

ERNESTO A. PAPA, AND CONRADO V. ATANACIO, PETITIONERS, VS. SEVERO J. SANTIAGO, RESPONDENT. RESOLUTION ON THE MOTION FOR RECONSIDERATION

G.R. Nos. L-16204 & L-16256. April 24, 1967

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Respondent Severo J. Santiago has petitioned for a reconsideration of our main decision of August 31, 1962, reversing that of the Public Service Commission which denied the application of Ernesto A. Papa and Conrado Atanacio in PSC Case No. 94119 for a certificate of public convenience and necessity to install and operate a telephone system in Pasig, Rizal, and simultaneously granted the application for the same purpose filed by Severo J. Santiago in PSC Case No. 101261.

It will be recalled that this Court in a preceding appeal (G.R. No. L-12433) remanded the case back to the Public Service Commission for further proceedings to determine which of the "two applicants is entitled to a certificate of public convenience and necessity, assuming that they are both qualified," since the matter "rests in the sound discretion of the Commission."

Pursuant to the directive from this Court, the Commission of Public Services held hearings, and after receiving the evidence of the parties, decided in favor of Severo J. Santiago, as above noted, on the following basis:

"The Commission finds that whereas the applicant Severo J. Santiago, has already in his possession a complete set of equipment and material for his proposed telephone system in Pasig, the other applicants, Ernesto A. Papa and Conrado V. Atanacio, have not yet completed their equipment; that whereas applicant Santiago has already installed not only his central office equipment but also his outside plant equipment and facilities and that he has even connected telephone lines to a number of residential houses and commercial offices, including some offices of the Government, and this system has actually been tested by engineers of the Commission, and found to be satisfactory producing clear and distinct sound, the equipment of the applicants, Papa and Atanacio, are scattered in at least four different places in Manila, Quezon City, and Meycauayan (Bulacan) and are not yet installed; that whereas the equipment already installed by the applicant Santiago is ready for the immediate use of the public of Pasig, those of the applicants Papa and Atanacio, being incomplete and un-installed, are not yet ready for use; that whereas the equipment already installed by the applicant, Severo J. Santiago, has been designed and installed to meet, by way of initial service, the requirements of Pasig for a period of five (5) years, that proposed by the other applicants is designed to serve less; that whereas the applicant Santiago is already possessed with the necessary tests and repair tools, equipment and material to insure a continuous service, the other applicants Papa and Atanacio are not so equipped; that whereas applicant Santiago having already designed his telephone system to meet the requirements of Pasig for a period of five (5) years, will not need any major financing to expand his service, the other applicants Papa and Atanacio having designed their proposed telephone system for a less initial service, have yet to acquire additional equipment for any expansion of their proposed service and according to their own evidence, the applicant, Ernesto A. Papa, will rely on a loan from the RFC for this purpose; that whereas the telephone system of

applicant, Se-vero J. Santiago, as proposed by him can easily meet the requirements of the new manufacturing, industrial and commercial houses in Pasig, thru the establishment and use of private exchange switchboards, the other applicants do not propose the use of private exchange switchboards; and whereas we find the applicant Santiago far more responsible financially speaking and better qualified on a technical basis than the other applicants this Commission should grant the certificate of public convenience and necessity to the said ap-plicant, Severo J. Santiago. Moreover, to grant the certificate of public convenience and necessity to the applicant, Severo J. Santiago, will result in the immediate operation of a telephone system in Pasig. On the other hand, to grant it to the other applicants, Papa and Atanacio, will only result in further delay in the establishment of the telephone system, aside from the fact that in this event, Santiago will have to remove all the equipment which he has already installed at such great expense."

Upon appeal, this Court reversed the verdict of the Public Service Commission on the following grounds:

(1) That to offset the prior application and operative municipal franchise granted to Papa and Atanacio, it is not only necessary for the other applicant to prove superior equipment and preparation, but also to show that the prior applicants are not themselves qualified.

(2) That the following circumstances operated against the position of Severo J. Santiago:

(a) That in the public bidding conducted by the Municipal Council of Pasig, Papa and Atanacio won against the Republic Telephone Co., Inc., of which Santiago was President and principal stockholder;

(b) That Santiago operated a telephone system without license or permit, leading to a cease and desist order from the Commission, upon complaint of Papa and Atanacio;

(c) That even before finality of the Com-mission's decision in his favor, Santiago operat-ed his telephone system, albeit with the apparent acquiescence of the Public Service Commission, when the Presidential approval of his municipal franchise, required by Act 667, was conditioned upon the Commission's decision becoming final; and

(d) That Severo J. Santiago being already the operator of telephone systems in other municipal-ities, the appealed award would likely create a monopoly prejudicial to public interest.

Severo J. Santiago in due time filed a motion praying that this Court's decision be reconsidered and reversed, on the ground that the rival applicant was not properly qual-ified, and that the violations charged against him (Santiago) were untrue and not supported by facts, since the "cease and desist" order of the Commission itself showed that it had been issued ex parte and was contingent in operation, and in fact the charges of illegal operation had been subsequent-ly dismissed. Santiago further submitted affidavits purporting to show that Conrado Atanacio, co-applicant of Papa, had withdrawn as early as 1957, from their joint enterprise, for which a certificate of public convenience had been applied for; and further challenging Papa's financial resources to estab-lish the service applied for, since at the time of the trial of the case before the Commission, Papa's equipment was not really complete, as the telephone cables he had shown for inspection by the technicians of the Public Service Commission were not his, but belonged to one Ocampo, who had merely granted Papa an option to purchase the cables, and that Papa had subsequently failed to take up the option, with the result that Ocampo had sold the same cables to the Republic Telephone Company.

Applicant Papa having opposed the motion for reconsidera-tion, the Court resolved to remand the case for reception of evidence of Papa's financial ability to maintain the service applied for. The Commission, having done so, it remitted the new evidence to this Court in December, 1966.

The evidence submitted at the rehearing confirms the al-legations made by movant Santiago, and shows that as early as May 1957, Papa's co-petitioner, Conrado Atanacio, had advised his associate that he was no longer

interested in PSC Case No. 94119, due to his belief that Papa and he were not in a position to finance and establish the telephone system in Pasig which requires considerable initial and year to year investment. Ricardo Ocampo, for his part, testified that the telephone cable of 51 pairs that the applicant Papa had listed as part of his equipment, actually were his (Ocampo's) and that Papa only had an option to buy said cables for P10,000.00 which he promised to pay if he won the case then pending before the Public Service Commission; that Papa never was in possession of the cable, and in fact the same was examined by the PSC inspectors in Ocampo's house; that later, Ocampo sold the cable to Santiago's Republic Telephone Company with Papa's knowledge and without objections from him.

It is markworthy that, originally, Papa and Atanacio had listed this 51 pairs of telephone cable among their assets (Exh. N-2, PSC Rec. Vol. I, p. 68) without disclosing that their acquisition thereof was contingent upon favorable decision by the Commission, and that revelation of this unfavorable detail was forced upon them (or rather, upon Ernesto Papa, since Atanacio had withdrawn from the enterprise) only when years later, Santiago called attention to this fact in his motion to have this Court's decision reconsidered. While Papa's conditional acquisition of this essential portion of his equipment (the telephone cable) is now being palliated on the plea that he was entitled to minimize the risks in case of unfavorable action, still it was his plain duty to frankly disclose such circumstance to the Commission, in order to enable it to assess thoroughly the capacity and reliability of the applicant. It can readily be understood that had the Commission been apprised of the true facts concerning this portion of Papa's equipment, it would have inquired more thoroughly into the applicant's resources. As things stand, Papa's concealment tended to mislead the Commission, and such tactics cannot but affect his case unfavorably. That he finally admitted the truth at the rehearing ordered by this Court and there exhibited Ocampo's receipt (Exh. 2a-Papa) where the contingent transaction is set down, can not cure Papa's initial disingenuousness, making virtue out of necessity.

We agree with movant Santiago that the facts thus disclosed at the Commission rehearing (and which were not re-vealed when the case was first heard) emphasize the correctness of the Commission's decision in preferring Santiago's application over that of Papa. They point to the meagerness of Papa's resources and deny his alleged capability to render satisfactory service. The cardinal rule in cases of this nature, is to adhere to what is best for the interest of the public, and favor what would best serve the public convenience (In re Gregorio, 77 Phil. 908, 914 and cases therein cited; Carmelo and Oriol vs. Monserrat, 55 Phil. 644). And, considering that as pointed out in the previous quotation from the appealed decision, Santiago's equipment had been tested, found satisfactory and ready for immediate use by the public, while Papa's had not yet been completed and tested; that Santiago's system was designed to meet the needs of Pasig for the next five years, while that of Papa was designed for a much less extensive coverage; and that Santiago was far more responsible, financially and technically, while Papa, on his evidence, had to rely on an expected loan from the RFC to expand his original limited service, there can be no doubt that the approval of Santiago's application corresponded to the demands of public interest, that is ever the paramount, in fact, the overriding consideration.

Furthermore, the withdrawal of Papa's co-applicant, Atanacio (even granting that the latter was merely contributing his labor and industry as Papa claimed in his testimony), would further pose the problem whether a grant of Papas application by the Commission would be in accordance with the municipal franchise upon which the application was predicated. Since the franchise was admittedly granted by the Pasig authorities to both Papa and Atanacio jointly, a certificate of convenience granted to Papa alone would, in effect, amend the municipal franchise without the consent of its grantor. It may well be doubted whether such amendment lay within the power of the Public Service Commission. Then, again, Papa deprecated Atanacio's financial contribution to their joint enterprise as nil, claiming that Atanacio was a mere industrial associate; but the version is inconsistent with Papa's original Exhibit N, p. 3 (PSC Rec., Vol. I, p. 65) where Atanacio is listed as owner and proprietor of

Atanacio's Electrical Equipment & Supply, "which is on a profitable basis." Thus, the credit standing of Atanacio was originally advanced by Papa as a basis for fa-vorable action by the Commission in his favor.

To minimize the impact of the disclosure that Ocampo's cables were not really part of his proposed equipment when the Commission heard and decided the case, Papa sought to introduce evidence at the 1966 rehearing that he had later purchased another 4 reels (10,000 feet) of telephone cable to replace the cables of Ocampo (t.s.n., p. 129); but also admitted that he used part of these replacements in his Mey-cauyan telephone network, while the rest he had sold, with other equipment, for P50,000.00 (t.s.n., pp. 131-132). These transactions, being subsequent to the rendition of the Commission's decision were inadmissible to determine Papa's resources and financial responsibility at the time of his application; but even if considered, such evidence proves the slenderness of the resources at Papa's disposal, and casts doubt on his ability to render adequate service. There is no reason for compelling the public to be content with Papa's limited and uncertain service, where Santiago's decidedly better offer is available.

For the same reason, no much weight can be accorded to the fact of Papa's priority of application and that he had won the bidding for the telephone service. Such circums-tance can not override the paramount regard for public interest and convenience. More so when, as previously explained, issuance of a certificate of convenience to Papa alone, would not be in conformity with the basic municipal franchise in fa-vor of both Ernesto Papa and Conrado Atanacio, and there is no proof that the grantor would consider the absence of Atana-cio as indifferent.

Our previous decision also held against applicant Santiago that he had been operating in Pasig even before the finality of the Commission's decision, prompting the latter to issue a "cease and desist" order on June 27, 1957, of the following tenor:

"Upon consideration of the petition dated June 20, 1957, filed by Ernesto A. Papa and Con-rado V. Atanacio, thru counsel, alleging that applicant Severo J. Santiago has been operating a telephone service for hire or compensation in Pasig notwithstanding the fact that said Santiago has no certificate nor authority to operate his telephone system, and it appearing from the re-cords of this case that the decision approving the franchise and ordering the issuance of the certificate for the operation of a telephone system in Pasig has not yet been released so that Severo J. Santiago has no authority nor certif-icate to operate a telephone service for hire in Pasig, Rizal, and pursuant to the prayer in the petition, applicant Severo J. Santiago and/or Republic Telephone Company is hereby ordered to cease and desist immediately from operating his telephone system in question for hire or compen-sation, and in the event that he has operated his system and collected amounts from his cus-tomers, he is ordered to immediately refund said amounts and is warned that if he persists in operating his telephone system as a public util-ity, the Commission will proceed to take action against him for violations of the Public Service Law." (Emphasis supplied.)

Mature reflection upon the terms of the order, however, shows that the same does not substantiate the charge. In the first place, the order appears on its face to have been issued ex parte; it only mentions the complaint filed by Papa and Atanacio, but makes no reference to any answer thereto by Santiago or to any hearing thereon or to any evidence in support of the charge. Secondly, the order to desist and refund is plainly contingent, as it is prefaced by the expres-sion "and in the event that he has operated his system and col-lected amounts from his customers," clearly indicating the ab-sence of evidence showing that Santiago had in fact operated illegally. The records are further bereft on any proof of il-legal operation, and Santiago's claim that the charge was ul-timately dismissed has not been contradicted. We are forced to conclude that the charge of illegal operation was without foundation.

The last objection formulated in our previous decision against the appealed award by the Public Service Commission, was that the Republic Telephone Company, that Santiago con-trols, was already operating telephone systems in many other municipalities, citing Benitez vs. Santos, L-12911, February 29, 1960, to the

effect that "a monopolistic trend with its concomitant evils, can only serve to prejudice public interest." Reflection upon recent experience, of which this Court may well take notice, shows that however valid the doctrine in the Benitez vs. Santos case should be in connection with the fields of transportation and merchandising, it is less valid in the sphere of telephone communication. Here, the desirability of the service rendered lies in the ability of every subscriber to obtain fast and reliable connection with every other subscriber at any given time and place; and experience has shown that the main obstacle to such efficiency is the existence and multiplicity of independent systems. Interconnection between them is difficult, laborious and time consuming. One need only recall the persistent complaints of the public concerning the hardships and delays in obtaining interconnections between say, the Philippine Long Distance Telephone and the Government Telephone systems, or between customers served by the former and those of the Re-public Telephone Company in Marikina or other outlying communities, in order to realize to what extent inter-system jealousies and differences in technical equipment can block fast intercommunication, to the prejudice of the general public. The difficulties described would be greatly compounded were the certificate granted Ernesto Papa, in view of the existing grant of a legislative franchise to the Re-public Telephone Company (Rep. Act No. 3662) for the same municipality of Pasig. It is difficult to discern what reasons of public convenience (as distinguished from the interest of the operators) could justify the splitting of a small community between two separate telephone systems, each understandably intent in satisfying its own subscribers and reluctant to favor those of its rival. The unfortunate experience of the independent systems operating in Manila would be then merely repeated.

In view of the foregoing factors, and considering the clear superiority of applicant Santiago, vis-a-vis his opponent, from the standpoint of financial means, technical resources and experience, as determined by the Public Service Commission; and bearing in mind the long standing doctrine of this Court not to interfere with the judgment of the Commission so long as it is supported by the evidence, a doctrine constantly adhered to from Ynchausti vs. Public Utility Commission, 44 Phil. 363 (1923) down to Red Line Transportation Co. vs. Santo Tomas, L-18472, January 30, 1967), we are left with no alternative but to conclude that the reversal of the Commission's award in our former decision was without adequate justification.

WHEREFORE, our previous decision is hereby reconsidered and set aside, and another one shall be entered, affirming the appealed judgment of the Public Service Commission, in its cases Nos. 94119 and 101261. Without costs.

SO ORDERED.

Concepcion, C.J., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.
Castro, J., did not take part.

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