

MARIA CONCEPCION PAEZ VDA. DE CRUZ, IN HER CAPACITY AS ADMINISTRATRIX OF THE INTESTATE ESTATE OF DON PEDRO B. CRUZ, PETITIONER, VS. TOBIAS P. MARCELO, RESPONDENT.

G.R. Nos. L-15301-2. March 30, 1962

Ponente: PADILLA, J.

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PADILLA, J.:

The decision sought to be jointly reviewed under Rule 43 of the Rules of Court is the following:

(1)

The grant to Tobias P. Marcelo of a certificate of public convenience to install, maintain and operate a 15 Ton Ice Plant in the City of Manila, under Public Service Commission Case No. 117717; and

(2)

The denial of the application of Maria Concepci6n Paez Vda. de Cruz (in her capacity as 4fce Administratrix of the Intestate Estate of Don Pedro B. Cruz), for authority to install, maintain and operate a 15 Ton Ice Plant in the City of Manila, docketed as Public Service Commission Case No. 113477.

These two cases are now before the Court and docketed G. R. Nos. L-15301 and L-15302.

On 4 January 1951 in case No. 40233 the Public Service Commission granted to Pedro B. Cruz a certificate of public convenience to install, maintain and operate a 15ton ice plant in Tondo, Manila, for a period of fifteen years from 5 December 1945.

Sometime later, Pedro B. Cruz, the grantee, died and on 26 January 1956 his widow, Maria Concepcion Vda. de Cruz, was appointed administratrix of his intestate estate (Exhibit D-Cruz; case No. 118477).

On 5 December 1957 Maria Concepcion Paez Vda. de Cruz in her capacity as Administratrix of the intestate estate. of Pedro B. Cruz filed an application for authority to substitute worn out equipment of the above-mentioned 15-Ton Ice Plant and to transfer its site from Tondo, Manila, to Del Pan Street, San Nicolas, Manila. This application was docketed as Case No. 111380 in the Public Service Commission (Exhibit S-Cruz; case No. 118477).

On 21 January 1958 an inspection was made by the engineer of the Public Service Commission on the site of the ice plant at Nepomuceno Street, Tondo, Manila, and he found that the site where the ice plant was formerly installed was being used as a pig pen and that there was no more ice plant machinery and equipment at the place.

On 29 January 1958 and 10 February 1958 the Ice and Cold Storage Industries of the Philippines and Tobias P. Marcelo, respectively, each filed, before the Public Service Commission, a petition asking for the cancellation of the certificate of public convenience of the late Pedro B. Cruz, on the ground of abandonment on the part of the grantee, the deceased Pedro B. Cruz, while he was still living, and by his administratrix, Maria Concepcion Paez

Vda. de Cruz, after his (the grantee's) death. (See Exhibit I-Marcelo, p. 44, Record of case No. 117717.)

On 18 March 1958, at the hearing of the application for substitution of equipment and transfer of site filed by the administratrix of Pedro B. Cruz, docketed as Case No. 111380, counsel for the Ice and Cold Storage Industries of the Philippines and Tobias P. Marcelo moved that the hearing of the case be suspended until after their petition for cancellation of the certificate in question shall have been resolved, claiming that if their petition for cancellation were granted there would be no basis for applicant's petition for substitution of equipment and change of site. Applicant claimed at the hearing that his plant is installed at Nepomuceno Street and to settle the matter the Commission suspended the hearing advising the parties that an engineer would be sent to inspect the plant to find out whether it is installed and in operation.

The very same afternoon of 18 March 1958, the plant was inspected again by the engineer of the Public Service Commission, who, in a memorandum submitted to the Commission on 19 March 1958, reported that the building wherein the ice plant used to be was used as a pig pen as found by him in his previous inspection of 21 January 1958 although the principal ice making equipment and machinery were being delivered to the plant while he was doing his inspection on the afternoon of 18 March 1958.

On 31 March 1958, by a decision rendered in Case No. 40233, the Public Service Commission, finding Pedro B. Cruz to have failed to install the Ice Plant in accordance with the certificate of public convenience issued to him on 4 January 1951, canceled and revoked the said certificate and in the same decision, the application for substitution and transfer of site filed by the administratrix of the deceased Pedro B. Cruz, was dismissed (Exhibit 1-1 Marcelo, Case No. 117717, p. 47).

Sometime thereafter, the Ice and Cold Storage Industries of the Philippines and Tobias P. Marcelo, in separate cases filed as Cases Nos. 111580 and 115586, respectively, applied for authority to increase their respective ice plant production capacities with an additional amount of 55 tons in lieu of the 15-ton ice plant of Pedro B. Cruz, which had been canceled and revoked, and of the 40-ton ice plant of a certain Vicente San Pedro. These petitions were dismissed by the Commission on the ground that the order for the cancellation of the certificates of both Pedro B. Cruz and Vicente San Pedro were not yet final as motions for reconsideration had been filed in both cases.

On 1 July 1958 the motion for reconsideration of the order entered by the Public Service Commission on 31 March 1958 in case No. 40233, filed by Maria Concepcion Paez Vda. de Cruz as administratrix of the late Pedro B. Cruz, canceling and revoking the certificate of Pedro B. Cruz, was denied.

Subsequently, after the order for the cancellation and revocation of the certificate of public convenience of the deceased Pedro B. Cruz became final, four applications were filed before the Public Service Commission by different applicants, all of whom were authorized ice plant operators of Manila and suburbs, praying for authority to install, maintain and operate and/or increase their daily production capacities with an additional amount of 15 tons in the City of Manila, in lieu of the 15 Ton Ice Plant formerly granted to the late Pedro B. Cruz, whose certificate of public convenience had been canceled and revoked.

The applicants in the chronological order of their filing were—

Tobias P. Marcelo Case No. 117717

Date of filing: 25 July 1958

Ice and Cold Storage

Industries of the Philippines, Inc Case No. 118300

Date of filing: 22 August 1958

Nemesio Buenaventura Case No. 118421

Date of filing: 26 August 1958

Maria Concepcion Paez Vda. de Cruz Case No. 118477

Date of filing: 27 August 1958

On 27 February 1959, in the four cases mentioned, the Public Service Commission finding all the applicants to be equally financially capable of putting up the 15 ton ice plant but considering not advisable nor practical to split the 15 tons among the applicants, decided to grant the certificate on the basis of priority of the date of filing of the applications and granted it to Tobias P. Marcelo who was the first of the applicants.

Of the three other applicants whose applications were denied, only Maria Concepcion Paez Vda. de Cruz, the herein petitioner, appealed.

The main issue involved in these cases is—

Whether an operator whose certificate of public convenience was canceled and revoked because of his abandonment of the operation of the public service right formerly granted to him, can avail himself of the preferential rights of an old operator in the subsequent grant or re-issuance of the same particular line of public service (ice-plant); and/or

Whether the Public Service Commission, in the discharge of its discretion, was right, under the law, to apply the rule of priority of date of filing an application, in a case where all the applicants were financially capable of putting up the required public service after considering that it was not advisable and practical to split the said public service among the applicants.

There is indeed a sound rule that old operators must be protected in their investments as long as they are willing and able to serve the public need in the proper and adequate manner. But this rule is not absolute, for this Court has time and again held that the grant of a certificate or preference to a new operator is in order where the old operators were given a chance to improve or complete their service but have failed to do so (Jose de la Rosa vs. Pedro V. Corpuz, 66 Phil., 8 and Interprovincial Autobus Company, inc. vs. Lubanton, 26 July 1951)

In the instant case, the petitioner has not only failed to improve nor complete the service, but has abandoned it. It is very clear that the herein petitioner, while acting as the administratrix of the late Pedro B. Cruz, and the latter while still living, had abandoned the operation of their 15-ton ice plant in such a manner that the ice plant was converted into a pig pen. Such abandonment is sufficient cause for the cancellation of a certificate of public convenience, for public necessity cannot be made to wait nor sacrifice for private convenience, as the Public Service Commission said, and it was fully quoted, in the case of G. R. No. L-7111, Paredes vs. Public Service Commission, 30 May 1955, which is again quoted:

x x x an operator who unjustifiably abandons his service for two or three years by not registering the necessary

equipment forfeits his right to x x x the service authorized to him. x x x

Furthermore, an abandonment is a violation of the law, as public service may not be abandoned to the prejudice of the interest of the public. In the present case, it is not only the herein petitioner who, acting in her capacity as the administratrix of the late Pedro B. Cruz, abandoned the service, but also her predecessor. For that reason she should not be allowed to avail of any right of preference under the old operator rule. And a certificate of public convenience is denied to a successor, where the predecessor has violated the law (*Buenaflor vs. Camarines Sur Industry Corp.*, 30 May 1960).

On the second issue, there is no valid reason for the Court to disturb the discretion of the Public Service Commission in applying the rule on priority of application.

In the case of *De los Santos vs. Pasay Transportation Co.*, 54 Phil., 357, this Court held that—

x x x Priority of application, while an element to be considered, is not ordinarily of sufficient importance to control the granting of a certificate of public convenience. x x x

The question to be determined under such circumstances is one calling for the sound judgment and discretion of the commission, and where at the time of the hearing it has before it the applications of various transportation companies covering the same routes, or routes traversing and serving the same territory, it is authorized to determine which of the applicants can best meet the requirements of the public convenience and necessity x x x

But all other conditions being equal—as in these cases— priority in the filing of application for a certificate of public convenience becomes an important factor in the granting thereof (*Batangas Transportation Co., et al. vs. Orlanes, et al.* 55 Phil., 745; *Benitez vs. Santos* and *Lopez vs. Santos*, 107 Phil., 167; and *Pineda vs. Carandang*, 24 March 1960).

The issuance of certificate of public convenience and necessity as between two applicants who are both qualified rests on the sound discretion of the Public Service Commission, *Papa vs. Santiago*, 28 February 1959.

The decision under review in cases Nos. 117717 and 118477 (G. R. Nos. 15301 and L-15302) is affirmed, with costs against the petitioner.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, and De Leon, JJ., concur
Reyes, J.B.L., J., took no part.

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