

**FORTUNATO F. HALILI, PETITIONER, VS. FIDEL L. ISIP,
RESPONDENT.***G.R. Nos. L-2458 & L-2476. January 28, 1950*

Ponente: OZAETA, J.

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In a decision rendered on August 2, 1948, Judge Feliciano Ocampo of the Public Service Commission granted to the applicant Fidel L. Isip a temporary certificate of public convenience, valid only until December 31, 1948, to operate an ice plant of ten-ton daily capacity in San Francisco del Monte, Quezon City. The opponents, Fortunato F. Halili and Ice and Cold Storage Industries of the Philippines, Inc., filed separate petitions for the review of said decision.

Both petitioners in substance contend: (1) that public necessity and convenience do not require the temporary service proposed by the respondent; (2) that the proposed service by the respondent would cause ruinous, unfair and wasteful competition with the established business of each of said petitioners; and (3) that if public necessity required the additional service proposed by the respondent, the petitioners should have been given the preference and the opportunity to put up such additional service.

I. The first contention raises a question of fact. After analyzing the evidence adduced by both parties, Judge Ocampo stated in his decision:

"After a careful examination of the entire record, we find that the preponderance of evidence clearly establishes that public interests and convenience require that applicant be authorized to operate a 10-ton ice plant in San Francisco del Monte with authority to sell ice in San Francisco del Monte and Manila. We are satisfied from the evidence that there is sufficient demand for ice in San Francisco del Monte to warrant the establishment and operation of applicant's plant, and that the occasional ice service which is rendered to the residents of the place by outside operators is not adequate for the growing and continuous demand for ice now existing in the place. While it can not be said that San Francisco del Monte totally lacks an ice service, it is nevertheless established that the said service does not sufficiently fill the ice demands of the public, and there can be no question that the operation of applicant's plant in the locality would result in providing the people with that uniform and continuous supply of ice which, as shown by the evidence, they greatly need. Neither do we find in the record evidence to justify oppositors' contention that the operation of the proposed plant would result in wasteful competition inasmuch as it appears that the existing demand for ice is ample and sufficient for the output of oppositors¹ and applicant's plants."

As we have repeatedly held, in accordance with section 35 of Commonwealth Act No. 146, the Commission's findings of fact are conclusive upon us. We are not authorized to weigh the conflicting evidence and substitute our conclusion for that of the Commission. We are authorized to modify or set aside a decision of the Public Service Commission only "when it clearly appears that there was no evidence before the Commission to support reasonably" such decision. (*Ice & Cold Storage Industries of the Philippines, Inc. vs. Jose M. Valero and Jose Samson*, G.R. Nos. L-1371 and 1872, Nov. 18, 1949, and cases therein cited). Upon the record before us it cannot

be said that there was clearly no evidence before the Commission to support reasonably its decision.

II. The second contention is likewise untenable. As held in the cases of Valero and Samson, *supra*, and in other cases therein cited, "in order that the opposition based on ruinous competition may prosper, it must be shown that the opponent would be deprived of fair profits on the capital invested in its business. The mere possibility of reduction in the earnings of a business is not sufficient to prove ruinous competition. It must be shown that the business would not have sufficient gains to pay a fair rate of interest on its capital investment."

In any event, the certificate granted to the respondent was temporary and good only until December 31, 1948. If and when the respondent should apply for an extension or for the perpetuation of said certificate, the opponents and the applicant would have a better opportunity to demonstrate by the records of the respective earnings of the different ice plant operators in Quezon City whether or not the continuation of the operation by the respondent would result in ruinous competition.

III. The question raised by petitioners' third contention has been adversely decided by this court in various similar cases, among which are: Fortunato F. Halili vs. Ice and Cold Storage Industries of the Philippines, Inc., G.R. No. L-336 and L-343, 44 O.G. 1151; *in re* Quirino G. Gregorio, 44 O.G. 1216; Joaquin Ma. Joson vs. Ildefonso Santos, 45 O.G. 1740, 1743; and Ice and Cold Storage Industries of the Philippines, Inc. vs. Valero and Samson, *supra*. We find no reason in this case to depart from the ruling laid down in said cases.

The judgment is affirmed, with costs against the petitioners.

Moran, C.J., Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

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