

ELISEO SILVA, PETITIONER, VS. BELEN CABRERA, RESPONDENT.*G.R. No. L-12446. May 20, 1960*

Ponente: CONCEPCION, J.

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Petitioner Eliseo Silva seeks the review of a decision of the Public Service Commission, dated September 20, 1956, as amended on June 5, 1957, granting respondent Belen Cabrera a certificate of public convenience to install and operate a 5-ton ice plant in the City of Lipa, and to sell her ice in said City, and in the municipalities of Cuenca, Alitagtag and Ibaan, province of Batangas, for a period of fifteen (15) years from January 7, 1950.

Cabrera's application, filed on June 1, 1949, was for a 15-ton ice plant and covered the municipalities of Sto. Tomas, Tanauan, Cuenca, Rosario, Alitagtag, San Juan de Bolbok and Ibaan, province of Batangas. Oppositions were filed by: (1) Eliseo Silva, who operates a 5-ton ice plant in the City of Lipa, with authority to sell his ice therein and in the municipalities of Malvar, Tanauan, Talisay and Sto. Tomas, Batangas; (2) Antonio Zaragosa, who operates a 10-ton ice plant in San Juan de Bolbok, Batangas, with authority to sell his ice therein and in the municipalities of Rosario, province of Batangas, and Candelaria, province of Quezon; and (3) Leoncio S. Oplencia and Leonor Lat, who are, likewise, authorized to operate a 5-ton ice plant in Tanauan, Batangas.

On July 14, 1949, Cabrera excluded the municipalities of San Juan de Bolbok and Rosario from her application, whereupon Antonio Zaragosa withdrew his aforementioned opposition. Subsequently, Cabrera and the remaining oppositors presented their evidence before the Chief, Legal Division, Public Service Commission, Atty. Antonio Aspillera, who had been delegated therefor by Public Service Commissioner Feliciano Ocampo, and thereafter, or on January 7, 1950, a decision was rendered authorizing Cabrera to operate a 10-ton ice plant in Lipa City. On appeal taken by Silva, this decision was, on March 19, 1951, annulled by the Supreme court (in G. R. No. L-3629),[1] which ordered a rehearing before either the Commission en banc or one of the Public Service Commissioners delegated therefor by the Commission, upon the ground that, under the Public Service Act then in force, such function could not be otherwise delegated.

Meanwhile, or during the pendency of the appeal, Cabrera had installed her 10-ton ice plant and started operation on March 15, 1950. After the rendition of said decision of the Supreme Court, or on April 11, 1951, Cabrera applied for a provisional permit to continue operating her ice plant, to which Silva objected. On May 31, 1951, at the hearing of this incident and rehearing of the case, Commissioner Ocampo allowed Cabrera, over the objection of Silva, to re-submit the evidence formerly introduced before Atty. Aspillera. On July 26, 1951, Commissioner Ocampo granted Cabrera's petition for a provisional permit, subject to cancellation or revocation at any time and without prejudice to such decision as may eventually be rendered on the merits of the case. A reconsideration of this order having been denied, on October 17, 1951, Silva applied from the Supreme Court (G.R. No. L-5162)[2] for a writ of certiorari for the purpose of having another rehearing and of annulling said order of July 26, 1951, as well as of securing a writ of preliminary injunction to restrain Cabrera from operating her ice plant, upon the ground that the admission of the evidence already introduced before Atty. Aspillera violated the decision of said Court in case G. R. No. L-3629, and was, therefore, null and void. By a decision, dated January 81, 1952, we

denied said petition for certiorari and ordered a trial de novo, in line with our decision in case G. R. No. L-3629, for the reason that the Commission had not adhered thereto in admitting said evidence for the determination on the merits of the case, but had not infringed any law in considering said evidence for the resolution of the petition for a provisional permit. Thus, the order of July 26, 1951 granting the same was, in effect, affirmed.

Subsequently a trial de novo, at which both parties introduced their respective evidence, was held. In the meantime, Cabrera had further excluded from her application the municipalities of Tanauan and Sto. Tomas, Batangas, to which the opposition of Leoncio S. Oplencia and Leonor Lat referred. On September 20, 1956, the Commission rendered a decision granting Cabrera a certificate of public convenience to install and operate a 10-ton ice plant in the City of Lipa and to sell her ice in that city and in the municipalities of Cuenca, Alitagtag and Ibaan, province of Batangas, for a period of fifteen (15) years from January 7, 1950. On motion for reconsideration and new trial filed by Silva on or about October 26, 1956, the Commission, by an order of June 5, 1957, denied the new trial prayed for, but modified its decision of September 20, 1956 "in the sense that applicant Belen Cabrera shall produce in her ice plant in Lipa City not more than 5 tons of ice daily instead of the 10 tons there authorized". The case is now before us for the third time on appeal taken by Silva, who maintains that:

"The Public Service Commission erred in granting the certificate of public convenience to the respondent since there is no evidence to reasonably support the decision and the order of June 5, 1957. In fact, the meager evidence adduced by the respondent as against the overwhelming evidence of the petitioner showing the lack of necessity for the installation of an additional plant of any capacity in Lipa City in addition to the newly discovered evidence of the petitioner which the Public Service Commission ignored, when construed by the Public Service Commission as justifying the grant of a certificate of Public Convenience to the respondent, constitutes an abuse of discretion to the prejudice and detriment of petitioner's business, which is entitled to reasonable protection against ruinous competition." (Petitioner's brief, pp. 5-6.)

The issue thus raised by Silva is one of fact, which hinges on the credibility and weight of the evidence introduced at the trial de novo. In this connection, the decision appealed from says:

"Applicant's evidence is to the effect that Lipa is a growing and well populated city with new commercial establishments which every day a considerable supply of ice have to be consumed; that the ice plant of the oppositor which has produced only five tons since it was installed is inadequate for the requirements of the public; that the people of Lipa have to get their ice from ice dealers and the latter have to go to other towns to buy their ice and this results not only in a higher price paid by Lipa people for the ice which they need but also in an irregular and undependable service; that not only the people of Lipa but also those of the towns which are proposed to be served have a great demand for ice because these towns are close to Lipa and ice service from Lipa is easy if there were enough supply of ice in the City of Lipa; that daily but more particularly on special occasions when there is an extraordinary demand for ice, there is no way of obtaining this very necessary commodity; that many people likewise go to Lipa every day for business, or personal reasons and they too add to the number of people who must be provided with ice; that there is no ice plant either in Sto. Tomas, Cuenca or Alitagtag notwithstanding the big demand for ice in these towns; that applicant has operated her plant continuously and the production of her plant has been availed of totally except on occasions when the plant due to breakdown was not able to operate; that the demand for ice in Lipa and the other towns can easily reach up to 20 or 25 tons so that the present production of 5 tons is grossly inadequate; that applicant has continued to invest large amounts in the repair and improvement of her ice plant in order to be able to operate the same to provide the public with the ice that it needs and that her actual investment on the plant is over P100,000, and that public interests and convenience will be promoted by the grant of a regular certificate to her to operate the ice plant in Lipa.

"The evidence of the oppositor, on the other hand, is to the effect that there is no such demand for ice in Lipa and the other towns as testified to by applicant's witnesses but even before the war and up to the present time

oppositor has never been able to sell the total output of his 5-ton plant; that there are really no businesses in Lipa which require the use of ice; that applicant's plant itself frequently stops operation due to the fact that there is no demand for the production; that as to the other towns, the demand for ice is so little that there is no need for authorizing a new plant in Lipa to supply the requirements of these other towns; that in Tanauan now there is a 10-ton plant operated by Ofulencia and Lat and this plant together with that of the oppositor provides all the ice that the public of Lipa and the other towns need so that there is no necessity for the operation of applicant's plant.

"It appears from the evidence that Lipa City and the towns of Tanauan, Cuenca, Alitagtag and Ibaan have a total population of over 125,000 people. Lipa alone has a population of over 50,000. Oppositor Silva has a 5-ton plant and is authorized to sell in Lipa, Malvar, Tanauan, Sto. Tomas and Talisay. Oppositor's authorized territory would concur with that proposed by the applicant in the towns of Lipa, Sto. Tomas and Tanauan. Our records show that there is now a 10-ton plant in Tanauan operated by Ofulencia and Lat and this operator is authorized, among other towns, to sell in Tanauan, Sto. Tomas and Lipa. We have gone over the evidence presented by both parties at the rehearing very carefully and are of the opinion that the preponderance thereof establishes the need for permitting the applicant to operate a 10-ton plant in Lipa. We are convinced that a 5-ton production in Lipa can not be sufficient for the ice needs of the public considering the population of over 50,000 people of the City. There is also the population of over 60,000 people in the other towns of Alitagtag, Ibaan and Cuenca, without counting the population of Tanauan which is now served by an ice plant in that town. We are convinced that the operation of applicant's 10-ton plant in Lipa will undoubtedly result in promoting public interests and convenience because thereby the ice requirements of the public which can not be met by the present plant will be adequately served. While it is true that ice is brought to Lipa by ice dealers, we are inclined to believe the evidence of the applicant that the service of ice dealers results in higher price paid by the consumers and at the same time is not reliable and regular because these dealers do not have the obligation of bringing ice regularly. Undoubtedly an additional plant in Lipa to serve the proven needs of the public will be more beneficial and convenient to the people of Lipa than to make them rely on service of ice dealers. We believe, however, that applicant should only be authorized a 10-ton plant and that the town of Tanauan should not be included in her territory inasmuch as there is already in Tanauan a 10-ton ice plant, and we do not believe that with a 10-ton ice plant, in Tanauan, it would be necessary for the applicant to send her ice to that town."

Without denying the existence of evidence on the facts thus found by the Commission, it is urged that the proof to the contrary introduced by appellant Silva is more weighty than that of appellee Cabrera. It is well settled, however, that the findings of fact made by the Commission are conclusive upon this Court, as long as there is evidence reasonably supporting such findings (*Javellana vs. La Paz Ice Plant & Cold Storage Co.*, 37 Off. Gaz. 3110; *Phil. Ship-owners' Association vs. Public Utility Commissioner*, 43 Phil., 328; *Ynchausti Steamship Co. vs. Public Utility Commissioner*, 44 Phil., 362; *San Miguel Brewery vs. Lapi*, 53 Phil. 539; *Ice and Cold Storage Industries of the Phil. vs. Valero, et al.*, 85 Phil., 7; *Halili et al. vs. Isip*, L-2458 and L-2476, January 28, 1950; *Lopez vs. Batangas Trans. Co., et al.*, 105 Phil., 649; 56 Off. Gaz. [20] 3646) *A. L. Ammen Trans. Co. vs. Soriano*, L-12350, May 26, 1959; *Bachrach Motor Co. vs. Guico*, 106 Phil., 118; 57 Off. Gaz. [24] 4433; and the evidence on record, to our mind, are sufficient to bear out the conclusions of fact made in the decision appealed from.

Indeed, the issue in this appeal boils down to whether the needs of the public in the area covered by the decision appealed from are sufficiently met by the ice plant operators therein. Apart from the facts adverted in the appealed decision, it appears that in April, 1947, Silva had applied for authority to increase the capacity of his ice plant, from five (5) tons to ten (10) tons daily, upon the allegation that an increased production was demanded by the "rapid rehabilitation and advancement of the fishing industry in and around Taal Lake; plus the increased volume of agricultural products harvested in the province of Batangas and * * * brought to Lipa City" as the "province's

commercial center", as well as by "the big increase of population in said municipality and in the municipalities of Malvar, Tanauan, Sto. Tomas and Talisay". This application (Case No. 24971) was dismissed on October 24, 1947, on account of Silva's failure to appear on the date set for the hearing thereof. However, soon after Cabrera had docketed her application, which is the subject matter of his appeal, or on June 13, 1949, Silva filed another application (Case No. 50513) for authority to increase the capacity of his ice plant from five (5) to fifteen (15) tons, on grounds substantially identical to those set forth in his application in Case No. 24971. In short, therefore, the very appellant had urged the Public Service Commission to believe that the ice plant operators in the City of Lipa and in the municipalities mentioned in the decision appealed from can not sufficiently supply the needs of the public therein.

It may not be amiss to note, also, that, in view of the number of years this case had been pending and of the incidents decided in relation thereto, the Commission had had more than the average opportunity and time to ascertain and elucidate the facts pertinent thereto. That it actually gave due consideration to the opposition filed by appellant Silva and the evidence introduced by him is attested by the circumstance that in the light of the new evidence he discovered, after the rendition of the decision of September 20, 1956, and disclosed in his motion for reconsideration and new trial, the Commission modified said decision by reducing to one-half ($\frac{1}{2}$) the amount of ice therein authorized to be produced by appellee Belen Cabrera.

Wherefore, the decision appealed from is hereby affirmed, with costs against petitioner, Eliseo Silva. It so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Barrera, and Gutierrez David, JJ., concur. Reyes, J.B.L., J., took no part.

[1] 88 Phil., 381.

[2] 90 Phil., 777.

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