

CONSUELO S. CALALANG, PETITIONER, VS. INTESTATE ESTATE OF THE DECEASED GERVACIO TANJANGCO, THRU HIS ADMINISTRATRIX, ET AL., RESPONDENTS.

G.R. No. 16068. November 29, 1960

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petitioner Consuelo S. Calalang is the grantee of a legislative franchise approved June 19, 1959 (Republic Act Xo. 2290) to construct, operate, and maintain an ice plant and cold storage in Hagonoy, Bulacan, subject to the following conditions, among others:

"Section 2. Said grantee shall manufacture and supply ice up to the limit of the capacity of her plant, said limit to be determined by the Public Service Commission or its legal successor in such certificate of convenience and public necessity as may be issued by it as prescribed by section four of this Act.

* * * * *

Section 4. The grantee shall not exercise any right or privilege under this franchise nor commence any construction thereunder, until and until the grantee shall first file with the Public Service Commission within one hundred and twenty days from the date of approval of this Act:

- Her acceptance of the terms and provisions of this Act;
- Her written acceptance of the terms and conditions of the certificate of convenience and public necessity required by law for the granting of this franchise and issued by the Public Service Commission of the form and character provided for in Commonwealth Act Numbered One Hundred Forty-six, as amended, and
- A document or documents evidencing receipt by the Treasury of the Philippines of the deposit or deposits required by law for each certificate of convenience and public necessity as an earnest proof of good faith and guaranty that the grantee shall complete the work within the period to be fixed by the Commission.

* * * * *

Section 6. This franchise is granted subject to the provisions of the Constitution and Commonwealth Act Numbered One Hundred Forty-six, as amended. * * *

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Pursuant to the above franchise, petitioner, on August 17, 1959, filed an application with the Public Service Commission (Case No. 126911) for the issuance of the corresponding, certificate of public convenience in her name.

It appears, however, that on July 27, 1959, or about three weeks before petitioner filed her application with the Commission, Aurora Tanjangco, administratrix of the intestate estate of Gervacio Tanjangco, an established

operator of an ice plant in Hagonoy, Bulacan, filed with the Commission an application to increase the capacity of her ice plant from 10 tons to 40 tons (Case No. 126537). Believing that the grant of Tanjangco's application to increase the capacity of her ice plant would nullify the legislative franchise granted her to operate an ice plant in the same municipality, and that as grantee of a legislative franchise, she has the preferred right to serve the public need therein, petitioner, on August 31, 1959, entered an opposition in Case No. 12653J. A few days later, she also moved for a joint hearing of her application and that of Tanjangco (Cases Nos. 126911 and 126537), on the ground that a common issue of fact, as well as the question of preference or priority, is involved in the two applications.

On September 10, 1959, the Public Service Commission, through Commissioner Aspillera, issued an order overruling petitioner Calalang's opposition in Case No. 126537 and also denying her petition for a joint hearing of said case with her own application, Case No. 126911. Basis of the order was Commissioner Aspillera's belief that petitioner's legislative franchise, being conditioned on her first obtaining a certificate of public convenience from the Commission, who in turn is authorized to grant the same to her only if it finds that public convenience so requires, did not invest her with any right as an operator to oppose the application of an established operator for authority to improve her service, nor did said legislative franchise deprive the Commission of the power to act on an established operator's application for additional capacity without first giving petitioner an opportunity to be heard.

On September 21, 1959, petitioner Calalang moved for the reconsideration of the above order, which motion Commissioner Aspillera denied on September 23, 1959. Whereupon, Calalang filed the present petition for certiorari before this Court, charging respondent Commissioner Aspillera with having acted with grave abuse of discretion and in excess of jurisdiction in denying her right to interpose an objection in Case No. 126537, as well as in denying her motion for reconsideration without submitting the same to the members of the Commission en banc. Upon petitioner's filing of a bond in the amount of P1,000.00, we issued an order restraining the respondent Commissioner from promulgating any decision in Case No. 126537 until further orders from this Court.

However, on November 21, 1959, petitioner presented a supplemental petition alleging that Commissioner Aspillera had already decided Case No. 126537 granting respondent Tanjangco's petition for an increase in the capacity of her iceplant, so that our writ of preliminary injunction came too late, and praying for another injunctive order to restrain said Commissioner from executing the decision in said case until the final disposition of this petition. We issued this second writ of preliminary injunction on December 8, 1959, after petitioner had filed an additional bond of P1,000.00.

The basic issue presented by this petition is a simple one: Whether petitioner, as the grantee of a legislative franchise to operate an ice plant in Hagonoy, Bulacan, approved before respondent Tanjangco applied for an increase of the capacity of her ice plant in the same municipality, should be allowed to oppose and be heard on the latter's application.

We think that under the circumstances, petitioner should have been given such a right.

The criterion or test in determining whether a person has sufficient interest or personality to intervene in any proceedings before the Public Service Commission has been laid down as follows:

"He must show * * *, that he has sustained, or is immediately in danger of sustaining, an injury as a result of that action, and it is not sufficient that he has merely a general interest common to all members of the public. His interest must be of such nature as to be susceptible of valuation" (Sambrano vs. Red Line Trans. Co., Inc., 68 Phil., 652)

We believe that petitioner, although not yet an operator of an ice plant in the municipality of Hagonoy, Bulacan,

has, in view of her having been granted a legislative franchise to operate such public utility in that municipality, sufficient interest as would satisfy the above test and entitle her either to oppose respondent Tanjangco's application for an increase in the capacity of her existing plant, or to ask a joint hearing of said application and her own application for the issuance of a certificate of public convenience in order to operate under her franchise.

Indeed, when petitioner was granted the franchise in question by the Legislature, we can assume that that body had already made a prima facie finding of a public necessity for the operation of an additional ice plant service in Hagonoy, Bulacan, and of petitioner's possessing the necessary qualifications to operate such service. Under this franchise, petitioner has thus acquired the right to operate an ice plant in the aforementioned municipality, subject only to the conditions mentioned in the franchise Act, among which is that she first obtain a certificate of public convenience from the Public Service Commission, fixing her plant's capacity and the conditions of operation. . Otherwise, it must be concluded that the franchise grant was an empty gesture on the part of the Legislature, as the petitioner could have just as well applied to the Commission itself.

The provisions of the franchise subjecting the grantee's operation to the terms and conditions imposed by the Public Service Commission presuppose that the Commission would not arbitrarily deny petitioner's application for a certificate of public convenience, but would act in accord with the facts and in the exercise of its sound judgment and discretion, with the end of accomplishing rather than frustrating the legislative will. When, therefore, respondent Tanjangco, an established operator, filed an application ahead of petitioner to increase the capacity of her existing ice plant in the same municipality, the least that the Commission should have done was to hear both applications together or give each applicant the opportunity to be heard against the other, to enable it to determine not only the relative merits of both applications but the question of preference between them as well. The act of the Commission of hearing and granting respondent Tanjangco's application without as much as allowing petitioner to intervene, oppose, or prove any better rights against it, is not only a deprivation of petitioner's rights without due process of law, "but seems calculated to render ineffectual and nugatory the franchise granted to her by the legislature and frustrate the legislative intent behind it. Such act is, therefore, not only a grave abuse of discretion on the part of the Commission, but an overstepping of the powers and jurisdiction conferred upon it by the law.

Wherefore, the order of September 10, 1959 of the respondent Commission is reversed; the trial and judgment in Case No. 126537 are set aside; the opposition of petitioner in Case No. 126537 is admitted; and the respondent Commission is ordered to try cases Nos. 126537 and 126911 jointly, after which a new judgment shall be rendered in accordance with the law and the evidence. . The preliminary writ of injunction issued by this Court on December 3, 1959, is rendered permanent. Costs against respondent Aurora Tanjangco.

Paras, C.J., Bengzon, Labrador, Concepcion, Barrera, Gutierrez David, Paredes and Dizon, JJ., concur.

Order of September 10, 1959, reversed.

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