

RUBEN L. VALERO AND ESTRELLA L. DE VALERO, PETITIONERS, VS. TERESITA L. PARPANA AND RAMON PAPA, JR., RESPONDENTS.*G.R. Nos. L-15328-29. October 31, 1960*

Ponente: GUTIERREZ DAVID, J.

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This is a petition for the review of a decision rendered by the Public Service Commission in Cases Nos. 113106 and 113956.

The records show that on February 12, 1958, the herein respondents Teresita L. Parpana and Ramon Papa, Jr., filed with the said Commission an application for a certificate of public convenience to install and operate an ice plant in the municipality of Tagudin, province of Ilocos Sur, with a productive capacity of 10 tons of ice daily, proposing to sell the ice they manufacture in said municipality of Tagudin and in the towns of Sevilla, Sta. Cruz, Sta. Lucia, Candon, Santiago and San Esteban, of the same province, as well as in the towns of Balaoan, Bangar, Sudipen, Luna and Bacnotan of the province of La Union. (Case No. 113106.) The application was opposed by Ruben L. Valero and his wife Estrella; L. de Valero, herein petitioners, who alleged that they are; the established operators with ice plants in San Fernando, La Union, and Candon, Ilocos Sur; that they are authorized to sell ice in all the towns which applicants Parpana and Papa propose to serve with' the plant they seek to install in Tagudin; and that, consequently, they (the Valero spouses) have a better right to a certificate of public convenience to operate a new ice plant in Tagudin. A month later, or on March 12, 1958, petitioners filed their own application for a certificate to install and operate a 3.6-ton ice plant in the same municipality of Tagudin with authority to sell the produce in said municipality as well as in San Fernando, San Juan, Bacnotan, Luna and Bangar, province of La Union, and in the towns of Sta. Cruz, Sta. Lucia and Candon, of Ilocos Sur. (Case No. 113956.)

Respondents' application, upon their motion, was heard before the Justice of the Peace Court of Tagudin, while that of petitioners was heard before the Commission in Manila. Before petitioner's application could be decided, however, respondents filed a petition asking that it be decided jointly with their own application, which petition was granted by the Commission.

From the evidence presented, the Commission found that there is sufficient need for ice service in the towns covered by the two applications to warrant the authorization of another ice plant in the municipality of Tagudin. Indeed, the need could hardly be disputed since both applicants have applied for such service. Excluding from those proposed to be served some of the towns which are very far from the site of the plant, the Commission authorized the establishment of an ice plant capable of producing 5 tons of ice daily. And finding that petitioners Valero spouses have not increased for the last 11 years the tonnage capacity of their two ice plants so as to meet the increased demand of ice in the territory they are authorized to serve, the Commission in its decision dated November 3, 1958 denied their application and approved that of Parpana and Papa, Jr., herein respondents, for a 5-ton plant in Tagudin, Ilocos Sur, with right to sell the ice they manufacture in said municipality of Tagudin, as well as in Sevilla, Sta. Cruz and Sta. Lucia of Ilocos Sur and in the towns of Bangar, Sudipen, Luna and Bacnotan

of the province of La Union.

In seeking a review of the decision below, counsel for petitioners contends that the Commission erred in holding that petitioners have failed to meet the increased demand of ice in the territory covered by their franchises. On this point the Commission made the following findings:

"* * * Since 1947 or for 11 years up to now, applicants Valeros have been satisfied to operate their two plants with a total capacity of 7 tons daily to serve the ice requirements of 17 municipalities of La Union and Ilocos Sur. Among these municipalities is San Fernando, the capital of La Union. The evidence discloses that just the six towns of Sta. Cruz, Bangar, Luna, San Esteban, Tagudin and Santiago have at present a total population of 94,000. San Fernando, Candon, and Narvacan are first class towns with big populations and as it has shown that with the years these towns as well as the others have continued to grow and there are in most of them hospitals, hotels, restaurants, refreshment parlors and other business establishments which need ice everyday. As operators of the San Fernando and Candon Plants, the Valeros knew or should have known that their 7-ton production which probably was adequate 11 years ago cannot now and during the last few years meet satisfactorily the ice demands of the public in the towns which they are called upon to serve and yet it does not appear that the Valeros at any time sought to increase the production of their plants so as to meet these increasing demands except when they filed their application for a plant in Tagudin one month after the application of Parpana and Papa was filed. There seems to be merit in the contention of applicants Parpana and Papa that the Valeros did not make any effort to bring about an increase in their service until somebody else sought to put up an ice plant within their territory. * * *"

From an examination of the records, we find the above findings to be amply supported by the evidence and consequently cannot now be disturbed. In reviewing a decision of the Public Service Commission this Court "will not substitute its discretion for that of the Commission on questions of fact and will not interfere in the latter's decision unless it clearly appears that there is no evidence to support it." (*Santiago Ice Plant and Co. vs. Lahoz*, 87 Phil., 221; 47 Off. Gaz. [12] 403; *Pineda vs. Carandang*, 107 Phil., 369; 58 Off. Gaz., [32] 5427.)

It is alleged that on August 27, 1957 petitioners actually applied for the operation of a 2-ton capacity ice plant in Balaoan, La Union, which application is still pending. It would appear, however, that they filed said application only after one Victorio B. Flores had the month before filed an application to install and operate an ice plant in said municipality of Balaoan, which was also opposed by petitioners. (See Cases Nos. 10825 and 109029.) This was exactly what happened in Case No. 113106 concerning respondents' application now under consideration. Apparently, the subsequent filing by petitioners of an application of their own was a tactical move to secure for themselves, as established operators, preference in the grant of authority for additional service, should the Commission decide after hearing that there is need for such additional service. Such tactical move, however, cannot hide the fact, as found by the Commission, that over a period of many years, petitioners failed to take steps to increase their service and facilities so as to be able to cope with the increasing demands of the public. For this reason, the Commission correctly held that petitioners cannot claim preferential right as an old operator.

"Moreover, even assuming for a moment that petitioner were an old operator on the line in question, nevertheless he has not applied for an increase in his service but allowed another to do so; and according to a line of decisions, it has been ruled that the granting of preference to an old operator applies only when said old operator has made an offer to meet the increase in traffic and not when another operator even a new one, like respondent * * *, has made the offer to serve the new line or increased the service on said line." (*Manila Yellow Taxicab Co., Inc. vs. Castelo*, 108 Phil., 394; 59 Off. Gaz., 694; see also cases cited therein.)

There being no reason to disturb the decision brought here for review, the same is hereby affirmed, with costs against petitioners.

Paras, C.J., Bengzon, Padilla, Bautista Angelo, Labrador, Reyes, J.B.L., Barrera, and Paredes, JJ., concur.

Decision affirmed.

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