

CIPRIANO LANUZA, PETITIONER, VS. LAT & BELTRAN, OPPOSITORS.*G. R. No. L-9555. July 31, 1957*

Ponente: REYES, A., J.

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Gipriano Laniiza, owner of an ice cream business in the city of Davao with an ice-making machine of his own, has applied for a certificate of public convenience to operate a one-ton ice plant in said city. The application was opposed by Lat & Beltran, operator of an ice plant service in the same city, on the grounds that the oppositor's service was adequate and sufficient to fill the public need and that to allow another plant to operate would only result in ruinous and wasteful competition. And the Commission having, after hearing, denied the application on the grounds that public convenience did not require the operation of another ice plant because the one operated by oppositor was already rendering an adequate and sufficient service, the case was brought here for review.

The question for determination is whether, on the evidence presented, the Commission was sufficiently justified in concluding that public convenience did not require the operation of another ice plant in the city of Davao.

The decision below gives the following analysis of the evidence.

"Applicant's evidence consists of his testimony and that of three other witnesses named Dominador Dima-ano, Vicente Yngayo and Avelina Garm and their testimony is to the effect that the ice service in Davao City is inadequate due to the failure of the authorized operator to properly distribute its ice and the fact that ice is not available either at the plant or from delivery trucks on many occasions. These witnesses while admitting that the oppositor has trucks used for delivering ice, frequently these trucks do not go by the streets where witnesses reside so that they are not able to buy ice when they need it. Applicant testified that he bought ice-making machine for the purposes of his ice cream business and that he can produce one ton of ice daily which he desires to sell to the public. Evidence of the oppositor purports to establish the authorized capacity and production of its ice plant in Davao City; the actual demand for ice in Davao City, and the fact that its present production is much more than what the public needs.

"We have gone over the evidence carefully and we can not say that the applicant has established that there is a public need for the proposed service. Applicant admitted that he made no observations of the actual demands for ice in Davao and that his principal complaint is that it is not possible to buy ice worth five or ten centavos from the oppositor's plant and even this complaint, according to him, was voiced to him by other persons. He said that he produces his own ice for his ice cream business and that he has excess ice to sell to the public. Witness Dima-ano also testified that he has ice-making machine also for his ice cream business but that when he runs out of ice, he goes to the plant of the oppositor and while at times he can buy ice at this plant, on other occasions ice can not be delivered to him. He also admitted that delivery trucks of the oppositor go around Davao City but at times these trucks do not pass by the street where he lives. We doubt the testimony of this witness that he has tried to buy ice from the oppositor's plant and could not get it, first because he has his own ice-making machine, and secondly there are contradictions in his testimony particularly as the number of times which he claims he went to the plant of the oppositor. In direct he said that he has gone to the plant about

ten times and on cross lie stated that it must have been about fifty times that he was able to get ice from the plant. Witness Yngayo admitted that when he needs ice for his soft-drinks store, he can buy it either from the delivery truck of the opposito or from, the tatter's plant. As to witness Carin, her complaint is also that the truck of the oppositor does not pass by her street and that the plant of the oppositor is too distant for those who want to buy ice in small quantities. On the other hand, the evidence of the oppositor is that it has two ice plants in Davao City, one in Sta. Ana of 12 tons and another in Bolton Street of 10 tons. It also has a 2% ton plant in Digos and a 2-ton plant in Magupo; that these plants are operated continuously except on days When the brine tanks are full of ice and the entire authorized production is available; that it also has ice storage rooms where it keeps ice that is not sold; that aside from its delivery trucks it also sells ice from its Bolton plant and has a place for dispensing ice at Sta. Ana where a man is always on duty to sell ice to customers, and that there has been no occasion where the production of its plants was exhausted m one day so that there was no ice available for distribution. The evidence also shows that oppositor was the original ice plant operator in Davao and has on two occasions been authorized to increase the capacity of its plants so as to meet the demands of the public".

The decision then concludes:

"We are convinced from the evidence that public convenience does not require the operation of the plant proposed by the applicant; that the 22 tons of ioe which oppositor produces daily in Davao and more than adequate for the needs of the public; that oppositor rendors a sufficient and adequate ice distribution service in Davao, and that the authorization of another plant "would only result in wasteful competition, for which reason the opposition to the application is sustained and it is ordered that the application filed therein be, as it is hereby denied."

The petitioner for review has submitted no brief. But it is argued in the petition for review that on the basis of one kilo of ice a day for each inhabitant of Davao City the 22 tons of ice produced daily by oppositor's plant can only serve 22,000 of the 120,000 people living in Davao City. But the argument is based on the gratuitous assumption that every man, woman and child in that city would be buying one kilo of ice a day. On the other hand, it appears from the deposition of Pedro M. Lat that even during the dry" season hardly one-half of the ice manufactured by the oppositor can be sold, so that a good portion thereof is lost through melting. There is conflict of proff as to the availability of oppositor's ice to people living in remote places or on streets where, so it is alleged, the oppositr's delivery trucks do not go. But there is evidence reasonably to support the finding of the Commission that the oppositor has four ice plants located in different places and that, aside from delivery trucks, it also has a place for selling its ice. We find no justification for going against this finding. As repeatedly held by this Court; the findings of fact of the Commission, when reasonably supported by the evidence, are conclusive upon this Court (Raymundo Transportation Co. vs. Cervo,[1] G. R. L-3899, May 21, 1952; Angat-Manila Trans. Co., Inc. vs. Tengco,[2] G. E. L-5906, May 26, X954; Estate of Florondo Buan vs. Pampanga Bus Co. & La Mallorca,[3] G. R. L-7996, May 31, 1956), and that this Court "cannot weigh the conflicting evidence and substitute its own conclusion in lieu of those made by the Commission and cannot modify or set aside the latter except when it clearly appears that there was no competent evidence before it to support reasonably its decision. * * *." (Ice and Cold Storage of the Phil. Inc. vs. Valero, 85 Phil., 7).

The claim that the oppositor is charging discriminatory rates and is not selling 5 or 10 centavos worth of ice may be a proper subject for complaint with a view to the imposition of corrective measures, but it is hardly a ground for authorizing a new service where the evidence is clear that the ice produced by the present operator is more than enough to take care of the public need.

Lastly, our attention is called to the fact that the operation already authorized by the Commission is in the name of Pedro M. Lat and Luciano Beltran and not in that of Lat & Beltran, which is alleged to be a partnership. But the Commission which is supposed to know its own records and may take judicial cognizance thereof, appears to

have recognized the operation of the authorized service by Lat & Beltran, and the objection is really of no moment for, regardless of whether the operator authorized is the partnership itself or its members as individuals, the fact remains that there is already an existing service which the Commission has found to be amply sufficient, so that it can not be said that public convenience still requires the establishment of another ice plant.

In view of the foregoing, the decision of the Commission is affirmed, with costs against the petitioner.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia and Felix, JJ., concur.

[1] 91 Phil., 313.

[2] 95 Phil., 58.

[3] 99 Phil., 873.

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