

DEMETRIO CARPENA, PETITIONER, VS. MELQUIADES SALISI, LEONCIO OPULENCIA, AND LEONOR LAT, RESPONDENTS.*G.R. No. L-22027. July 31, 1973*

Ponente: TEEHANKEE, J.

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In this appeal from an adverse order en banc of the Public Service Commission, the Court finds that the original decision of the first division granting petitioner a certificate of public convenience to operate a 15-ton ice plant in Cabuyao was duly based on factual findings which established the public need and necessity for such facility in addition to those provided by existing operators, and that the split majority order of the commission en banc (by a four to two vote) arbitrarily re-versing the decision and denying petitioner's application without questioning much less setting aside the decision's basic factual findings of public necessity or reciting any contrary fact or circumstance to justify reversal, must therefore be set aside.

Petitioner filed the petition at bar on October 24, 1963 to set aside and enjoin pending review by this Court the public service commission's en banc split order of August 15, 1963 (by a four to two vote, with then commissioner Enrique Medina penning the order reversing himself and the decision of the first division originally granting petitioner's application for a certificate of public convenience in which he himself had concurred) reconsidering after almost seven months the favorable decision of the first division of January 25, 1963 and denying petitioner's application for a certificate of public convenience to operate an ice plant in Cabuyao, Laguna.

Petitioner first filed on March 16, 1960 with the commission his application for installation and operation of a twenty-ton ice plant in Cabuyao, Laguna and to sell its production therein as well as in the municipalities of Biñang, Sta. Rosa, Calamba, Los Baños and Bay, Calauang, Sta. Cruz and Pila, all in Laguna province.

Respondent Melquiades Salisi, operator of a 10-ton ice plant in Calamba, Laguna and respondents Leoncio Opuencia and Leonor Lat, operators of a 10-ton plant in Tanauan, Batangas, all with obligation to service the municipalities of Laguna sought to be serviced by petitioner, filed their respective but identical oppositions on the ground "that there is no necessity or public demand which warrants the installation and operation of an ice plant in the said municipality of Cabuyao, in view of the fact that ice is adequately supplied therein by the herein oppositor and the other authorized operators, neither will it promote public interest and convenience, on the contrary it will only cause and be conducive to ruinous competition between the applicant and the herein oppositors and other authorized operators." [1]

While petitioner's application was being heard with respondents strongly opposing it on the ground that there was no necessity for the proposed ice plant in Cabuyao and public interest and convenience would not be promoted, respondent Salisi filed on April 22, 1960 with the commission his own application to increase his Calamba ice plant capacity from 10 tons to 30 tons (by the addition of another 20 tons capacity) on the ground that "public convenience and necessity badly need and require" such increase of capacity.

Respondent Salisi further filed another application for installation of a refrigerated ice storage with a capacity of 20 blocks of ice in Cabuyao (to come from the plants in Sta. Rosa and Calamba) citing the needs and demands of public convenience in justification thereof.

Petitioner appeared at the hearing of Salisi's applications and prayed that the same be jointly heard with his application citing the common issue involved and his right of priority by virtue of his prior application and that Salisi's counter-applications were filed only to defeat his prior application.

The commission denied petitioner's motion for joint hearing with Salisi's application for a 20-ton increase of ice plant capacity as per its order of July 27, 1960[2] and subsequently per its order of November 22, 1960 granted Salisi's application citing the public need therefor, as adduced by Salisi, as follows:

"xxxx xxxx that the additional production is asked because the present production of 10 tons is insufficient to meet the demands of the public because the plant serves not only the people of Sta. Rosa but also the towns of Biñan, Cabuyao, Los Baños, Calamba, Bay and San Pedro; that due to shortage of production people in those towns who need ice have to go to other places to purchase it and also ice from plants in other places has to be brought to Sta. Rosa but the service of this kind does not assure a regular supply; that the additional demand for ice is due to the increasing population of Laguna which now has a population of 477, 000 or an increase of 155,000 from 1948; that the demands for ice in Sta. Rosa and the towns served by his plant continue to increase for which reason he desires to put up the additional unit to meet this increasing demand, and that public convenience will be promoted by the authorization of this additional unit." [3]

The commission as per its order of May 13, 1960 likewise denied petitioner's prayer for joint hearing with Salisi's application for refrigerated ice storage and in the same order granted Salisi's application, after stating that "the claim of Carpena that the ice storage would defeat his application for an ice plant in Cabuyao is not correct either because Carpena's application is for 20 tons while the ice storage requested is only for 20 blocks of ice."

After petitioner had finished presentation of his evidence, the hearing commissioner, then associate commissioner Gabriel P. Prieto found that his evidence showed urgent necessity for ice to supply the needs of the territory in question and entered an order dated May 21, 1961 granting petitioner provisional authority (since there was no possibility of terminating the proceedings in a reasonably short time) to install and operate a 10-ton ice plant in Cabuyao, stating that

"xxxx xxxx The records of this case, however, show that of the twenty tons authorized oppositor Salisi as additional capacity for his Santa Rosa ice plant, he has so far installed only ten (10) and therefore there is still lacking another ten (10) tons. The evidence of applicant also shows that there is need for around 600 blocks of ice or 85 tons daily, computing at the basis of 7 blocks per ton, resulting in a difference of 25 tons to cover up the required 85. But as above stated, of the 20 tons authorized lately to Salisi, he has only installed 10 tons so the difference in tonnage rises to 35. We believe that for the purpose of the provisional authority, applicant could be authorized this difference of 10 tons."

The two other members of the first division, then commissioner Ale-jandro A. Galang and associate commissioner A.H. Aspillera, dissented however against the grant of provisional authority on the ground of lack of urgent need and that petitioner had no ice machinery installed and was not ready to operate immediately.

The application thus dragged until 1963. After respondents had rested their opposition, the case was submitted for decision to the first division composed of new commissioners, namely commissioner Enrique Medina with associate commissioners Gregorio C. Panganiban and Francisco A. Perfecto, with the latter being the hearing commissioner until termination of the case. The division, after noting the commission's earlier grants of Salisi's counter-applications for a 20-ton increase of his Calamba ice plant capacity and for refrigerated ice storage in

Cabuyao, found the total of 50 tons of ice plant then authorized to oppositors to be insufficient to meet the needs of the fishermen, storeowners and residents of the six well-populated towns sought to be serviced also by petitioner and handed down its unanimous decision of January 25, 1963 (penned by commissioner Perfecto) overruling the oppositions and granting petitioner's application for a certificate of public convenience and authorizing him to install and operate a 15-ton ice plant in Cabuyao, Laguna and to service the ice needs thereof and of the five other towns of Laguna listed in the application, excluding Calauang, Sta. Rosa, Sta. Cruz and Pila.

Respondents filed their motion for reconsideration on February 14, 1963 and much later on August 15, 1963, the commission en banc entered split order (by a vote of four to two) with the majority opinion this time penned by then commissioner Enrique Medina (who had concurred with then associate commissioner Perfecto and Panganiban in the first division's original decision on January 25, 1963 finding the application to be fully justified by public necessity and need) and concurred in by then associate commissioners Josias K. Guinto, Alex F. de Guzman, and Jose A. Fornier, wherein they principally invoked the protection rule for old operators and stated their "con-sidered opinion that the decision of this commission dated January 25, 1963, granting applicant Demetrio Carpena authority to install and operate a 15-ton ice plant of Cabuyao, Laguna be reconsidered and that said application be, as it is hereby DENIED." [4]

Then associate commissioners Perfecto and Panganiban entered strong dissents stressing that the majority opinion of reversal does not "question the findings of facts and circumstances as supported by the evidence adduced" nor recite any fact or circumstance to warrant reversal of the original decision and citing the inconsistent stand as well of oppositors who disclaimed public need for the service in their opposition but admitted and even alleged such public need in filing their own applications for increases of their authorized capacity, as of then commissioner Medina in joining the unanimous decision of the first division granting the application and now on the very same facts reversing himself and the original decision concurred in by him.

Hence, the filing of the petition at bar. Upon petitioner's show-ing in his petition that pursuant to the decision of January 25, 1963 en-joining him to install the ice plant within six months from date of the de-cision, he had already purchased a 10-ton ice plant [5] and installed the same at a cost of P153,000.00 and that the same was in full operation, besides having contracted for the purchase of another 5-ton unit at a cost of P57,500.00 to comply in full with the total capacity granted him, the Court issued on October 31, 1963 upon a P10,000 bond a writ of preli-minary injunction enjoining implementation of the commission's reversal order of August 15, 1963 so as to allow petitioner to continue operating his ice plant during the pendency of this appeal.

Successive motions for reconsideration and lifting of the pre-liminary injunction were filed by respondents and denied per the Court's resolutions of December 3, 1963, January 3, 1964 and February 18, 1964.

Respondents further filed on March 30, 1964 a motion for restraining order to prevent petitioner from installing an additional 5-ton ice plant unit to complete the 15-ton capacity authorized unto him in the commission's decision of January 25, 1963 as reversed in the appealed order of August 15, 1963 but the Court virtually denied the same as per its resolution of April 14, 1964 wherein it resolved to consider the same "when the case is decided on the merits."

I

The petition is meritorious and must be granted.

The Court is satisfied that the first division's original decision of January 25, 1963 found on the basis of facts duly established by the evidence that notwithstanding the 20-ton increase in ice plant capacity previously granted respondent-oppositor Salisi as an old operator for his Sta. Rosa ice plant and for refrigerated ice storage for 20 blocks of ice (equivalent to 3 tons of ice) in Cabuyao, that public need and necessity justified the grant of

petitioner's application for an ice plant facility in Cabuyao, although in a reduced capacity of 15 tons (5 tons less than the original 20 tons applied for). Thus, the following factual findings were expressly made in the decision:[6]

"From the evidence adduced by applicant, it appears that according to the census taken in 1960, Cabuyao has a population of 22,040 inhabitants; that practically one third of the people living in the coastal barrios of the municipality are engaged in fishing, owning about 600 motor boats and 150 bancas; that these fishermen cannot go out everyday to sea to earn their daily bread because of the lack of ice; that because of this scarcity of ice, these fishermen receive a very limited amount of ice to the extent of receiving their ice rations only on two days during the whole week; that at present, there is no ice plant in the municipality of Cabuyao; that the fish caught in the Laguna de Bay were brought to the province of Cavite, to Tanauan, Lipa, Rosario, Batangas in the province of Batangas, and to other provinces in Central Luzon as far as Nueva Ecija and Pangasinan; that in this fishing industry, the fishermen must have a supply of ice before going out to fish in order to conserve the freshness of the fish while at sea, and they also must have ice upon landing their catch to prevent the fish from rotting on their way to the other provinces; that oftentimes, these fishermen are forced to go out to sea without ice, and if upon landing the fish caught, there is no ice available, they are forced to sell their catch at a low price before the fish rots as fish caught in fresh water easily rots unlike the fish caught in salt water, and what is left of the fish unsold are used for family consumption and the rest are used as duck (itik) feed; that the Mayor of the town of Cabuyao has been approached by these fishermen asking for help and remedy their plight because of the lack of ice; that there are store owners catering 'halo-halo', and ice cream manufacturers who were forced to close shop because of the uncertainty in their supply of ice by the ice dealers, inasmuch as in spite of the fact that they receive a meager ration, the ice does not come everyday; that there are instances when people needing ice went personally to the very ice plants both in Santa Rosa and in Calamba, in the province of Laguna, but were not able to purchase any ice, there being none in these plants, that inspectors of this Commission who were sent to these ice plants to make observations, first approached these ice plants incognito, and upon making attempts to buy ice, were denied, but upon making themselves known, were admitted to make inspection and found violations being committed by the plant owners; that these inspectors of the Commission have approached trucks selling ice in the territory applied for by applicant, which ice came from ice plants operating outside of these municipalities, like the ice plant of Jose Samson in Mandaluyong, Rizal, the ice plant of Venancio Quiambao in Bayanan, Muntinlupa, Rizal, the ice plant of Teofilo H. Tiong-son in San Pablo City, and from the Ice & Cold Storage Industries (commonly known as the San Miguel Brewery) here in Manila.

"xxx xxx xxx

"At the very outset, it is very apparent, as it is undisputed, that there is no ice plant, even at present, operating in Cabuyao, Laguna, where applicant Deme-trio Carpena proposes to establish his ice plant. It has never been contradicted that the residents in the coastal barrios of said town make their livelihood through fishing in Laguna de Bay where they employ different methods of fishing, and that the fish caught were brought to the provinces of Cavite, Batangas, Nueva Ecija and Pangasinan. It is evident, therefore, that ice must be produced and procured in sufficient quantity to conserve the state of the fish up to the place of their destination. The main purpose, therefore, of the application is to help these fishermen who live along the coastal barrios of the municipalities of Biñan, Santa Rosa, Cabuyao, Calamba, Los Baños and Bay, and to prevent from deterioration the dying fish-ing industry along these coastal towns and barrios resulting from the want of ice. The supply of ice to the different stores and ice cream manufacturers in the territory applied for, although significant due to the fact that many of these store owners and ice cream manufacturers have to stop their business because of the uncertainty of the coming of ice, is but secondary. And yet, we certainly have to look to the interests of these store owners and ice cream manufacturers. It is worthy to note that one of the witnesses for the applicant testified that he was forced even to help his wife in washing clothes whenever he could not manufacture ice cream due to lack of ice. So also is the testimony of another witness for the applicant, who declared that the fish he caught, which could have been used for human consumption, were given to the ducks due to the shortage of ice.

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"xxx xxx We do not believe that the total of 50 tons of ice presently authorized to the oppositors, is enough to meet the needs of the fishermen, store owners and residents of the six (6) well populated towns of Biñan, Santa Rosa, Cabuyao, Calamba, Los Baños, and Bay in the province of Laguna, covered by the application, the population of which totals 171, 211 as per census of 1960. Neither do we believe that a mere refrigerated ice cold storage of 20 blocks of ice can best serve the interests of the fishermen and the people of Cabuyao. The establishment of said refrigerated ice cold storage is a poor attempt on the part of the oppositors to thwart and frustrate the efforts exerted by applicant in his attempt to solve the problem of the fishermen in the coastal towns and barrios along Laguna de Bay from Biñan to Bay in Laguna, and to defeat the present application. Our Supreme Court has already made the ruling in the leading case of *San Mi-guel Brewery v. Espiritu* (60 Phil 745) that 'even in the case where an outside manufacturer has an ice deposit in the locality, this Court has found and hold that it is always more advantageous to have an ice plant in the same locality.'

"We fail to comprehend the stand of oppositors when they filed their oppositions against the present application alleging that there is no necessity which war-rants the installation and operation of the proposed ice plant, and yet take refuge in the same necessity alleged by the applicant Carpena when they filed their application for authority to increase the productive ca-pacity of their ice plant in Santa Rosa, and then pro-ceeded to establish such necessity in prosecuting said application.

"And in the case of the town of Los Baños in La-guna, notwithstanding the existence of an ice deposit box maintained by Frisco Quintos, and admittedly fed by oppositors Leoncio Opulencia and Leonor Lat, they still have to apply for a legislative franchise to operate an ice plant in the very town of Los Baños. By this act on the part of oppositors, they unwittingly admit-ted that not only there is need for more ice in Los Baños, but also it is better to have an ice plant in the locality than to have a mere ice deposit box or even a refrigerated ice cold storage at that, and further, it reveals that oppositors are trying their best to defeat the present application of Carpena. xxx xxx"

The commission's en banc majority opinion reversing the decision, did so without questioning much less setting aside the findings of facts and circumstances as recited in the decision or re-citing any contrary fact or circumstance to justify reversal of the original decision and simply stated that:

"xxx xxx Consequently, while it was the first impression of this Commission that the filing by oppositor Salisi of an application for in-crease of the tonnage capacity of his ice plant in Sta. Rosa and the establishment of an electrically refrigerated ice storage in Cabuyao were intended to 'thwart and frustrate' the application of applicant Demetrio Carpena, we cannot be unmindful of the immediate and far-reaching effect of oppositor's additional investments and efforts in increasing his ice plant's productive capacity and improving the quality of his service, on the existing public need for more ice. Viewed on this perspective, we believe that oppositor's effort on this regard merits favorable consi-deration that militates against granting a new service to any new applicant. We believe also that a very material distinction exists between an electrically refrigerated ice storage which conserves ice as originally produced in an ice plant, and that of a mere ice deposit where ice is conserved by palay husks or other crude and inef-fective methods." [7]

before proceeding to make the bare conclusion and "considered opinion" that the original decision "be reconsidered and that said application be, as it is hereby DENIED."

Respondents in their brief[8] concede as much, contending that "(I)t is true that the reversing order does not state in the precise terms suggested by the petitioner that 'the need for ice in the territory in question has already been satisfied with the increase of 20 tons in Sta. Rosa and the ice storage for 20 blocks in Cabuyao, and that there is no further necessity for petitioner's ice plant' (pp. 16-17, Petitioner's Brief). But although couched in different terms, could there be any other obvious implication of the finding of the Commission" (here res-pondents refer to and quote the portion of the majority's statements al-ready quoted supra, on oppositor's efforts to "increase his

ice plant's productive capacity and improving the quality of his service" as "merit-ing favorable consideration that militates against granting a new service to any new applicant."

These fatal flaws in the commission's reversal order, border-ing on arbitrarily setting aside the decision on the basis of mere caprice and without factual justification since the public need found in the deci-sion was in no way assailed or set aside by the reversal order were high-lighted in then associate commissioner Perfecto's dissenting opinion, wherein he stressed the following facts and considerations which were in no way met by the reversal order:

"1. That the reversing order does not deny the facts proving the existence of the necessity of more ice supply in Cabuyao; and

"2. That it does not deny that the limited twenty (20) blocks of ice in oppositor's electrically refrigerated ice storage in Cabuyao is grossly inadequate and insufficient to meet the necessity of the whole town including the barrios.

"The records of the Commission show that oppositor Salisi has a 30-ton ice plant in Sta. Rosa which has a population of about 26,490, and another 10-ton in Calamba with 62,619 people. Cabuyao has 22,596 inhabitants of which 3, 722 reside in the poblacion while the 18,874 are scattered in the nearby bar-rios. She is sandwiched between Calamba and Santa Rosa, each of which is eight (8) kilometers away from Cabuyao. Close to Santa Rosa is the municipality of Biñan on the north with some 33. 448 inhabitants. All these four towns lay in a row along the National Road and all are adjacent to the Laguna de Bay lake. All are blessed with rich fishing grounds and naturally rich productive lands lying along the bounteous Laguna de Bay lake. All are progressive and fast developing due to their proximity to Manila and the tremendous highly developed industrialized suburbs and nearby provinces, what with the opening of the Super Highway and the efficient means of transportation coming from these four towns everyday to and from Manila.

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"xxx xxx as early as May, 1960, this Commission already indicated that Carpena's propos-ed 20-ton ice plant for Cabuyao would not be defeated or denied since oppositor Salisi's requested storage is ONLY FOR 20 BLOCKS of ice. It also implied that these 20 limited blocks of ice in storage was inadequate and insufficient to meet the need for ice in Cabuyao. Of more significance still is the undenied testimony of oppositor's witnesses that these 20 blocks were 'being sold mostly around the neighborhood of that storage and in the poblacion.' Beyond this limited territory, no ice is being served. None is being dis-tributed to the fifteen other barrios of Cabuyao. The poblacion has a mere 3,722 inhabitants while the bar-rios bordering the rich fishing ground has a popula-tion of 18,874. These are the people who need the ice for their fishing industry and incidentally for their home consumption. Why must the Commission, in the order under consideration, deny these people dedicated in the important fishing industry, the ice they very badly need for the conservation of their catch to enable them to bring their fish to other places, which according to the evidence of record, reach as far as Cavite, Nueva Ecija and Pangasinan? Why must the mantle of protective rule be afforded an operator who not only limits his ice service to a limited few in the neighborhood of his storage but also fails to serve the greater bulk of the population in the other barrios of Cabuyao numbering 18,874? These are the people living around the rich fishing grounds of the lake and who badly need the ice, and whom the applicant pro-poses to serve. Where is justice in the reversing or-der, or is injustice a necessary ingredient to an un-satisfiable greed for monopoly on a much needed and prime commodity, thereby helping this industry to lag behind and prevent the town of Cabuyao from a steady progress and development along side by side with her sister towns on this Laguna de Bay region?

"We have authorized oppositor Salisi a total of 30 tons in his ice plant in Santa Rosa with 26, 490 inhabi-tants, and a 10-ton ice plant in Calamba with 62,619 inhabitants. Why discriminate against the residents of Cabuyao by allowing (and) protesting oppositor Salisi to limit his supply to the residents of the vicinity of his ice deposit

together with those in the poblacion to a meager 20 blocks to the detriment and deprivation of the 18,874 residents along the seashore of Cabuyao dedicated to the fishing industry? How could justice be given to these people who are in great need of ice for the conservation of their catch? Instead of helping these people to aid in the development of the economic conditions of the Philippines, the Commission in the reversing order is trying to flatly deny them any help and deter the progress of the community, all because of the monopolistic desire of this oppositor. And why insert in the reversing order the belief of the Commission that an electrically refrigerated ice storage conserves ice as originally produced, when there has been no issue about its quality? Is it to be used as a cover for the reversing order? I do not see any point in discussing such immaterial fact inasmuch as there is the proven fact that this so-called refrigerated ice storage serves a meager 3,722 inhabitants but does not reach to the 18,874 residents of the more important barrios along the coast.

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"xxx xxx in the reversing order, the Commissioner admitted that the 'old operator rule' is not an absolute one. But he tries to minimize this rule by citing alternative defenses. No party must be allowed to come to this Commission, nay to any Court in this jurisdiction, to make the Commission or the Court believe in the non-existence of a fact when the other party has proved it, only later to aver and allege such existence when it is to his advantage and to defeat the other party (the applicant in this case), such party pre-sents an application for increase of his service. Such alternate defenses must have the same meaning and effect if to be given credence. One must be consistent with the other, not like in the present case when oppositors disclaim the need for the service when op-posing the application filed by applicant Carpena, but on the other hand admit and even allege such need when filing their own application for increases of their service in order to defeat the former application. Such alternate defense only tends to reveal the true character of oppositor in their monopolistic desire to corner the business and restrain this Commission from further granting any certificate to new applicants.

"I am not against the 'old operator rule. 'I, for one, will be the first one to apply this rule if and when the circumstances warrant, but not in the present instance when oppositors slept on their right and when awakened and bothered by the present application, hurriedly tried to console the Cabuyao residents with a 20-block storage but denying the need (of the) majority. xxx xxx'

It may be stated by analogy that the Commission en banc when passing upon a motion for reconsideration of a decision rendered by a division, as in the case at bar, occupies the position of a reviewing court and hence would ordinarily be bound by the factual findings made in the decision, save in the well known exceptions where such findings are grounded entirely on speculation, surmises or conjectures, or are based on an inference that is manifestly mistaken, absurd or impossible or are conflicting; or when the decision of the division is based on misapprehension of facts or mistake or the findings of fact made are contrary to the admissions of the parties.[9] No such exceptions apply here.

Withal, the commission en banc does have the authority to review the evidence and record and when warranted, to modify or set aside the factual findings and conclusions of the decision rendered by the division - since it is the same commission with a full membership called upon to pass and rule upon motions for reconsideration of decisions of its two divisions. But no such modification or contrary findings of facts were made by the commission en banc to justify reversal of the decision of the first division. On the contrary, the findings made in the decision fully bear out the factual finding therein of public need and necessity for the facility granted unto petitioner and such finding, which in no way was assailed or questioned by the reversal order, must prevail over the majority's arbitrary action of reversing the original decision. Stated in another way, it is vital for sustaining the majority's reversal order that some mistake or misappreciation or some such other nullifying factor be shown in the decision's factual findings of public need and necessity, specially so, where then commissioner Medina, without whose vote there would not be a majority to reverse, had fully concurred in the original decision and yet

has not established in the majority order of reversal the existence of any mistake or misapprehension of fact in the decision's factual findings that would warrant its reversal.

Parenthetically, it may be added that time is of course the best judge of conflicts and factual issues. Time indeed has shown here the inadequacy of the ice plant facilities of oppositors and the public need and necessity for the 15-ton ice plant which petitioner has operated all this time in Cabuyao and serviced the needs thereof and of the five other neighboring towns without any ruinous competition having been caused between him and the old operators, particularly herein oppositors, despite the 20-ton ice plant capacity increase in Sta. Rosa granted by the commission to Salisi and the Los Baños legislative franchise secured by the Opulencias from Congress under Republic Act No. 3920.[10]

II

On February 22, 1969, petitioner filed a motion for leave to file his verified urgent manifestation with which he submitted several documents showing that on June 6, 1966, respondent Salisi had without commission approval sold for a stated total consideration of P160,000.00 his certificates of public convenience to operate a 30-ton ice plant in Sta. Rosa and for ice storage service in Cabuyao with the parcels of land on which the facilities were constructed with all the equipment (P120,000 for the Sta. Rosa ice plant and P40,000 for the Calamba ice plant) to the children of his co-respondents, Leoncio Opulencia and Leonor Lat, namely, Melchor, Manuel and Jose, all surnamed Opulencia and Retita O. Ilao;[11] that respondents Opulencias in a verified complaint filed against their children in the Lipa city court of first instance for recovery of the ice and cold storage plants supposedly sold to them by Salisi on June 6, 1966, claim to be the real owners of Salisi's certificates of public convenience and that they had financed said business since its installation and operation, in effect making Salisi "a mere dummy;"[12] that respondent Leoncio Opulencia had secured from and been granted by Congress under Republic Act No. 3920 approved on June 18, 1964 a legislative franchise to construct and operate an ice plant and cold storage in Los Baños, Laguna and to sell the ice and supply cold storage service within the province of Laguna and San Pablo City;[13] and that the commission had on February 18, 1967 granted over petitioner's opposition the Opulencia spouses' application to transfer their 10-ton ice plant in Tanauan, Batangas to Calamba, Laguna.[14]

Petitioner submitted these additional developments in support of his petition and contention that respondent Salisi by virtue of his sale of his ice plant certificates and services has lost personality and interest in the proceedings and that the Opulencias' actions of securing a franchise for Laguna and of transferring their Tanauan ice plant to Calamba completely contradicted and negated their opposition to petitioner's application.

In compliance with the Court's requirement, respondents filed their unverified comment on April 24, 1969, wherein they manifested that "(F)rom the very beginning, respondent Salisi was hard pressed for financial resources" with which to install and operate the ice and cold storage plants and turned to his co-respondents the Opulencia spouses for financial assistance which reached the total sum of P155,000.00 by 1965; that unable to liquidate his indebtedness, he offered to transfer the ice plant and cold storage services to the Opulencias "in payment of his account and for the additional consideration of a sum of money" which offer was accepted by the Opulencias who asked him in view of their advancing age to execute on June 6, 1966 the deed of sale in the names of their four children who themselves paid no consideration for the transfer; that right after the transfer, the Opulencia children "started quarreling among themselves over the control and management of the ice plants transferred in their names" and the Opulencias "asked their children to execute a deed of cession and transfer of the properties in their favor, but one of them, Manuel Opulencia, refused;" that instead Manuel instituted a complaint in the Laguna court of first instance for partition and liquidation of the properties, prompting the Opulencias to file the action against their children in the Lipa court of first instance "for the reconveyance of the

properties acquired from Salisi;" and that "(P)ending the determination (of the two court cases) respondents Opulencias could not file the corresponding petition for approval of the sale and transfer to them."

The Court does not deem it necessary to resolve the supplemental issues raised in petitioner's urgent manifestation, in view of the results already reached on the merits of the petition, as hereinabove stated. The secondary issues raised as to whether Salisi was just "fronting" for the Opulencias as a consequence of which the very certificates of public convenience obtained by Salisi should be cancelled for having been fraudulently obtained, are matters which will have to be determined in the pending litigations between the Opu-lencias and their children, as well as by proper charges that should be filed with the public service commission or its successor-agency.

ACCORDINGLY, judgment is hereby rendered revoking and setting aside the appealed order en banc of August 15, 1963 of the public service commission and affirming its decision of January 25, 1963. The preliminary injunction heretofore issued against implementation of the order en banc of August 15, 1963 is hereby made permanent. With costs jointly and severally against respondents.

Makalintal, Acting C.J., Ruiz Castro, Fernando, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.
Zaldivar, J., on leaves.

[1] Annexes B and C, petition, emphasis furnished.

[2] Annex E, petition.

[3] Annex F, petition, emphasis furnished.

[4] Annex K, petition.

[5] As per resolution of Jan. 27, 1964, Rollo, p. 58.

[6] Decision, Annex J, petition; emphasis furnished.

[7] Annex K, petition, emphasis furnished.

[8] At page 18.

[9] Cf. Ramos vs. Pepsi-Cola Bottling Co., 19 SCRA 289 (1967).

[10] *Infra*, see next paragraph.

[11] Deed of Sale and Assignment executed by Salisi in favor of the Opulencia children, Annex A, manifestation.

[12] Verified complaint of Opulencia spouses against their children docketed as Civil Case No. 1899 of the Lipa City court of first instance, Annex B, manifestation.

[13] Republic Act No. 3920, Annex C, manifestation.

[14] Decision of the public service commission dated Feb. 16, 1967 penned by associate commissioner Josue L. Cadiao and concurred in by associate commissioner Josias K. Guinto, Annex D, manifestation.

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