

ERNESTO A. PAPA AND CONRADO V. ATANACIO, PETITIONERS, VS. SEVERO J. SANTIAGO, RESPONDENT.

G. R. No. L-12433. February 28, 1959

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is a petition for review of the order of the Public Service Commission, herein referred to as the Commission dated May 10, 1957, dismissing the application of petitioners Ernesto A. Papa and Conrado V. Atanacio for a certificate of public convenience and necessity to operate a telephone service in Pasig, Rizal.

The facts, as may be gathered from the petition, the order sought to be reviewed, the briefs of petitioners and of respondent Severo J. Santiago, and their memoranda filed in lieu of oral argument, may be stated as follows: Under resolution No. 217, dated November 27, 1954, the Municipal Council of Pasig, Rizal, granted respondent Santiago a municipal franchise to operate a telephone service in Pasig. It seems that this resolution was not approved by the Provincial Board, as required by Act No. 667 as amended by Act No. 1022. The Provincial Board returned it, disapproving the resolution, advising the Council that the application for said franchise be submitted to public bidding.

The same Municipal Council of Pasig approved Resolution No. 212 dated December 22, 1955, granting to petitioners Papa and Atanacio a municipal franchise to operate a telephone service in Pasig. Said franchise was granted after a sealed bidding conducted by the council, in which respondent Santiago took part but lost. Santiago claims in his brief that he did not participate in this bidding, but petitioners answered without denial on Santiago's part that he, Santiago, really took part through the Republic Telephone Co., Inc., of which he was president and principal stockholder.

As required by law (Act No. 667), the said Municipal Resolution No. 212 was referred to the Provincial Board of Rizal for approval. According to petitioners, it was approved by the Provincial Board on January 25, 1956, in its Resolution No. 119. What the Provincial Board really said in its resolution No. 119 was as follows:

"IT WAS RESOLVED to respectfully forward the aforementioned resolution to the Public Service Commission and the Office of the President of the Philippines, recommending approval. "Carried." (Italics supplied).

Following said resolution of the Board, petitioners Papa and Atanacio, on February 18, 1956, filed an application in Case No. 24119 of the Public Service Commission for a certificate of public convenience and necessity to operate a telephone service in Pasig, Rizal, and completed submission of their evidence in support thereof on November 28, 1956.

In the meantime, the same Municipal Council of Pasig passed Resolution No. 245 on December 12, 1956, revoking the franchise given to petitioners Papa and Atanacio, on the ground that they had failed to install a telephone service. This municipal resolution was approved by the Provincial Board on February 13, 1957, by Resolution No. 192, amended by its Resolution No. 204 of February 18, 1957.

The Municipal Council on September 10, 1956, in its Resolution No. 186, granted respondent Santiago a franchise to operate a telephone service in Pasig. Petitioner called this resolution a revival of its original Resolution No. 217, dated November 27, 1954, which was not approved by the Provincial Board. Said Municipal Resolution No. 186 was approved by the Provincial Board on November 12, 1956 by its Resolution No. 1437. After said Board's resolution Santiago filed his application with the Public Service Commission on November 7, 1956, amending it on November 23, 1956, also for a certificate of public convenience and necessity to operate a telephone service in Pasig, in case No. 101261. He finished submitting his evidence on February 15, 1957. Both applications of the petitioners and respondent were heard by the Commission, the parties mutually asking for the dismissal of each other's application. Presumably, because the application of petitioners was submitted first, the Commission acted upon and decided it by its order of May 10, 1957, now sought to be reviewed.

In his motion for the dismissal of the application of petitioners, Santiago claimed that petitioners franchise had been revoked by resolution of the Municipal Council, approved by the Provincial Board, and that consequently, there was no existing franchise on which the Commission could act and base any grant of a certificate of public convenience and necessity. Ruling upon this claim and question raised, the Commission, in our opinion, correctly held that the Municipal Council and Provincial Board had no right to revoke a franchise already granted, unless there be a valid reason for doing so; that a franchise constitutes a contract between the grantor and grantee, and that it cannot be impaired except for good reasons. The reason or excuse, according to the Commission, given by the Municipal Council in revoking the franchise granted to the petitioners, was that the latter failed to install the telephone service involved in the franchise. But the Commission rightly argued and ruled that petitioners could not be expected to make the installation until and unless their franchise was acted upon favorably by the Commission by a grant of the corresponding certificate of public convenience and necessity, and approved by the Chief Executive, and at the time of the revocation by the Municipal Council, petitioners had not yet obtained said approval of the Commission and of the President. For this reason, the Commission denied Santiago's petition for dismissal.

The Commission, however, evidently on its own initiative, found and held that the action taken by the Provincial Board by its resolution forwarding the municipal resolution granting a franchise to petitioners, to the Commission and to the President recommending approval, was not the express and explicit approval required by the law—Section 2 of Act 667, which states that "no franchise shall become operative until the same shall have been approved by the Municipal Council, and secondly, by the Provincial Board." The question now to determine is whether a recommendation for approval is equivalent to and may be regarded as an approval. Petitioners call our attention to authoritative definitions of and the import of the words and phrase "approval," "approved," "recommending approval" and their connotations. We shall not quibble about their significance and shades of meaning. We propose to approach the question from a practical and realistic standpoint.

By recommending approval, may it be said that the Provincial Board truly and practically approved the Municipal Council resolution granting a franchise to petitioners? It is not improbable that the Provincial Board may have entertained the belief that by recommending approval, it was approving the measure, assuming that the members thereof were adequately informed of the legal provision requiring approval. Another aspects of the question is that when the Municipal Council resolution was referred to the Provincial Board, as required by law, the Board was expected to take some positive action on the same. It could: (1) approve the resolution; (2) disapprove it; (3) forward the case to the Commission and to the President without any recommendation; (4) forward the same recommending disapproval; or (5) recommending approval as it did. The fact is that the Provincial Board neither disapproved it, nor recommended its disapproval, and although it did not expressly approved the resolution, it recommended its approval by the higher authorities. In our opinion, the favorable attitude of the Board to the measure, as clearly expressed in its recommendation for approval may correctly and reasonably be regarded as an

approval in the eyes of the law. Consequently, the franchise granted by the Municipal Council to the petitioners was perfected and became operative, though still subject to the action of the Commission and Chief Executive.

Moreover, that intention of the Provincial Board was subsequently clarified and reiterated when upon the request of petitioners that it clarify and define its intention in recommending to the Commission and the President the approval of the municipal resolution, the Board passed a resolution authorizing the secretary to inform petitioners accordingly, which the secretary did, telling them that the Board really approved the measure. Furthermore, the Commission had previously accepted and construed, though perhaps incidentally, a recommendation for approval by a Provincial Board of a municipal resolution granting a franchise. In Case No. 76560 of the Commission, the Caramoan Electric Power Cooperative Association secured a municipal franchise to install and operate an electric, light, heat and power service in the municipality of Caramoan by virtue of a municipal resolution. When it reached the Provincial Board, the latter instead of approving the resolution, merely referred the same to the Public Service Commission, recommending approval, and said action of the Board was considered and interpreted by the Commission as an approval within the meaning of the law, and the Commission, in its decision of March 2, 1956, granted the corresponding certificate of public convenience and necessity.

Pending appeal, we had issued a writ of injunction on the Commission so as to suspend action on the application of Santiago, because otherwise, if in the meantime the Commission favorably acted upon his application and issued to him a certificate of public convenience and necessity to install and operate a telephone system in Pasig, then the application of petitioners for a similar certificate would be seriously jeopardized, and may even have to be dismissed, or denied. The reason is that for a small community like Pasig, it is hard to imagine that more than one party or entity could operate a telephone system. with profit. The Commission would, in all probability allow only one operator, and it is to be presumed that the Municipal Council itself and the Provincial Board intended to grant a franchise to only one applicant, as shown. by the fact that although Santiago was first in applying for a franchise, the subsequent application of petitioners was approved only after Santiago's application was practically disapproved, because it had been submitted to public bidding; and that the application of Santiago was subsequently revived by the Council and approved by the Provincial Board only after the Council and the Board had, presumably, decided to revoke the franchise granted to the petitioners for their failure to install the telephone system.

In view of the foregoing, the appealed order of dismissal is hereby set aside and the case is ordered remanded to the Commission for further proceedings. As to which of the two applicants is entitled to a certificate of public convenience and necessity, assuming that they are both qualified, rests in the sound discretion of the Commission. The Commission may, however, take into consideration the fact that as between the two, the petitioners obtained an operative franchise from the Council and the Provincial Board first; also that they were the first in filing an application with the Commission and in completing the submission of their evidence. Petitioners also informed the Court in their pleadings that they have already made investments and expenditures in preparation for the future operation of the franchise, in the sum of P60,000. We have no evidence before us as to the correctness and validity of said claim, which may well be considered by the Commission. No costs.

Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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