

SAN ILDEFONSO ELECTRIC PLANT, INC., PETITIONER, VS. BALIUAG ELECTRIC LIGHT AND POWER CO., INC. AND THE PUBLIC SERVICE COM-MISSION, RESPONDENTS.

G.R. Nos. L-26770-71. March 25, 1969

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

The San Ildefonso Electric Plant, Inc. seeks the reversal of a joint decision of the Public Service Commission in the above-entitled two (2) cases.

The first was PSC Case No. 62-5006, involving an application of said corporation - hereinafter referred to as the Petitioner - for a certificate of public convenience and necessity to install, operate and maintain an electric plant in the Municipality of San Ildefonso, Province of Bulacan, for the purpose of supplying electric lighting, heat and power service to the inhabitants of said municipality. The second was PSC Case No. 64-3136, involving an application of the Baliuag Electric Light and Power Company, Inc. - hereinafter referred to as the Respondent - for an identical certificate of public convenience and necessity from said Commission. For obvious reasons, the applicant in each case filed an opposition in the other and the two (2) cases were jointly heard and decided by the Commission, which granted Respondent's application in the second case and denied that of Petitioner in the first.

Petitioner seasonably filed a motion for new trial, upon the ground of newly discovered evidence. Said motion was granted and the two (2) cases were re-opened for the presentation of further evidence, after which the Commission issued an order, dated May 4, 1966, reaffirming its previous decision. A reconsideration thereof and of said order having been denied, Petitioner filed its petition for review herein, in which it maintains that the Commission erred in rendering said decision and in issuing the order of May 4, 1966, because: (1) Petitioner was the first to apply for the service in question; (2) Respondent is not financially capable to operate and maintain the aforementioned service; (3) Respondent's municipal franchise is null and void because its corporate charter did not authorize it to operate in the municipality of San Ildefonso; and (4) the revocation of the Petitioner's municipal franchise by the municipal council of San Ildefonso was null and void.

With respect to the first question, the Commission had this to say:

"Without going into the many debatable legal points raised by applicants during the hearings and in their memoranda, the Commission after careful consideration finds that there is an urgent need for electric service in the municipality of San Ildefonso, Bulacan; that both applicants hold valid and subsisting franchises from the Municipal Council of San Ildefonso, and that both applicants are legally and financially qualified to operate the proposed public service. As the operation of two different entities for the supply of electricity over the same territory, in this instance the municipality of San Ildefonso, is considered not in the public interests for obvious reasons, the issue in these cases is reduced to the question of which of the two applicants can render the better service.

"The San Ildefonso Electric Plant, Inc. filed its application in 1962 and the Baliuag Electric Light and Power

Co., filed its application in 1964. Ordinarily, and in accordance with precedents and jurisprudence, all things being equal, the award shall be for the prior applicant, the San Ildefonso Electric Plant, Inc. in these cases. A close study of the records, however, has led the Commission to make a different finding.

"The records show that the San Ildefonso Electric Plant, Inc. was granted its franchise by the municipal council on July 15, 1958 and the same was approved by the Provincial Board of Bulacan on May 15, 1961. It filed its present application, Case No. 62-5006, for the approval of said franchise by the Commission on September 3, 1962. Hearing of this case was set by the Commission on October 22, 1962 and then postponed successively six times before hearing on the merits started on May 30, 1963, when applicant presented one witness. Then for one full year applicant showed little or no interest in the successful prosecution of its application until the Baliuag Electric Light and Power Co., Inc. was granted a franchise by the municipal council of San Ildefonso.

"In sharp contrast, with respect to the Baliuag Electric Light and Power Co., Inc., the records show that it secured its municipal franchise on April 16, 1964, had it approved by the Provincial Board on May 6, 1964 and filed its application with the Commission on July 5, 1964. What took the San Ildefonso Electric Plant, Inc. more than four long years to do, the Baliuag Electric Light and Power Co., Inc., accomplished in less than two months. The records also reveal many other instances, bordering what might be called negligence, on the rather listless manner in which applicant San Ildefonso Electric Plant, Inc. went about in prosecuting its application.

"Thus while priority in the filing of its application is a factor favoring the grant of a certificate to applicant San Ildefonso Electric Plant, Inc., the Commission is not so inclined. The lackadaisical manner in which it prosecuted its avowed purpose of supplying the much needed electric service to the people of San Ildefonso placed in grave doubt the seriousness of its purpose. Also, if such will be its standard conduct in the operation of a public utility, the same certainly will not promote public convenience. On the other hand, the Baliuag Electric Light and Power Co., Inc., is a successful public service operator of long standing presently serving the municipalities of Bustos, Baliuag and Norzagaray in Bulacan, nearby towns of San Ildefonso with electric service. It has thus the distinct advantage of experience and 'know-how' over the San Ildefonso Electric Plant, Inc." [1]

The foregoing findings are borne out by the record. Indeed, the same shows, on the part of Petitioner herein, a degree of negligence and lack of interest even greater than that indicated in the decision appealed from. Thus, Petitioner did absolutely nothing to secure the approval by the Provincial Board of Bulacan of the franchise granted to the former by the municipal council of San Ildefonso, despite the fact that the latter had repeatedly called its (Petitioner's) attention thereto and asked it to expedite action thereon. Hence, on May 15, 1961 - or almost three years since the grant of Petitioner's franchise on July 15, 1958 - the council passed its Resolution No. 64 urging the Provincial Board to approve said franchise, which the Board did on June 21, 1961.

This was followed by another period of inaction on the part of Petitioner herein, which did not file its application for a certificate of public convenience with the Commission until about 15 months later, or on September 2, 1962. Even then, although the case had been set for hearing on October 22, 1962, and the application was then unopposed, Petitioner had the hearing postponed six (6) times, until May 30, 1963, when hearing on the merits began and Petitioner introduced the testimony of only one (1) witness. After another period of inaction of Petitioner herein, or on August 15, 1963, the municipal council of San Ildefonso passed Resolution No. 86, revoking and cancelling Petitioner's franchise, which resolution was approved by the Provincial Board on October 27, 1963. Sometime later, or on April 16, 1964, said council granted the franchise of Respondent herein, which was approved by the Provincial Board on May 6, 1964. The corresponding application was filed with the Commission two (2) months thereafter, or on July 5, 1964.

Under the circumstances, the Commission was fully justified in entertaining grave doubts on the seriousness or

earnestness of Petitioner's purpose and in concluding, from its past conduct, as contrasted with that of Respondent herein, as a public service operator in the neighboring towns of Baliuag, Bustos and San Rafael, that public convenience would be promoted by authorizing Respondent to render, also, such service in San Ildefonso, instead of granting it to Petitioner herein.

Although priority in the filing of the application is "an element to be considered", it is "not ordinarily of sufficient importance to control the granting of a certificate of public convenience", because, when there are various applications, the Public Service Commission "is authorized to determine" which one "can best meet the requirements of the public convenience."¹ As stated in another case:

""(P)riority of application in the granting of a certificate of public convenience, although to be considered, is not necessarily a controlling reason for the issuance of the corresponding certificate to the prior applicant. It has been repeatedly held by public utility regulatory bodies that the question to be considered in cases where there are many applications over the same territory is, which applicant or applicants can render the best service, considering the whole territory to be developed and served by the kind of service under consideration and the conditions and qualifications of the respective applicants to furnish the same."²

In the language of *Batangas Transportation Co. v. Banaag Transportation Co.*,³ "financial conditions and business facilities being equal, we believe priority in the filing of the application to being equal, be an important factor in determining the right to the certificate applied for." In the case at bar, the parties herein are not in the same condition. Respondent has proven experience and efficiency, whereas Petitioner has no experience whatsoever, apart from demonstrating marked sluggishness. Moreover, it is well-settled that, in cases of this nature, the most important consideration is public interest or the service to the public, which Respondent is, manifestly, in a better position to promote.

Petitioner insists that Respondent is not financially capable of rendering the service in question because it is in arrears in the payment of obligations, in the total sum of P75,847.33 (P14,000 to the Reparations Commission, P50,233.097 to the Development Bank and P11,614.24 to the Rural Electrification Administration), in addition to its current obligations aggregating P29,602.54 (P7,555.07, representing the current payroll, P12,533.70, by way of taxes and insurance dues, and P9,513.77, for Meralco bills), apart from the total sum of P146,280.33, consisting of P81,822.66, for accounts payable, P8,926.98, for interests, and P55,520, as used-up customers' deposits.

Upon the other hand, as stated in the order of May 4, 1966, the accuracy of which is not contested:

"On the other hand, the Baliuag Electric presented Jose M. Cruz, its Executive Vice-President and Assistant General Manager, who testified that the arrears in payment to the three government entities mentioned above were due to the expansion program of the company and the construction of the electric system in San Ildefonso, Bulacan; that it is at present operating in the municipalities of Baliuag, Bustos, and San Rafael, and that the loan obtained from the Electrification Administration has been invested in the said three towns; that in the Development Bank of the Philippines, it submitted collaterals consisting of land measuring 5,000 square meters near the poblacion of Baliuag with a value of not less than P200 a square meter, which land is registered in the name of Vicente R. Cruz and Cristina R. Mateo, who are the majority stockholders of the Baliuag Electric Light, Mr. Cruz being the present President and General Manager and Cristina Mateo being the Treasurer of the corporation; that aside from the said property, the whole distribution system installed in the territorial jurisdiction of Baliuag costing about P700,000 to P800,000 was also submitted as a collateral; that with the Electrification Administration, the Baliuag Electric submitted as collateral six (6) hectares of land located at Bustos including 300 mango trees worth P10,000 per hectare and P300 per mango tree. In addition thereto, they gave as collaterals a lot near the public market in the poblacion of Baliuag, measuring 2,780 square meters with a market value of not less than P200 per square meter; the lot and house near their residence in Baliuag also in the poblacion measuring more or less 2,000 square meters with a market value of

P22,500 for the lot and P15,000 for the house; the whole transmission and distribution system in the municipality of Bustos and in San Rafael and also the improvements in Baliuag totaling about P450,000; that the gross income of the electric plant is about P55,000.00 a month for the entire system with a net profit of P15,000 per month; and that it has also invested the sum of P40,000 for the installation of the electric system in the municipality of San Ildefonso."¹

Commenting thereon, the Commission expressed itself as follows:

"After a careful consideration of the evidence submitted by both parties at the new trial of these cases, the Commission believes that there is no ground for altering its finding in the decision rendered in these cases on October 11, 1965 that the applicant Baliuag Electric Light & Power Company is financially capable of installing, maintaining, and operating the electric system in the municipality of San Ildefonso, Bulacan, for which it was granted a certificate of public convenience and necessity by virtue of the said decision. The mere fact that the Baliuag Electric Light has incurred in arrears in the payment of its obligations to the Reparations Commission, the Development Bank of the Philippines, and the Rural Electrification Administration is not sufficient in our opinion to form a conclusion that the Baliuag Electric Light & Power Company is not financially capable of operating the electric service in the municipality of San Ildefonso, Bulacan, considering that such arrears have been due to the fact that the Baliuag Electric has invested a considerable amount for the expansion and improvement of its services in the municipalities of Baliuag, Bustos, and San Rafael and the construction of the electric system in the municipality of San Ildefonso and that it has sufficient collaterals to answer for the settlement of its obligations with the said lending institutions."¹

We have repeatedly held that the evaluation of the evidence is primarily a function of the Commission and that its findings and conclusions thereon will not be disturbed unless they are not reasonably supported by the evidence.² Such support exists in the case at bar.

Petitioner assails Respondent's authority to operate in San Ildefonso, the same not being mentioned in its (Respondent's) charter as part of the territory in which it may discharge its functions. The issue thus raised by Petitioner herein has, however, become moot owing to the fact that, long before the rendition of the Commission's decision, said charter had been duly amended to include the municipality of San Ildefonso within the area of Respondent's operations.

Moreover, a public service corporation may derive its powers, not only from its charter of incorporation, but also, from a franchise or special charter granted thereto by the legislature through a municipal corporation.

"Public service corporations include, among others, gas, electric light, street railway, water, and general railroad companies. The powers of such companies often depend, not only on their charters, but also on the construction of special charters granted them by the legislature directly or through the medium of a municipality, such as the franchise x x x."¹

Hence, in *Oakland Electric Co. v. Union Gas*,² it was held that an electric light company is not impliedly prohibited from contracting to furnish electricity for lighting purposes to an adjoining town because its charter expressly authorizes it to set poles and extend wires through the streets of certain named towns, not including the town contracted with.

It is lastly urged that the Commission erred in not passing upon the validity of the resolution of the municipal council of San Ildefonso, revoking Petitioner's municipal franchise without previous notice and hearing. We find no merit in this pretense, not only because the Commission has no authority to annul said resolution, the power to do so being within the province of ordinary courts of justice,³ but, also, because, even if Petitioner's franchise had not been cancelled or revoked, the Commission would still have been justified in denying its (Petitioner's) application and overruling its opposition to that of Respondent herein. In fact, the Commission did so assuming

that Petitioner's municipal franchise was still in existence.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against the Petitioner.

IT IS SO ORDERED.

Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] Rollo, pp. 14-16.

1 De los Santos v. Pasay Transportation Co., 54 Phil. 357.

2 Mindanao Bus Co. v. Cagayan-Misamis Land Transportation Co., 55 Phil. 826, 829. Underscoring ours.

3 55 Phil. 745, 755.

1 Rollo, pp. 34-36.

1 Rollo, pp. 36-37.

2 Serrano v. Public Service Commission, L-24165, August 30, 1968; Philippine Rabbit v. Gabatin, L-24472, July 31, 1968, citing Pangasinan Transportation Co. v. Feliciano, L-14401, August 31, 1962.

1 Fletcher, Cyc. Corporations, Vol. 6, pp. 542-543.

2 107 Me. 279, 78 Atl. 288.

3 Batangas Laguna Tayabas Bus v. Public Service Commission, L-25994 and L-26004-46, August 31, 1966.

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