

## ANDRESA FUERTES, PETITIONER, VS. PUBLIC SERVICE COMMISSION, RESPONDENT.

*G.R. No. 10378. April 30, 1959*

Ponente: PADILLA, J.

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### **PADILLA, J.:**

This is a petition for review of the decision rendered by the Public Service Commission dated 30 January 1956, granting Andresa Fuertes, the herein petitioner, a certificate of public convenience to operate a 1-ton ice plant in the municipality of Nasipit, province of Agusan, and to sell the ice produced in Nasipit and its neighboring towns, Carmen and Buenavista, but not in Butuan City where there is already an authorized operator. Not satisfied with the decision Andresa Fuertes has appealed claiming that the decision has no reasonable support in evidence, and that it is contrary to law.

The pertinent findings and pronouncement of the Public Service Commission are, as follows:

This is a petition for a certificate of public convenience to install, maintain and operate a 1-ton ice plant in Nasipit, Agusan, and to sell the ice produced therein the Nasipit, Buenavista, Carmen and Butuan City, on the ground that public convenience requires the proposed plant. A written opposition was filed by Flora Consing on the ground that she operates a 5-ton plant in Butuan City but at the hearing before the Justice of the Peace of Nasipit who was authorized to receive the depositions, no appearance was entered by the oppositor and neither was any evidence presented by her in support of her opposition.

The evidence shows that applicant is a Filipino citizen and is financially qualified to operate the 1-ton plant proposed by her; that there is sufficient demand for ice which may be served by the 1-ton plant proposed and that there is no ice plant in the towns of Nasipit, Buenavista and Carmen. Evidence was presented to show the need for allowing the applicant to send ice to Butuan City but we do not find this evidence satisfactory for the reason that the testimony of applicant's witnesses as to insufficient supply of ice in that City is not satisfactory some of them saying that their testimony as to inadequacy of supply of ice was based on what they heard from others. At any rate we believe that the 1-ton plant should not be authorized for a large territory because of the limited production and that we should not allow the service of an ice plant from one town in another town where there is already an established plant. We find from the evidence that applicant may be granted a certificate for a 1-ton ice plant in Nasipit but with authority to sell only in Nasipit, Carmen and Buenavista but not in Butuan City where there is an authorized operator.

The only point to be decided in this case is whether the petitioner may be granted authority to sell her ice in Butuan City where there is already an authorized operator.

The testimony of petitioner's witnesses, Catalino Pizarro, Teodoro Ronquillo and Purisima Vda. de Bausa, does not show satisfactorily that the service of Flora Consing's 5-ton ice plant in Butuan City is irregular and unsatisfactory. Asked whether or not the supply of Flora Consing's ice plant was adequate and sufficient for the residents of Butuan City, Catalino Pizarro answered: "I do not know if they have enough but the truth is that many of us are being supplied by Mardoria's ice plant and there are many others who are being supplied by the

Mardoria's ice plant; \* \* \* I cannot state clearly whether they cannot supply the sufficient amount of ice because I do not buy from them." The testimony of Teodoro Ronquillo that he had been buying ice from Andresa Fuertes (the petitioner) since June 1954 because she had been selling her ice to him and he liked her ice; and that of Purisima Vda. de Bausa that she had also been buying ice from Andresa Fuertes since 1954; that she did not buy from Flora Consing's ice plant because her plant's production is insufficient, are not enough to show that a 5-ton ice plant cannot supply the amount of ice needed by the consuming public.

Significantly, the petitioner has weakened her case when she testified that the population of the town of Nasipit is 12,000 more or less; Buenavista, 12,000 more or less; Carmen, 9,000 more or less; and Butuan City, 45,000 more or less; that in the towns of Nasipit, Buenavista and Carmen there is no authorized ice plant operator, whereas in Butuan City Flora Consing is operating a 5-ton ice plant; that according to the information she had received from the residents of Butuan City the ice plant of Flora Consing used to have break downs, and for that reason they bought ice from her. If the total number of inhabitants of the three towns where the petitioner is authorized by the Public Service Commission to sell her ice is true, then such number of inhabitants would be more than what her 1-ton ice plant could supply. There would be no need for her to invade Butuan City where there is already an authorized operator.

The information that the petitioner had received from certain residents of Butuan City as to the break downs of Flora Consing's ice plant is hearsay. But even granting that there had been such break downs, those were to be expected in the normal operation of any machine-run establishment. In the absence of a showing that the supply of ice to the general public was insufficient, such break downs would not be a justification for the petitioner's insistence on invading the territory of another operator whose plant's production is five times more, as to cause the latter ruinous competition.

The decision appealed from is affirmed, with costs against the petitioner.

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

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