221

Coming now to the other case, let it be stated at the outset that before any certificate may be granted, authorizing the operation of a public service, three requisites must be complied with, namely:

(1) the applicant must be a citizen of the Philippines or of the United States, or a corporation or co-partnership, association or joint-stock company constituted and organized under the laws of the Philippines, sixty per centum at least of the stock or paid-up capital of which belongs entirely to citizens of the Philippines or of the United States;[18] (2) the applicant must be financially capable of undertaking the proposed service and meeting the responsibilities incident to its operation;[19] 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.[20]

As stated earlier, in the decision appealed from, the Commission found that Morong Electric is a corporation duly organized and existing under the laws of the Philippines, the stockholders of which are Filipino citizens, that it is financially capable of operating an electric light, heat and power service, and that at the time the decision was rendered there was absence of electric service in Morong, Rizal. While the petitioner does not dispute the need of an electric service in Morong, Rizal,²¹ it claims, in effect, that Morong Electric should not have been granted the certificate of public convenience and necessity because (1) it did not have a corporate personality at the time it was granted a franchise and when it applied for said certificate; (2) it is not financially capable of undertaking an electric service, and (3) petitioner was rendering efficient service before its electric plant was burned, and therefore, being a prior operator its investment should be protected and no new party should be granted a franchise and certificate of public convenience and necessity to operate an electric service in the same locality.

- The bulk of petitioner's arguments assailing the personality of Morong Electric dwells on the proposition that since a franchise is a contract,[22] at least two competent parties are necessary to the execution thereof, and parties are not competent except they are in being. Hence, it is contended that until a corporation has come into being, in this jurisdiction, by the issuance of a certificate of incorporation by the Securities and Exchange Commission (SEC) it cannot enter into any contract as a corporation. The certificate of incorporation of the Morong Electric was issued by the SEC on October 17, 1962, so only from that date, not before, did it acquire juridical personality and legal existence.. Petitioner concludes that the franchise granted to Morong Electric on May 6, 1962 when it was not yet in esse is null and void and cannot be the subject of the Commission's consideration. On the other hand, Morong Electric argues, and to which argument the Commission agrees, that it was a de facto corporation at the time the franchise was granted and, as such, it was not incapacitated to enter into any contract or to apply for and accept a franchise. Not having been incapacitated, Morong Electric maintains that the franchise granted to it is valid and the approval or disapproval thereof can be properly determined by the Commission.

Petitioner's contention that Morong Electric did not yet have a legal personality on May 6, 1962 when a municipal franchise was granted to it is correct. The juridical personality and legal existence of Morong Electric began only on October 17, 1962 when its certificate of incorporation, was issued by the SEC.[23] Before that date, or pending

the issuance of said certificate of incorporation, the incorporators cannot be considered as de facto corporation.[24] But the fact that Morong Electric had no corporate existence on the day the franchise was granted in its name does not render the franchise invalid, because later Morong Electric obtained its certificate of incorporation and then accepted the franchise in accordance with the terms and conditions thereof. This view is sustained by eminent American authorities. Thus, McQuillin says:

"The fact that a company is not completely incorporated at the time the grant is made to it by a municipality to use the streets does not, in most jurisdictions, affect the validity of the grant. But such grant cannot take effect until the corporation is organized. And in Illinois it has been decided that the ordinance granting the franchise may be presented before the corporation grantee is fully organized, where the organization is completed before the passage and acceptance." (McQuillin, *Municipal Corporations*, 3rd Ed., Vol. 12, Chap. 34, Sec. 34.21).

Fletcher says:

"While a franchise cannot take effect until the grantee corporation is organized, the franchise may, nevertheless, be applied for before the company is fully organized.

"A grant of a street franchise is valid although the corporation is not created until afterwards." (Fletcher, *Cyclopedia Corp.* Permanent Edition, Rev. Vol. 6-A, Sec. 2881)

And Thompson gives the reason for the rule:

"(I)n the matter of the secondary franchise the authorities are numerous in support of the proposition that an ordinance granting a privilege to a corporation is not void because the beneficiary of the ordinance is not fully organized at the time of the introduction of the ordinance. It is enough that organization is complete prior to the passage and acceptance of the ordinance. The reason is that a privilege of this character is a mere license to the corporation until it accepts the grant and complies with its terms and conditions." (Thompson on Corporations, Vol. 4, 3rd Ed., Sec. 2929)[25]

The incorporation of Morong Electric on October 17, 1962 and its acceptance of the franchise as shown by its action in prosecuting the application filed with the Commission for the approval of said franchise, not only perfected a contract between the respondent municipality and Morong Electric but also cured the deficiency pointed out by the petitioner in the application of Morong Electric. Thus, the Commission did not err in denying petitioner's motion to dismiss said application and in proceeding to hear the same. The efficacy of the franchise, however, arose only upon its approval by the Commission on March 13, 1963. The reason is that—

"Under Act No. 667, as amended by Act No. 1022, a municipal council has the power to grant electric franchises, subject to the approval of the provincial board and the President. However, under Section 16 (b) of Commonwealth Act No. 146, as amended, the Public Service Commission is empowered 'to approve, subject to constitutional limitations any franchise or privilege granted under the provisions of Act No. 667, as amended by Act 1022, by any political subdivision of the Philippines when, in the judgment of the Commission, such franchise or privilege will properly conserve the public interests, and the Commission shall in so approving impose such conditions as to construction, equipment, maintenance, service, or operation as the public interests and convenience may reasonably require, and to issue certificates of public convenience and necessity when such is required or provided by any law or franchise.' Thus, the efficacy of a municipal electric franchise arises, therefore, only after the approval of the Public Service Commission." (Almendras vs. Ramos, 90 Phil. 231)

The conclusion herein reached regarding the validity of the franchise granted to Morong Electric is not incompatible with the holding of this Court in *Cagayan Fishing Development Co., Inc. vs. Teodoro Sandiko*[26] upon which the petitioner leans heavily in support of its position. In said case this Court held that a corporation should have a full and complete organization and existence as an entity before it can enter into any kind of a

contract or transact any business. It should be pointed out, however, that this Court did not say in that case that the rule is absolute or that under no circumstances may the acts of promoters of a corporation be ratified or accepted by the corporation if and when subsequently organized. Of course, there are exceptions. It will be noted that American courts generally hold that a contract made by the promoters of a corporation on its behalf may be adopted, accepted or ratified by the corporation when organized.[27]

- The validity of the franchise and the corporate personality of Morong Electric to accept the same having been shown, the next question to be resolved is whether said company has the financial qualification to operate an electric light, heat and power service. Petitioner challenges the financial capability of Morong Electric, by pointing out the inconsistencies in the testimony of Mr. Jose P. Ingal, president of said company, regarding its assets and the amount of its initial investment for the electric plant. In this connection it should be stated that on the basis of the evidence presented on the matter, the Commission has found the Morong Electric to be "financially qualified to install, maintain and operate the proposed electric light, heat and power service." This is essentially a factual determination which, in a number of cases, this Court has said it will not disturb unless patently unsupported by evidence. An examination of the record of this case readily shows that the testimony of Mr. Ingal and the documents he presented to establish the financial capability of Morong Electric provide reasonable grounds for the above finding of the Commission.

"It is now a very well-settled rule in this jurisdiction that the findings and conclusions of fact made by the Public Service Commission, after weighing the evidence adduced by the parties in a public service case, will not be disturbed by the Supreme Court unless those findings and conclusions appear not to be reasonably supported by evidence." (La Mallorca and Pampanga Bus Co. vs. Mercado, L-19120, November 29, 1965).

"For purposes of appeal, what is decisive is that said testimonial evidence provides reasonable support for the Public Service Commission's findings of financial capacity on the part of applicants, rendering such findings beyond our power to disturb." (Del Pilar Transit vs. Silva, L-21547, July 15, 1966).

It may be worthwhile to mention in this connection that per inspection report dated January 20, 1964[28] of Mr. Meliton Martinez of the Commission, who inspected the electric service of Morong Electric on January 15-16, 1964, Morong Electric "is serving electric service to the entire area covered by its approved plan and has constructed its line in accordance with the plans and specifications approved by the Commission." By reason thereof, it was recommended that the requests of Morong Electric (1) for the withdrawal of its deposit in the amount of P1,000.00 with the Treasurer of the Philippines, and (2) for the approval of Resolution No. 160 of the Municipal Council of Morong, Rizal, exempting the operator from making the additional P9,000.00 deposit mentioned in its petition, dated September 16, 1963, be granted. This report removes any doubt as to the financial capability of Morong Electric to operate and maintain an electric light, heat and power service.

- With the financial qualification of Morong Electric beyond doubt, the remaining question to be resolved is whether, or not, the findings of fact of the Commission regarding petitioner's service are supported by evidence. It is the contention of the petitioner that the Commission made some findings of fact prejudicial to its position but which do not find support from the evidence presented in this case. Specifically, petitioner refers to the statements or findings that its service had "turned from bad to worse", that it miserably failed to comply with the oft-repeated promises to bring about the needed improvement, that its equipment is unserviceable, and that it has no longer any plant site and, therefore, has discredited itself. Petitioner further states that such statements are not only devoid of evidentiary support but contrary to the testimony of its witness, Mr. Harry Bernardino, who testified that petitioner was rendering efficient and satisfactory service before its electric plant was burned on July 29, 1962.

On the face of the decision appealed from, it is obvious that the Commission in describing the kind of service petitioner was rendering before its certificate was ordered revoked and cancelled, took judicial notice of the

records of the previous case (PSC Case No. 39715) where the quality of petitioner's service had been squarely put in issue. It will be noted that the findings of the Commission were made notwithstanding the fact that the aforementioned testimony of Mr. Bernardino had been emphasized and pointed out in petitioner's Memorandum to the Commission.[29] The implication is simple: that as between the testimony of Mr. Bernardino and the inspection reports of the engineers of the Commission, which served as the basis of the revocation order, the Commission gave credence to the latter. Naturally, whatever conclusion or finding of fact that the Commission arrived at regarding the quality of petitioner's service are not borne out by the evidence presented in this case but by evidence in the previous case.[30] In this connection, we repeat, the conclusion, arrived at by the Commission after weighing the conflicting evidence in the two related cases, is a conclusion of fact which this Court will not disturb,

"And it has been held time and again that where the Commission has reached a conclusion of fact after weighing the conflicting evidence, that conclusion must be respected, and the Supreme Court will not interfere unless it clearly appears that there is no evidence to support the decision of the Commission." (La Mallorca and Pampanga Bus Co., vs. Mercado, L-19120, November 29, 1965 citing Pangasinan Trans. Co., Inc. vs. Dela Cruz, 95 Phil. 278)

For that matter, petitioner's pretension that it has a prior right to the operation of an electric service in Morong, Rizal, is not tenable; and its plea for protection of its investment, as in the previous case, cannot be entertained.

WHEREFORE, the two decisions of the Public Service Commission, appealed from, should be, as they are hereby affirmed, with costs in the two cases against petitioner Rizal Light & Ice Co., Inc.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

Judgments affirmed.

[1] Hereinafter referred to as "Commission".

[2] Hereinafter referred to as "Morong Electric".

[3] Not "Pedro G. Talavera" as appearing in petitioner's Brief. Mr. Pedro S. Talavera also conducted the hearings in the main case.

[4] Law List 1961, First Edition, does not contain the name "Pedro S. Talavera."

[5] As amended by R.A. No. 723 which took effect on June 6, 1962, it reads: "The Commission may also, by proper order, authorize any of the attorneys of the legal division or division chiefs of the Commission, if they be lawyers, to hear and investigate any case filed with the Commission and in connection therewith to receive such evidence as may be material thereto." (Italics supplied.)

[6] Sessions of September 23, 1960, December 15, 1960, February 24, 1961 and August 25, 1961.

[7] Everett Steamship Corp. vs. Chuahiong, L-2933, September 26, 1951; Raymundo Trans. vs. Cervo, L-3899, May 21, 1952; Enriquez & Co. vs. Ortega, L-865, December 22, 1952; and Luzon Stevedoring Co. vs. PSC, L-5458, September 16, 1953.

[8] In *Raymundo Trans, vs. Cervo*, supra, it was held: "As provided for in Rule 43, Section 2 of the Rules of Court an appellant can only raise in a petition for review questions that had been raised before the Public Service Commission."

[9] *A L. Ammen Transportation Co. vs. Froilan Japa*, L-19643, July 26, 1966; *Del Pilar Transit, Inc. vs. Jose M. Silva*, L-21547, July 15, 1966; *Pineda vs. Carandang*, L-13270-71, March 24, 1960; and *Ramos vs. Lat, et al.*, L-14476 & 15773, May 23 1960.

[10] Admitted by the petitioner in its Brief, pp. 3 & 11.

[11]"The Public Service Commission in the exercise of its quasi-judicial and administrative functions has the power to take into consideration the result of its own observation and investigation of the matter submitted to it for consideration and decision, in connection with other evidence presented at the hearing of a case." (*Cebu Transit Co. vs. PSC*, 19 Phil. 386; *Sambrano vs. Northern Luzon Trans. Co.*, 63 Phil. 554; *Manila Yellow Taxicab Co., Inc. vs. Araullo, et al.*, 60 Phil. 833; and *Manila Yellow Taxicab Co., Inc. vs. B. Stables Co.*, 60 Phil. 851.)

"The Commission can take cognizance of the facts disclosed by its own records." (*Dagupan Ice Plant Co., Inc. vs. Lucero, et al.*, 66 Phil. 120, 123.)

[12] "Matters of which the Court will take notice are necessarily uniform or fixed, and do not depend upon uncertain testimony, for as soon as a matter becomes disputable, it ceases to fall under the head of common knowledge and will not be judicially recognized." (29 Am Jur 2d 61-62)

[13] Petitioner's motion for reconsideration was heard on Jan. 11, 1963 and on that date said motion was considered submitted for decision, while the testimony of Bernardino was given on January 24, 1963.

[14] "Judicial notice is not judicial knowledge; and one having the burden of establishing a fact of which a court may take judicial notice is not in consequence relieved of the necessity of bringing the fact to the knowledge of the Court." (Francisco, Evidence, pp. 51-52 citing *Shapleigh, et al., v. Mier*, No. 125 (U.S.) Jan. 1937.)

[15] 52 Phil. 455, 472; see also *Javier v. Ortanes* 53 Phil. 468 and *Bohol Trans. Co. vs. Jureidini*, 53 Phil. 560.

[16] See *Teresa Electric & Power Co., Inc. vs. PSC*, L-21804, Sept. 25, 1967; *Manila Taxicab, et al., vs. PSC, et al.*, 90 Phil. 301.

[17] *Paredes vs. PSC, et al.*, L-7111, May 30, 1955.

[18] *Ishi v. PSC*, 63 Phil. 428.

[19] *Manila Yellow Taxicab v. Austin Taxicab Co.*, 59 Phil. 771.

[20] Sec. 15 Com. Act No. 146; *Batangas Trans, v. Orlanes*, 52 Phil. 455. See also *Martin*, Phil. Commercial Law, Vol. 3, pp. 1195-1196; *Almario*, Transportation and Public Service Law, pp. 300-301; *Agbayani*, Commercial Laws of the Phil Vol 4 (1964 Ed.), pp. 2363-2364.

[21] T.s.n., p. 89 (Session of January 11, 1963)

[22] *City of Manila vs. PSC*, 52 Phil. 515.

[23] *Hall vs. Judge Piccio*, 86 Phil. 603, 605; See also *Fisher*, The Phil. Law of Stock Corp., p. 36.

[24] *Tolentino*, Commercial Laws of the Philippines, Vol. II 8th Ed., p. 723; See also *Cmevara*, The Phil. Corp. Law, New Ed., p. 18.

[25] *McQuillin*, *Fletcher* and *Thompson* cite as authorities the cases of *Clarksburg Electric Light Co. vs.*

Clarksburg, 47 W. Va. 739, 35 S.E. 994, 50 L.R.A. 142 and Chicago Telephone Co. vs. Northwestern Tel. Co., 199 111. 324, 65 N.E. 329.

[26] 65 Phil. 223.

[27] Fletcher, Cyclopedia Corporation, Permanent Ed. Vol. I, Chap. 9, Sec. 207, p. 681.

[28] Marked Annex "A" of the memorandum of Morong Electric in lieu of oral arguments.

[29] p. 16, Memorandum of Oppositor (herein petitioner)

[30] The close connection of the matter in controversy in the two cases warranted the Commission to take judicial notice of the records of the previous case, the findings of fact therein and the ruling of the Commission (See also 5 Moran, 1963 Ed., p. 42.).

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