

INTESTATE TESTATE OF TEOFILO M. TIONGSON, PETITIONER, VS. THE PUBLIC SERVICE COMMISSION AND MARIO Z. LANUZA, RESPONDENTS.

G.R. No. L-24701. December 16, 1970

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

On May 11, 1965 the Public Service Commission decided its Case No. 124626, approving the application of Mario Z. Lanuza for a certificate of public convenience to install and operate a 20-ton daily capacity ice-plant in Pagsanjan, Laguna, and to sell the ice to be produced in said municipality as well as in the municipalities of Longos, Paete, Pakil, Pangil, Siniloan, Famy, Sta. Maria, Cavinti, Magdalena, Majayjay, Nagcarlan, Rizal, Lilio, Sta. Cruz, Lumban, Pila and Victoria, all in the province of Laguna.

Three existing operators had opposed the application. One of them, Victorino de Peña, who has an ice-plant in Mauban, Quezon, withdrew his opposition after the applicant excluded the municipality of Luisiana from the territory originally applied for. Another oppositor, Emilio Gomez, did not appeal from the decision of the Public Service Commission. The petitioner here, the Estate of Teofilo M. Tiongson, remains the only oppositor in the present appeal.

The petitioner is the grantee of a certificate of public convenience to maintain and operate a 30-ton (increased to 40-tons in 1960 and then to 70 tons in 1964) ice plant in San Pablo City, with authority to sell ice therein as well as in the municipalities of Sta. Cruz, Rizal, Nagcarlan, Calauan, Victoria, Pila, Lumban, Paete, Pakil, Pangil, Cavinti, Siniloan and Alaminos.

There is no question as to the applicant's financial capacity. The principal issue is whether there is sufficient need for ice in the places stated in the decision to justify the establishment of a plant in Pagsanjan with the daily capacity authorized by the Commission. This issue is essentially one of fact on which, as a rule, the findings of the Commission are binding on this Court unless it clearly appears that there is no evidence to reasonably support them.[1] Such findings in this case, and the conclusion derived therefrom, are as follows:

"At one of the hearings of this case, applicant, a businessman and Filipino citizen, manifested that at present there is no ice plant in Pagsanjan, Laguna; that there was formerly one in that municipality but it was transferred to San Pablo City; that the nearest ice plant is located in Kalayaan (Longos, Laguna) which is about 10 kilometers from Pagsanjan, Laguna; that there is a demand for ice by the people of Pagsanjan and of the towns proposed to be served by the applicant because the present supply of ice coming from ice plant operators and distributed by ice dealers is inadequate; that in the territory proposed to be served by applicant, ice is needed for "halo- halo", for cooling soft drinks and drinking water, and for the preservation of the fish caught by fishermen; that aside from these refreshment parlors, there are "sari-sari" stores selling soft drinks; that along Laguna de Bay from Lumban to Sta. Maria, Laguna, from 30% to 50% of the people are engaged in fishing throughout the year; that fishes caught consist of "dalag", "hito", "carpa", "banak" and "shrimps" and to preserve these fishes from the time they are caught until they are sold or disposed of ice is needed; that ice is

also needed in movie houses where soft drinks are sold, in homes, clinics and hospitals; that in a small town where there are about 20 stores, about 6 blocks of ice of 300 lbs. each are consumed during the day, and in a big town like Sta. Cruz, the consumption is about 20 blocks of ice of 300 lbs. each during the rainy season and the consumption is about double during the dry season; and that due to the inadequacy of ice supply in the towns proposed to be served by applicant, an ice block of ice of 300 lbs. costs from P5.00 to P8.00."

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"Applicant presented the following witnesses: Manuel Zaide, a fish dealer of Paete, Laguna; Willie Limlengco, a businessman and sari-sari store owner of Pagsanjan, Laguna; Conrado Almario, a refreshment parlor and sari-sari store owner of Lumban, Laguna; Alfonso Rebong, Municipal Mayor of Victoria, Laguna; and Ernesto Marina, business and sari-sari store owner of Pila, Laguna.

All witnesses presented at the hearings of this case manifest that there is shortage of ice supply in the territory proposed to be served by the applicant, especially during summer months; that the fish dealers do not get their ice requirements so that most often fish are not preserved in ice when sent to other places to be sold, like Sta. Maria, San Pablo City, or Manila; and that when the ice supply is inadequate, shrimps which are shipped to Manila are often cooked to minimize spoilage.

The oppositors to this application have not established to the satisfaction of the Commission the adequacy of the service rendered by them in the eighteen (18) municipalities proposed to be served by the applicant, considering that most of these municipalities are far from the locations of their ice plants.

After a thorough examination of the evidence submitted by the parties and after a careful consideration of our records on existing service in the territory applied for, and considering that an ice plant which manufactures its ice in the locality where it sells that commodity is more advantageous and convenient to the general public in that locality than ice plant located some kilometers away, and that applicant is financially capable of undertaking the installation, and maintaining the operation of the proposed service, the Commission believes that the oppositions filed by Emilio Gomez, operator of an ice plant in San Juan, Longos, Laguna, and Teofilo Tiongson, operator of an ice plant in San Pablo City, in this case should be, as these are hereby, overruled and that the application herein filed may be, as it is hereby, APPROVED."

The foregoing findings are assailed on two grounds: (1) that only eight witnesses were presented by the applicant, who individually testified as to the need for ice in each of only seven of the municipalities included in the application; and (2) that their testimony even as to those referred to by them is deficient. We have gone over the record in this regard and found enough support therein for the decision appealed from Manuel Zaide is a fish dealer in Paete, Willie Limlengco is a sari-sari and refreshment store-owner in Pagsanjan; Conrado Almario has a similar business in Lumban; Alfonso Rebong was the municipal mayor of Victoria since 1960; Ernesto Mariña is a businessman in Pila; Jose Acuña is a businessman and fisherman in Pakil; Jose Maceda was the municipal secretary of Pagsanjan; and Eligio Lorenzo is a grocery merchant in Sta. Cruz. They all affirmed the inadequacy and frequent lack of ice supply in their respective localities not only for home consumption but also for restaurants and refreshment parlors as well as for the fishing industry or occupation of the inhabitants, particularly in the regions bordering Laguna Bay. It is true their combined testimony did not cover all the municipalities applied for, but the applicant himself, respondent here, demonstrated sufficient familiarity with the entire area to be able to give evidence, as he did on the ice-supply situation in everyone of them. He did a lot of traveling as owner of three movie houses in Pagsanjan, Sta. Cruz and Pila, and in connection with his application in this case personally conducted a thorough investigation of the local demands for ice in the municipalities covered by said application. That he is the applicant does not necessarily affect his credibility; on the contrary, such an investigation was necessary and called for by sound business policy, for no one would invest capital in the production and sale of any commodity without first ascertaining the needs of the prospective market.

One significant fact may be noted insofar as the petitioner's existing ice plant in San Pablo is concerned. The petitioner formerly operated another plant in Pagsanjan, and in each of them it had one delivery truck to service the customers in different municipalities. The Pagsanjan plant, however, was closed in 1952 and transferred to San Pablo, and since then the petitioner has been maintaining only one delivery-truck service, with a single dealer-employee in charge. Under the circumstances the Public Service Commission correctly remarked that "the oppositors have not established ... the adequacy of the service rendered by them in the eighteen (18) municipalities proposed to be served by the applicant, considering that most of these municipalities are far from the locations of their ice-plants.

The "prior operator" and "protection of investment" rules cited by petitioner cannot take precedence over the convenience of the public. There is no ice plant at present in Pagsanjan; and from the testimony of the witnesses for the applicant there exists a great demand for ice not only there but also in certain neighboring municipalities. There is nothing in the record to show that the petitioner had exerted efforts to meet this demand before the respondent, made his offer to service the areas where ice was needed.[2] Moreover the respondent is authorized to produce only 20 tons of ice daily, whereas the petitioner has been allowed to increase its daily capacity from 30 to 40 tons in 1960, and recently, in 1964, to 70 tons. This only proves that there is indeed a great demand for ice in the area applied for by the respondent, and negates the probability of ruinous competition. On the contrary the resulting competition will undoubtedly benefit the public through improvement in the service and reduction in retail prices.

On the whole, we find no reason to deviate from the rule heretofore consistently applied that findings and conclusions of fact made by the Public Service Commission, when supported by evidence, are binding upon this Court.

Wherefore, the decision appealed is affirmed, with costs against the petitioner.

Concepcion, C.J., did not take part.

Reyes, J.B.L., Zaldivar, Castro, Fernando, Teehankee, Barredo, and Villamor, JJ., concur.

Dizon and Makasiar, JJ., on official leave.

[1] RC Ledesma vs. PSC, G.R. No. L-26900, Feb. 27, 1970, 31 SCRA 805; and cases cited.

[2] Phil. Long Distance Telephone Company vs. City of Davao G.R. No. L-23080, September 20, 1965.

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