

ELPIDIO JAVELLANA, PETITIONER, VS. PUBLIC SERVICE COMMISSION, NATIVIDAD ARIAGA, JUAN SALVADOR, AND MARIANO CACHO, RESPONDENTS.

G.R. Nos. L-4047-49. December 21, 1950

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for a writ to compel the respondent Public Service Commission to act on a petition for reconsideration of the decision rendered on 28 March 1950 in cases Nos. 46997, 48871 and 49378. In the decision sought to be reconsidered the respondent Commission overruled the opposition of the herein petitioner and of the La Paz Ice Plant and Cold Storage Company, Inc., and ordered the issuance of certificates of public convenience to Natividad Ariaga, applicant in case No. 46997; to Juan Salvador, applicant in case No. 48871; and to Mariano Cacho applicant in case No. 49378, granting to each of them permit to operate and maintain an ice plant and a cold storage service in the City of Iloilo, valid for fifteen (15) years, subject to the terms and conditions stated therein.

There is no dispute as to the following facts:

The applicants in the cases referred to applied for a certificate of public convenience to install, operate and maintain an ice plant of thirty (30) tons of ice daily productive capacity, to sell the produce thereof in the City of Iloilo and in the municipalities of the province of Iloilo, and to operate and maintain a cold storage and refrigeration service for perishable goods in the said City. The applicant in case No. 48871 further asked for license to distribute and sell the produce of his ice plant throughout the Island of Panay. Elpidio Javellana, the herein petitioner, a licensee or possessor of a certificate of public convenience before the outbreak of the Pacific War, runs and maintains an ice plant of thirty (30) tons of ice daily productive capacity, and is authorized to sell the ice produced by his plant in the City of Iloilo and in all other municipalities of the province of Iloilo and to operate and maintain a cold storage and refrigeration service in the said City. La Paz Ice Plant and Cold Storage Company, Inc. is also an ice plant operator in the City of Iloilo by virtue of a certificate of public convenience issued in its favor by the Public Service Commission. Both operators objected to the granting of the applications referred to, on the ground that public necessity and convenience do not require the approval of said applications; that the granting thereof would cause only ruinous competition with their established business; that should the respondent Public Service Commission find that there was need for additional services in the territory served by them, Elpidio Javellana, the herein petitioner, was ready, willing and able to put up the required additional service; that the privilege to put up such additional service belonged to licensees already operating, running and maintaining the service pursuant to law and precedents; and that the applicant Natividad Ariaga in the first case is not the real party in interest. As stated above, on 28 March 1950, the respondent Public Service Commission rendered a decision, a copy of which was served on 13 April 1950 upon Elpidio Javellana, the herein petitioner and opponent therein. Within the prescribed period the herein petitioner filed with the respondent Commission his "petition for reconsideration," on the ground that the decision sought to be reconsidered is contrary to the

evidence presented and against the law and precedents, and that the applicant Natividad Ariaga is not the real party in interest. On 10 June 1950, the petition for reconsideration filed by the herein petitioner, together with the motion for reconsideration filed by the La Paz Ice Plant and Cold Storage Company, Inc., was heard by the respondent Public Service Commission, sitting in banc, and after oral argument was heard and memoranda presented in support of the petition and motion for reconsideration, the parties submitted the same for resolution of the respondent Commission. On 8 July 1950, instead of acting upon the petition for reconsideration of the herein petitioner, the respondent Public Service Commission entered an order ruling that it was unnecessary to pass on the merits of the petition for reconsideration, in view of the fact that the La Paz Ice Plant and Cold Storage Company, Inc. filed with the Supreme Court a petition for the review of the decision sought to be reconsidered, and the respondent Commission was directed to certify and forward the records of the cases to the High Court. Thereafter, upon motion of the La Paz Ice Plant and Cold Storage Company, Inc., the Supreme Court dismissed the petition for review without prejudice, and returned the records of the cases to the respondent Public Service Commission. On 24 July 1950, the herein petitioner filed another petition with the respondent Commission praying that his "petition for reconsideration" previously filed be acted upon, resolved and decided. Acting upon such petition, on 31 July 1950, the respondent Commission entered an order holding that it could not decide the petition for reconsideration filed by Elpidio Javellana, who did not appeal to, or did not file a petition with, the Supreme Court for a review of the decision sought to be reconsidered, but filed the petition for reconsideration within the prescribed period, on the ground that

"* * * the decision sought to be reconsidered is joint and indivisible and is no longer within the jurisdiction of the Commission as a result of the appeal filed by the La Paz Ice Plant and Cold Storage Co., * * *

"* * * the Commission is of the opinion that it has already lost jurisdiction over the cases under consideration; that the decision of this Commission of March 28, 1950, has become final, and that it can no longer act on any motion or pleading filed by either of the oppositors affecting the said decision.

"Accordingly, the petition of Elpidio Javellana of July 24, 1950, praying for a resolution on his motion for reconsideration should be, as it is hereby, DENIED."

These are the pertinent and material facts necessary for the decision of this case. The denial of the petition of 24 July 1950, wherein the herein petitioner prayed that his "petition for reconsideration" be acted upon, is not equivalent to a denial of said petition for reconsideration. The claim of indivisibility upon which the opinion of the majority of the respondent Commission is made to rest finds no foundation in fact nor support in law. The fact that the herein petitioner agreed to allow the applicants to submit jointly the evidence in support of their applications and the respondent Commission to render one decision thereon, does not mean that steps to be taken thereafter by one party were to bind the other parties. The indivisibility of the three applications or cases ceased upon rendition of the decision therein. It could not and did not go beyond that stage of the proceedings. The appeal taken or petition for review filed by the La Paz Ice Plant and Cold Storage Company, Inc. is not an appeal or petition by the herein petitioner. The forwarding or certification of the records of the cases to the Supreme Court, as a result of the petition for review filed by the La Paz Ice Plant and Cold Storage Company, Inc., did not deprive the respondent Public Service Commission of its jurisdiction to decide any incident or incidents of the litigation, insofar as the herein petitioner is concerned. In other words, the appeal taken or the petition for review filed by the former did not have the effect, insofar as the latter is concerned, of withdrawing the cases from the jurisdiction of the respondent Commission or of depriving it of its jurisdiction. So that the motion for the dismissal without prejudice of the appeal taken or of the petition for review filed by the La Paz Ice Plant and Cold Storage Company, Inc. could not and did not bind the herein petitioner. It is his right to ask the respondent Commission to decide, and the duty of the latter to act upon, the former's petition for reconsideration (sec. 34, C. A. No. 146).

By refusing to act on the petition for reconsideration filed by the herein petitioner, the respondent Public Service Commission neglected the performance of an act which the law specifically enjoins as a duty resulting from its office, and there being no plain, speedy and adequate remedy in the ordinary course of law, the herein petitioner is entitled to the writ prayed for.

Accordingly, the respondent Commission is directed to decide the petition for reconsideration filed by the herein petitioner, so that he, as opponent in said cases, may take the proper legal steps to protect his interests.

Writ granted, without costs.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Tuason, Montemayor, Reyes, Jugo, and Bautista Angelo, JJ., concur.

Writ granted.

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