

ELPIDIO JAVELLANA, PETITIONER, VS. DOMINADOR BARILEA, RESPONDENT.

G.R. No. L-4347. January 31, 1953

Ponente: REYES, J.

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REYES, J.:

This is a petition to review a decision of the Public Service Commission granting respondent a certificate of public convenience to operate an iceplant.

It appears that petitioner was a pre-war iceplant operator with authority to operate an iceplant with a 10-ton daily capacity in Cadiz, Occidental Negros, and to sell the products of the plant not only in said municipality but also in those of Manapla, Fabrica, Sagay, and Escalante, of the same province. But petitioner's plant was destroyed during the last world war, and when peace came petitioner took time in rehabilitating the plant so that for some time after liberation Cadiz had no iceplant to serve the needs of its inhabitants. Stepping into the breach, respondent in 1947 put up his own iceplant with a set of army surplus ice-making equipment capable of producing one ton of ice daily, and with a temporary permit from the Public Service Commission has since then been manufacturing and selling ice in that town. As respondent's temporary certificate or permit, which was good only till December 31, 1948, was about to expire, respondent applied for extension "for another reasonable period." But petitioner herein, on January 30, 1950, opposed the application, alleging that with the rehabilitation of his own plant (which resumed operation in November of that year) there was no longer any need for another iceplant in Cadiz and that respondent's continued operation would only lead to ruinous and wasteful competition.

Deciding the case on the basis of the evidence submitted, the Public Service Commission found that public convenience required the continuance of respondent's one-ton iceplant and granted him a certificate of public convenience which was to be "valid only for a period of fifteen (15) years from December 6, 1948." It is this decision that is now before us for review. And while petitioner has assigned several errors, the real issue is whether or not there is still need for the continuance of respondent's iceplant now that petitioner has already resumed operation.

As petitioner himself states in his brief, this Court, under the provisions of Section 35 of Commonwealth Act 146, is not authorized to weigh the conflicting evidence and substitute its conclusion for that of the Commission. Only where it clearly appears that there was no proof before the Commission reasonably to support its conclusion would this Court be justified in interfering with the Commission's decision. After going over the evidence, we do not find that to be the case here.

Despite petitioner's effort to show that respondent could not have sold as much ice as that shown in his financial statement for the year 1949, Exhibit "E", there is the undeniable fact that even after the resumption of petitioner's operation respondent was able to sell his ice every day, due probably in great measure to the increase of the population of Cadiz from 41,000 in 1939 to 48,000 in 1948, which, as the Commission observes, "has necessarily brought about the corresponding increase in the demand for ice in Cadiz, this demand coming from the general

public and from the various business establishments such as refreshment parlors and bars and ice cream peddlers who need ice every day." In addition the Commission also took note of "the demand for ice by fishermen which is considerable." Not to be overlooked is also the fact that petitioner has increased the capacity of his own plant and is serving not only Cadiz but four other municipalities and that what respondent really seeks is merely the conversion of his certificate from a temporary to a semi-permanent one.

In line with the policy heretofore followed of stabilizing the operation of those who risked their capital in order to fill a public need at a time when the old operators were unable or unwilling to do so, we think that, everything considered, the decision of the Commission should not be disturbed.

The decision below is therefore affirmed, with costs against the petitioner.

Paras, C.J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Jugo, Bautista Angelo and Labrador, JJ., concur.

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