

VICENTE BAUTISTA, PETITIONER, VS. PUBLIC SERVICE COMMISSION AND GERARDA G. TABORA, RESPONDENTS.

G. R. No. 12705. October 30, 1959

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Petitioner Vicente Bautista is appealing the decision of the Public Service Commission, dated February 13, 1956, denying his application for authority to increase the capacity of his ice plant in Baguio City by two tons more, the dispositive portion of which reads as follows:

"In view of the foregoing, and finding that applicant has not established that public interests and convenience require the additional production proposed by him, it is ordered that the application filed in this case, be as it is hereby denied." (p. 367, PSC record)

For a better understanding of this case, the following facts may be stated: On February 12, 1948, Bautista applied for authority to operate a one ton ice plant in the City of Baguio, and sell its output in said city. His application was approved by respondent Public Service Commission on April 24, 1948, and he has been operating his ice plant and selling ice therefrom since then.

On April 9, 1948, respondent Gerarda G. Tabora also applied for authority to operate a 3.6 tons ice plant in the City of Baguio, and her application was likewise approved on November 25, 1948, and since then, she has been operating said ice plant and selling ice made therein.

On June 13, 1954, Francisco Lagman, Jr. applied with the Public Service Commission for a permit to install and operate a two ton ice plant in the same City of Baguio (Case No. 80057).

On June 26, 1954, petitioner Bautista filed with the same Commission an application to increase the capacity of his ice plant from one to four tons (Case No. 80352). On July 2, 1954, respondent Gerarda Tabora filed a written opposition to the application of Lagman, alleging "that the present ice plant now in operation in the City of Baguio is more than sufficient to cope with the situation or the present demand of the public", and that if there is a necessity for additional equipment, the present operator be given the preference to install and operate the same:

On July 22, 1954, respondent, Tabora also applied for permit to increase the capacity of her ice plant to 3.6 tons (Case No. 80865).

On November 23, 1954, the application of Lagman and Bautista were heard jointly before Commissioner Aspillera, at which hearing, Gerarda Tabora appeared and testified in support of her opposition. After receiving her testimony on direct examination, the Commissioner asked the parties "whether they are willing to consider the testimony of Mrs. Tabora not only as evidence in opposition to the applications of Bautista and Lagman but also as evidence in support of her application", and to consider that application (of Mrs. Tabora) as being heard" on that day, although the same was not set for hearing, and all the parties agreed.

On November 27, the Commissioner rendered a decision, saying that according to the evidence, as additional

production of not more than three tons daily should be authorized, and that as between the applicants, Mrs. Tabora was entitled thereto, being the pioneer operator in the field, and that she had the equipment for such additional production and the means with which to install it. As a result, the applications of Bautista and Lagman, Jr. were dismissed and Mrs. Tabora was given the authority to increase the capacity of her ice plant by three tons so as to produce a total of 6,6 tons daily. Lagman and Bautista moved for reconsideration of the decision, but their motions denied. They did not appeal said decision, for cording to Bautista, one of the commissioners advised him that he may file another application.

On February 2, 1955, Bautista filed a second application for increase of production of ice (Case No. 84833). On motion of Mrs. Tabora, the application was dismissed on March 31, 1955. However, upon a motion for reconsideration by the applicant, the order of dismissal was modified and made "without prejudice to his filing a new application if he so desires".

On June 22, 1955, Bautista filed the present application to increase the capacity of his ice plant, alleging among other things that the ice cream vendors in Baguio who are his customers have increased in number to thirty-two, thereby requiring a daily supply of three tons of ice.

On July 19, 1955, Mrs. Tabora filed an opposition to the application, claiming that she was already producing 6.6 tons of ice in her Baguio ice plant under authority of the Commission, and that the approval of the present application would create ruinous and wasteful competition. After due trial, where applicant and oppositor testified and other evidence was submitted, the Commission rendered the decision now appealed to us.

As a rule, we do not disturb the findings of fact made by the Public Service Commission and its decision based on the same, as long as there is substantial evidence in support thereof. However, in the present case, our attention has been invited to certain circumstances and considerations which apparently have been overlooked by the Commission, and which in bur opinion, are of great importance, if not decisive. For instance, although the operator and oppositor, Mrs. Tabora, has been authorized to increase her production to 6.6 tons of ice daily, not in frequently, either due to defect in her machinery or some other reason, she does not produce more than 5.& tons.

Naturally, this results in shortage of ice to the prejudice of the residents of Baguio. Again sometimes, at the height of the season in Baguio, she ships some of the ice produced in her Baguio ice plant to her ice plant in Damortis. The reason given by her for these shipments is that sometimes, she cannot dispose of all her daily output of ice in Baguio, and so she sends the excess to her plant in Damortis to prevent it from melting. It is well known that Damortis being in the lowlands, almost at sea level, naturally, is much warmer and, therefore, ice melts there faster than in Baguio, which has a much cooler climate, being about 5,000 feet above sea level. So, if the purpose is to prevent or minimize melting of ice, Baguio is a more convenient and better place to store it. It is not unreasonable to believe that said ice was shipped to Damortis in order to supply her customers in or around that place. Another fact which apparently has not been given due consideration by the Commission is that, according to the evidence of petitioner Bautista, if he had not been able in the past to supply his customers with ice, it was not because his daily supply of one ton was adequate, but because he had been getting ice from Itogon and Camp John Hay. Baguio cannot depend for her ice needs on sources from outside. There is also evidence to the effect that on several occasions, people needing ice went to the ice plant of Mrs. Tabora and were told that there was no more ice available. All this points to the fact that perhaps, due to the increase in population of Baguio, not only the permanent but also the floating population that acquires considerable proportions during the season, the supply of ice heretofore authorized by the Commission is inadequate and that an increase of production is needed and should be authorized. After all, the petitioner is only asking for an increase of two tons, that is to say, from one ton to three tons daily.

Another consideration that might perhaps have influenced us in granting the petition for increase by petitioner Bautista is that there would appear to have been committed a little injustice against him when he and Mrs. Tabora in 1954, applied for increase in their ice production, he from one to four tons and Mrs. Tabora, from 3.6 to 8.6 tons. Why Bautista's application was turned down while that of Mrs. Tabora was partly granted by allowing her to increase her production from 3.6 tons to 6.6 tons, despite the fact that Bautista filed his application for increase more than one month ahead of Mrs. Tabora, is not entirely clear. The decision of the Commission in that case said that Mrs. Tabora was a pioneer operator. The record, however, shows that petitioner Bautista applied for authority to operate an ice plant in Baguio on February 12, 1948 and his application was approved on April 24, of the same year, while Mrs. Tabora filed her application about two months later, that is to say, on April 9, 1948 and her application was granted on November 25, of the same year. Consequently, petitioner Bautista can be considered the first and pioneer operator in the manufacturing of ice in the City of Baguio. Of course, he did not appeal from said decision because according to him, he was advised by one of the commissioners to file another application for increase, which he did.

In view of the foregoing, the appealed decision is hereby reversed and the application of Vicente Bautista for increase of the capacity of his ice plant from one ton to three tons is approved. No costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Endencia, Barrera, and Gutierrez David, JJ., concur.

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