

**PILAR L. DE VALENZUELA, PETITIONER, VS. TITO M. DUPAYA.
RESPONDENT***G. R. No. L-16852. July 16, 1966*

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

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Appeal by petition for review from a decision of the Public Service Commission, in its Case No. 126903, granting Tito Dupaya authority to establish and operate an ice plant with a production capacity of 15 tons of ice per day in Lal-lo, Cagayan, and to distribute and sell ice therein as well as in the neighboring municipalities of Calamanlutan, Gattaran, Alcala, Cumao, Pagao, Lasam, Aliacapan, Buguey, Gonzaga, and Sta. Ana, all of Cagayan Province; and overruling the opposition of petitioner herein, Pilar de Valenzuela, who operates a 6-ton ice plant in Apart! with right to sell in Calamanlutan, Buguey, Gonzaga, Lal-lo and Gattaran.

The burden of petitioner's appeal is that she was denied her day in Court, for while the Public Service Commission, through hearing officer Ernesto Alcala, had granted applicant Dupaya opportunity to submit his evidence on seven days of hearing, "spread over a period of three and a half months", oppositor-appellant was permitted, by order of January 14, 1960, to submit her evidence before the Justice of the Peace of Aparri only up to February 10, 1960. Subsequently, upon her motion, it was extended up to February 24, 1960, with the warning "no other petition for extension will be entertained and that, upon failure of oppositor to present and complete her evidence on the said date, this case will be considered submitted for decision on the merits of the evidence presented by the parties". The Justice of the Peace having set the hearing for February 23, oppositor-appellant was able to submit the evidence of four witnesses on that day, and one more on the next, February 24. She then asked the Commission to extend the authority of the Justice of the Peace for 15 or 30 more days, because her witnesses from Gonzaga town could not arrive, as the Pateng river was swollen and they could not cross; but the Public Service Commission refused to grant the extension prayed for, considered the case submitted, and decided it in favor of applicant Dupaya.

Wherefore, applicant charged the Commission with abuse of discretion.

The following errors are charged:

"1. The Public Service Commission gravely abused its discretion by unreasonably restricting to a short period of time the authority of the Justice of the Peace of Aparri, within which to receive the evidence of oppositor-petitioner.

2. The Public Service Commission gravely abused its discretion by refusing to extend the authority of the Justice of the Peace of Aparri to enable oppositor-petitioner to complete her evidence in support of her opposition.

3. The Public Service Commission acted without and/or in excess of its jurisdiction in rendering its decision dated March 10, 1960 granting to applicant-respondent authority to install, maintain and operate a 15-ton ice plant in Lal-lo, oppositor-petitioner not having completed her evidence yet, consequently it is not supported by

evidence."

We find no reversible errors in those assigned by appellant. The limitation of the period wanted by the Commission for completion of her evidence appears on record motivated by the desire to have all the evidence in the case heard and reported by hearing officer Alcala before the latter's impending retirement (Rec., folios 318-319). This appears to be adequate reason, because if the appellant's evidence were to be heard by another hearing officer further delay would be unavoidable, since the second referee would have to acquaint himself first with the evidence heard by his predecessor before making his own report and recommendation.

While it is true that the rigid adherence to the Commission's hearing schedules prevented the appellant from placing on record the testimony of some of her witnesses, there is no showing what they would have testified, or that, if given the chance, they would have led the Commission to a different result. Appellant disclosed only what she expected to prove by the testimony of her plant manager, to wit, "that the produce of her ice plant is more than sufficient to supply ice to the people residing in the municipalities wherein she is authorized to sell ice" (Oppositor's motion of March 4, 1960, Annex "D", Petition). Such testimony would not have sufficed to overcome the evidence before the Commission to the effect that petitioner-appellant (oppositor below) does not distribute ice outside of Aparri; so much so that the people in the other municipalities must proceed to that town to get ice. This despite the 20 kilometers that separate Aparri from Lal-lo, where applicant (appellee herein) proposed to establish his own ice plant. Obviously, a sufficient production of ice in Aparri does not prove that it is duly transported to and made available in, other municipalities; production is one thing and proper distribution is something else.

Furthermore, the Commission held, on the authority of previous decisions of the Supreme Court, that, in view of the universal and widespread demand for ice, "no evidence is necessary to show that an Ice plant in the locality is much more advantageous to the general public as to facility in acquiring the commodity" (San Miguel Brewery vs. Espiritu, 60 Phil. 745; Santiago Ice Plant vs. Lahoz, 87 Phil. 221). Petitioner-appellant has not demonstrated how the unreceived testimony would have affected this finding adversely.

We feel that the proper step for petitioner to take should have been the timely filing in the Commission of an apposite motion for rehearing, supported by affidavits of the witnesses who were not able to testify, giving the substance of their intended evidence. Not having done so, she is in no position to claim substantial injury to her rights.

Finding no reversible error, the Public Service Commission decision under review is affirmed. Costs against petitioner.

Concepcion, C. J., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

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