

RUBEN VALERO AND ESTRELLA A. DE VALERO, PETITIONERS, VS. ISABEL FOLLANTE, RESPONDENT.*G.R. No. L-6134. April 23, 1954*

Ponente: BAUTISTA ANGELO, J.

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On July 25, 1951, Isabel Follante filed with the Public Service Commission a petition to operate an ice plant in the municipality of Candon, Province of Ilocos Sur and its environments. Ruben Valero and Estrella A. de Valero filed an opposition alleging, among other things, that the Public Service Commission has already granted the oppositors authority to operate an ice plant with 5-ton daily capacity in the municipality of San Fernando, La Union, with right to sell ice in the municipalities of San Juan, San Gabriel, Bacnotan, Balaoan, Luna, Bangar and Sudipen, all in the Province of La Union, and in the municipalities of Tagudin, Sevilla, Sta. Cruz, Sta. Lucia, Candon, Santiago, San Esteban, Sta. Maria and Narvacan, all in the Province of Ilocos Sur. They also alleged that the service they were rendering in the territory covered by their authority was adequate and satisfactory and that public convenience and necessity did not require the operation of another ice plant in the municipality of Candon and its environs. They finally alleged that to grant the petition would only promote unfair and ruinous competition and that petitioner was not financially capable of maintaining an adequate and sufficient operation of a new ice plant as set forth in her petition.

The petition was heard in due time and a decision was rendered on December 27, 1951 granting to petitioner the authority applied for. Both on motion for reconsideration, and after a rehearing was held, the Public Service Commission set aside its former decision and revoked the authority granted to petitioner in an order issued on June 3, 1952. The petitioner filed a motion for reconsideration, and without any further hearing, another order was issued as follows: Commissioner Paredes voted to deny the motion and to reaffirm the order issued on June 3, 1952. But Commissioners Ocampo and Prieto voted to grant the motion and to reaffirm the original decision rendered on December 27, 1951. The oppositors moved to have this order reconsidered, but their motion was denied. Hence, this petition for review.

It should be recalled that the petition for authority to operate an ice plant in the municipality of Candon, Province of Ilocos Sur, and its environs, was originally granted in a decision rendered on December 27, 1951, but on motion for reconsideration, said decision was set aside in an order issued on June 3, 1952. It should be noted that, in connection with said motion for reconsideration, the Commission granted the parties an opportunity to present additional evidence to substantiate the new facts alleged in the motion for reconsideration. And in connection with the new evidence presented, the Commission made the following findings of fact:

"The Commission has carefully gone over the additional evidence presented as well as the evidence adduced during the original hearing, and finds that the fact has been established that the applicant is not financially capable of operating the ice plant applied for, and that she is but a mere dummy of a Chinaman by the name of Tan Tai alias Noo Wah, the owner of a restaurant in Candon, Ilocos Sur, and husband of Cresencia Follante, a very close relative of the applicant. The Commission also finds that, with respect to her financial capacity,

applicant misrepresented the facts to this Commission as evidenced by her statement to the effect, calculated, no doubt, to impress the Commission regarding her solvency, that she had deposited P35,000 in the Philippine National Bank branch in Vigan, Ilocos Sur, prior to the date of the original hearing, when the truth is, as admitted by her during the hearing on the motion for reconsideration, that no such amount was ever deposited. The Commission is not disposed to believe the statements made by this applicant during the rehearing, that she pledged and mortgaged personal and real property in order to raise funds for the operation of the ice plant applied for, as this is in direct conflict with her previous testimony to the effect that she had already in her possession P35,000 ready for the use and for the purchase of the necessary equipment to install and operate the ice plant in question. The financial ability of an applicant to operate a public utility is one of the most important considerations that should be taken into account in the approval or denial of an application to engage in such operation.

"In view of the above, particularly of the fact that applicant is a mere dummy of an alien who has tried to circumvent the provisions of the Public Service Act as well as of the Constitution of the Philippines, the Commission finds it its duty to revoke the decision sought to be reconsidered and to set the same aside."

Note also that the above order was written by Commissioner Paredes and was concurred in by Commissioner Prieto. Commissioner Ocampo was then on leave. Later, however, petitioner filed a motion for reconsideration, and on the strength of the same evidence, and without any further hearing, Commissioner Paredes, who received the additional evidence, and penned the order, issued an order on August 21, 1952, reiterating his previous findings and denying the motion; but this time Commissioner Ocampo dissented, and his dissenting opinion was concurred in by Commissioner Prieto. Since their dissenting opinions carried two negative votes, they became the opinion of the majority. This is the opinion which is now being impugned by the oppositors in the present petition for review.

The reasons expressed by Commissioner Ocampo in his dissenting opinion are as follows:

"The order revoking the decision which granted to the applicant a certificate of public convenience is based on the additional evidence which oppositors produced during the rehearing. This evidence consists of the testimony of Ruben L. Valero, one of the oppositors but said evidence does not provide a sufficient basis for the revocation of the certificate granted to the applicant. This evidence purports to prove that applicant is a dummy of a Chinese national and that she is not financially qualified to install and operate the plant. The testimony of Valero on these points is clearly hearsay and at times even double hearsay—told to Valero by someone to whom it was told. There is no reliable direct evidence proving these allegations of financial incapacity or that applicant is a mere dummy. On the other hand there is the rebuttal evidence of applicant that she had accumulated about P20,000 which is the money she used to install her plant and we do not see that this testimony is in any way unbelievable."

As already stated, Commissioner Prieto concurred in the dissenting opinion of Commissioner Ocampo, but apparently his reasons for dissenting are based on a matter of procedure more than on the reasons set forth by Commissioner Ocampo in his dissenting opinion. Commissioner Prieto expressed the opinion that the oppositors should not have been allowed to present evidence on the lack of financial capacity of the applicant and on the fact that she was a mere dummy of a Chinaman who was the real party behind her application for the simple reason that those are new facts which were not alleged either in the written opposition, or in the motion for reconsideration filed by oppositors, and because of this transgression of an important rule of procedure, he believed that those new facts cannot serve as basis for setting aside the original decision rendered on December 27, 1951. It would seem therefore that Commissioner Prieto is of the opinion that the findings made by Commissioner Paredes in his order of June 3, 1952, which was concurred in by him, to the effect that petitioner was not financially capable and was a mere dummy of a Chinaman are correct, but that the reason for reversing his previous stand is that those facts cannot be taken into account because they are not among the issues raised in

the pleadings filed by the oppositors. We may therefore say that, in substance, these findings bear the approval and support of the vote of two commissioners.

As regards the matter of procedure brought out by Commissioner Prieto, we may say that, while the stand he has taken is in line with ordinary rule of procedure, the same need not be strictly adhered to by the Commission, nor should the latter be strictly bound by it, for the law creating the Commission has invested it with ample power to conduct its hearings and investigations without being trammelled by the ordinary rules of court. Thus, Section 29 of the Public Service Act provides that "All hearings and investigations before the Commission shall be governed by the rules adopted by the Commission, and in the conduct thereof the Commission shall not be bound by the technical rules of legal evidence." The only thing required is that the parties be given proper notice and hearing in accordance with the rules (section 16), except in cases where the Commission can act without previous hearing (section 17). So that, in our opinion, the Commission cannot be said to have acted improperly in receiving the additional evidence if in its opinion such evidence is necessary to enable it to reach an enlightened decision of the controversy. And having reached this conclusion, we are of the opinion that the real decision of the Commission on the merits is that rendered on June 3, 1952 which bears the affirmative vote of two commissioners.

Wherefore, the dissenting opinions of Commissioners Ocampo and Prieto dated August 28, 1952 are hereby set aside and the decision of Commissioners Paredes and Prieto dated June 3, 1952 is hereby maintained, as reaffirmed in the order of Commissioner Paredes dated August 21, 1952, without pronouncement as to costs.

Pablo, Bengzon, Reyes, Jugo, Labrador, Concepcion, and Diokno, JJ., concur.

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