

**BACOLOD ICE AND COLD STORAGE CO., INC., PETITIONER, VS.
NEGROS ICE AND COLD STORAGE CO. INC., RESPONDENT.***G.R. No. L-7088. May 16, 1956*

Ponente: PADILLA, J.

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For a period of nearly 22 years by a certificate of public convenience the Negros Ice & Cold Storage Co., Inc. was authorized to operate and has operated an ice plant with a daily productive capacity of 5 tons, and on 26 September 1950, to increase it to 15 tons (Appendix G; case No. 58242), and to sell its production within the Municipality of Bacolod later on converted into Bacolod City. On 8 May 1952 the operator filed an application in the Public Service Commission praying that it be authorized to sell its production not only within Bacolod City but also in the whole province of Occidental Negros (Appendix A; case No. 66402). The Bacolod Ice & Cold Storage Co. Inc., that had its ice plant in Bacolod City and was authorized to sell its production throughout Occidental Negros except in Bacolod City and subsequently authorized to sell it in the aforesaid city; the San Carlos Electric Co. that had its 5-ton plant in San Carlos and was authorized to sell its production in San Carlos and Calatrava; the Insular Lumber Co. that had its plant in Fabrica and was authorized to sell its production in Fabrica and Paraiso; Jesus Campos who had his ice plant in San Enrique and was authorized to sell his production in La Castellana, Isabela, La Carlota, Pontevedra, Valladolid, Pulupandan, Maa and Murcia; and Elpidio Javellana who had his 10-ton ice plant in Cadiz and was authorized v to sell his production in Cadiz. Manapla, Fabrica, Sagay and Escalante, all filed separate oppositions to the application claiming that the efficient service they were rendering their respective authorized territories did not warrant the grant to the applicant of permission to bring and sell its ice outside Bacolod City and within their respective authorized territories. Hearing on the case was commenced before the Commission in Manila and, upon motion of the oppositors, continued before the Municipal Judge of Bacolod City. Only the Insular Lumber Co. and the Bacolod Ice & Cold Storage Co., Inc. presented evidence in support of their oppositions.

On 23 August 1952 the Public Service Commission granted the applicant a provisional license or permit to sell its production not only in Bacolod City but in all the towns of Occidental Negros, with the exception of Fabrica, subject to alteration or revocation by the Commission at any time and to whatever decision is finally rendered in the case.

After hearing, on 28 August 1953 the Public Service Commission rendered judgment the dispositive part of which is-

After due and careful consideration of all the oral and documentary evidence presented, and finding that public interests and convenience will be promoted by permitting the applicant to sell ice in all the towns of Occidental Negros, with the exception of Fabrica, Cadiz and Victorias, the Commission hereby approves the application filed in this case and authorizes the applicant to sell the ice produced in its ice plant in Bacolod City not only in Eacolod but in all the town of Occidental Negros, excepting Fabrica, Cadiz and Victorias, and applicant's certificate of public convenience in Case No. 58242 is hereby amended accordingly.

The provisional authority granted in this case by order of August 23, 1952 is hereby revoked. (Appendix C.)

The Bacolod Ice & Cold Storage Co., Inc., comes to us and prays for a review of the judgment thus rendered under the provisions of section 35, Com. Act No. 146 and section 1, Rule 43.

The Public Service Commission made the following findings and pronouncements:

* * * Evidence of the Bacolod Ice & Cold Storage consists of the testimony of witnesses Eliseo Emilia, Ernesto Boneto, Gregorio Villas, Julian Parreno, Conrado Gamboa, Eusebio Dionila, Francisco Orbe and L. Alit. " The first four testified that they were engaged in the sale of leche eon hielo and that they use ice every day but that all the ice that they need, they could obtain from the Bacolod Ice and they never had any difficulty in obtaining this ice from the said oppositor. Witnesses Gamboa and Dionila testified that they operate fishing boats in Silay and Bacolod and that the ice that they need for their boats they have always been able to obtain from the Bacolod Ice & Cold Storage Co. without any difficulty. Orbe and Alit testified that as salesmen of the Bacolod Ice they go out to other towns of the province and according to their investigations there is no shortage of ice in any of these towns because of the service rendered by the Bacolod Ice Company. The Manager of the Bacolod Ice & Cold Storage, Leandro Gruet, was also presented to testify as to the alleged losses suffered by the said company in its ice business and identified its Exhibit "1" showing that in the months of August to November, 1952 and February and March, 1953, the company suffered losses, and Manuel Roig, supervisor of the opponent company, testified to the fact that the applicant charges rates not authorized in the sale of its ice. Rebuttal evidence was presented by the applicant consisting of the testimony of witnesses Antonio Gaston, D. Espanilla and Cesar Dimson, the testimony of the first being that as a fishing boat operator, he cannot always obtain ice from the Bacolod Ice Company and even fishing boats in Silay, and that this frequent shortage of ice would be remedied if another operator were permitted to sell in other towns of Negros Occidental where there is continuous demand for ice. Dimson testified that as salesman of the Negros Ice and Cold Storage he has found that there are many towns in Negros where an additional supply of ice would be beneficial to the public.

We have gone over the evidence very carefully and are satisfied that the preponderance of the evidence establishes that there is a public need for authorizing the applicant to sell its ice in other towns of Negros Occidental outside of Bacolod City. It is sufficiently established that there are many places in Negros Occidental where ice service is very inadequate if not inexistent, and if this situation can be remedied by permitting an operator to bring his ice to these places, we see no reason why an authority to this effect should not be granted. The evidence of the, Bacolod Ice does not satisfy us that its service in al the towns of the province is such that there is no need for permitting an additional service which the applicant desires to render. The Manager himself of the oppositor company admitted that there are several towns in the province where his company does not send ice, mention having been made of the towns of San Carlos, Calatrava and Toboso. And as to the other towns, there is no concrete evidence that the oppositors render a service which may be considered as regular. We take notice of the numerous towns comprising the province of Occidental Negros and that many of them are quite distant from Bacolod City thus resulting in difficulties in rendering a daily ice service to all these towns, and for this reason we are inclined to believe the evidence of the applicant that most of the towns are not at present regularly served by the oppositor Bacolod Ice. As part of its evidence, oppositor Bacolod Ice has presented its Exhibit "1" purporting to show losses suffered by it during certain months of 1952 and 1953, but as to 1952 it appears that' this loss was caused by typhoons which visited that province during the months in which losses were suffered and which adversely affected the sale of ice because in other months the same exhibit shows profits made by the company. Furthermore, said exhibit while showing losses does not point out nor indicate the real cause of said losses which may have been due to other causes but not necessarily to insufficient demand for ice in towns outside of Bacolod City. There are some towns, however, where we are not satisfied from the evidence that applicant should be allowed to bring and sell its ice, these towns being Fabrica, Cadiz and Victorias. As to Fabrica, there is an ice plant of the insular Lumber Co. in operation aside from another 5-ton plant authorized to Eduardo Lopez; as to Cadiz, our records show that the

grantee of the certificate, Elpidio Javellana, has already installed his 10-ton plant, and as to Victorias, the 4-ton plant authorized therein is actually in operation. We do not believe that applicant should be allowed to send its ice to these town where the ice service of the authorized operators has not been shown to be deficient. With the exception of these three towns, we find that applicant has proven that there is a public need for authorizing it to bring and sell its ice in the rest of the towns of Occidental Negros.

Taking into consideration the findings of the Public Service Commission "that there is a public need for authorizing the applicant to sell its ice in other towns of Negros Occidental outside of Bacolod City;" "that there are many places in Negros Occidental where ice service is very inadequate if not inexistent;" that the Bacolod Ice & Cold Storage Co., Inc. has not satisfactorily shown "that its service in all the towns of the province is such that there is no need for permitting an additional service which the applicant desires to render;" that the Manager himself of the Bacolod Ice & Cold Storage Co., Inc. admitted "that there are several towns in the province where his company does not send ice, mention having been made of the towns of San Carlos, Calatrava and Toboso;" that many of the towns of the province of Occidental Negros are quite distant from Bacolod City which rendered difficult a daily ice service to all such towns; and that for that reason the Commission was inclined to believe, as the evidence of respondent (applicant in the tribunal below) shows, that most of the towns of Occidental Negros were not then regularly served, not only by the Bacolod Ice & Cold Storage Co., Inc., but also by the other oppositors authorized to operate ice plants, except Fabrica, Cadiz and Victorias where the ice service of the authorized operators was not shown to be deficient, we cannot say that there is no evidence on which the judgment Under review is predicated.[1] The analysis made of the evidence for the respondent and conclusion drawn therefrom by counsel for the petitioner would be well taken and effective in ordinary judicial vcases but not in proceedings before the Public Service Commission.[2]

The petitioner advances and claims that the grant of the respondent's application would Vesult in ruinous competition. The Public Service Commission, however, found and held that the losses suffered by the petitioner in some months of 1952 were caused by typhoons and that the losses suffered in 1953 may have been due to other causes but not necessarily to insufficient demand for ice in municipalities outside Bacolod City. The finding is not arbitrary and whimsical because the Commission took judicial notice of typhoons that lashed Occidental Negros during the months of 1952 referred to and the conjecture as to the cause of losses in 1953 is not altogether baseless, because during the months of 1952 and 1953 when the respondent was authorized provisionally to sell ice outside Bacolod City, there were two months when the petitioner made profit.

The judgment of the Public Service Commission under review is affirmed, with costs against the petitioner.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[1] Ice & Cold Storage Industries of the Phil vs. Valero, 86 Phil., 7; Interprovincial Autobus vs. Mabanag, 88 Phil., 436; Halili vs. Balane, 88 Phil., 450; Negros Ice & Cold Storage Co. vs. Public Commission, 90 Phil., 138; Surigao Express Co Inc. vs. Mortola, 94 Phil., 613; Angair-Manila Trans. Co. vs. Tengco, 95 Phil., 58; PANTKANCO vs. Tambot, 95 Phil., 661.

[2] Section 29, Com. Act No. 146; Cebu Transportation Co., Inc. vs. Jereza, 58 Phil., 760; Vaterno vs. Follante, 50 Off. Gaz., 1972.

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