

**SAN MIGUEL BREWERY, PETITIONER AND APPELLANT, VS.
FORTUNATO G. LAPID, RESPONDENT AND APPELLEE.***G.R. No. 31058. September 16, 1929*

Ponente: VILLAMOR, J.

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In case No. 16564, Fortunato G. Lapid, on June 20, 1928, applied for a certificate of public convenience to the Public Service Commission to install, operate, and maintain an ice plant, with a daily capacity of five tons, in the district of Caridad, municipality of Cavite, Province of Cavite, alleging that at present there is no ice plant in said municipality and that the installation of said plant is of the utmost importance in order to supply a need felt by the inhabitants of the province, and offering to sell the ice which may be produced by said plant in all the municipalities of the Province of Cavite at the rate of 2½ centavos per kilo when sold at the factory and 2½ centavos per kilo for home delivery.

Subsequently, that is, on August 29, 1928, Zosimo Rojas presented another application in case No. 17235, asking that a certificate of public convenience be issued to him to install, maintain and operate an ice plant in the municipality of Cavite, with a daily capacity of ten tons, for the benefit of the inhabitants of said municipality and of the other municipalities of the Province of Cavite, obligating himself to sell the manufactured ice at the rate of 2 2/3 centavos per kilo when purchased at the plant and 2 centavos per kilo for home delivery.

The appellant, San Miguel Brewery, objected to said applications, alleging that it has been operating ice plants in the City of Manila for several years; that it has been supplying many provinces, among them that of Cavite, in a regular and continuous manner, supplying and being disposed to supply, at any time, all the orders and needs which the people of Cavite may have now and in the future, inasmuch as its production greatly exceeds the consumption of ice, notwithstanding the large consignments which it makes to many provinces of the Island of Luzon.

After the hearing of these cases, the commission rendered a single judgment, declaring as proven beyond question that there is no ice plant in the municipality of Cavite and in the districts of Caridad and San Roque; that the ice for sale in the municipality of Cavite comes from Manila sent by the San Miguel Brewery to its agent in the municipality of Cavite, and that a part of it is sent by water and the other part by land. It likewise declared as proven that the granting of a certificate of public convenience to either of the two applicants would redound to the benefit of the public, which can depend upon an ice plant in its own locality to satisfy its needs; that at present the Cavite public is not supplied by any local operator but only by the agents of the San Miguel Brewery in the locality, who are furnished with ice from that factory. And, by virtue of which, it rendered judgment declaring that the first applicant, that is, Fortunato G. Lapid, should have the privilege, not only because of his diligence in being the first to apply for this certificate of public convenience, but also because he is in a better position than the other applicant, inasmuch as he has been engaged for sometime in the installation and management of the ice business in several provinces of the Island of Luzon, and at present he has another ice plant operating in the municipality of Paranaque, Rizal. And it denied the application of Zosimo Rojas and likewise dismissed the opposition interposed

by the San Miguel Brewery for lack of ground.

The oppositor, San Miguel Brewery, appealed from this resolution, and now alleges that the Public Service Commission erred in ordering the issuance of a certificate of public convenience in favor of Fortunato G. Lapid to operate an ice plant in the municipality of Cavite, Cavite, there being no evidence before the commission to reasonably support said order, and this constitutes a violation of the rights previously acquired by the appellant; and that the Public Service Commission erred in denying the motion for a new trial.

The other applicant Zosimo Rojas did not appeal.

The question raised in this appeal resolves itself into a determination as to whether or not there was evidence before the commission to reasonably support its appealed order, or whether the same was entered in excess of the jurisdiction of the commission. The power of this court to review the appealed order is provided in section 35 of Act No. 3108, as interpreted in *Philippine Shipowner's Association vs. Public Utility Commissioner and Board of Appeal* (43 Phil., 328), and in *Ynchausti Steamship Co. vs. Public Utility Commissioner and Board of Appeal* (44 Phil., 363). In the case of the *Philippine Shipowners' Association*, it was said that the only power which this court has is to set aside the order when it appears that there was not sufficient evidence to support said order; and in *Ynchausti Steamship Co.*, it was held that: where, after a full hearing the Public Utility Commissioner makes findings of fact, and there is a material conflict in the evidence, such findings will not be disturbed when they are reasonably supported by the testimony. In this same case, the court said that the trend of modern legislation is to vest the Public Utility Commissioner with the power to regulate and control the operation of public utilities under reasonable rules and regulations, and, as a general rule, the court will not interfere with the exercise of that discretion when it is just and reasonable and based upon a legal right.

In the present case, considering the agreement between the parties to the effect that the evidence introduced in case No. 16564 shall be considered as the evidence for the opposition in case No. 17235, and vice versa, it appears that evidence has been introduced before the commission on the consumption of ice and on the needs of the town of Cavite; that according to said evidence, in Cavite alone there are 22 restaurants, 16 bars, 32 refreshment parlors and 3 cabarets, and all these establishments, open to the public, use ice for the consumption of their customers; that the consumption of ice in the municipality of Cavite and in the other municipalities of the province reaches approximately 46.9 blocks a day of 181 kilos per block; that the cost of ice sold by the agents of the San Miguel Brewery in the different municipalities of Cavite is much higher than two centavos per kilo when sold at said factory and two and one-half centavos for home delivery, for which the said applicant Fortunato G. Lapid binds himself to sell.

In view of the foregoing, we are of the opinion that the order of the commission, granting the permit to the applicant Lapid, is reasonably supported by the evidence. And this being the case, there is no reason to reverse the resolution of the commission because, as was said in the case of *Dauner vs. Unson* (G. R. No. 28957),^[1] decided by the second division, in reviewing orders of this character, it must be remembered that this court is not required to examine the proof de novo and determine for itself whether or not the preponderance of the evidence really justifies the order made by the lower court. Our function is to determine whether there was evidence before the commission upon which the finding of said court might reasonably be based.

Although we can conceive that the San Miguel Brewery is able to supply ice for the consumption of the whole Province of Cavite, the fact, however, is that said company does not really operate in that province under a certificate issued by the Public Service Commission, Said establishment operates its ice factory in the City of Manila and sells its ice in the Province of Cavite through its agents. Said agents or dealers in ice are not subject to the rules which the commission may prescribe as to the price for which they sell this article to the consumers, and

naturally they have to fix a higher price in view of the waste of the ice from the time it is taken from the factory and the cost of transportation, expenses which, in the last analysis, the consumer has to pay.

The commission, in view of the evidence presented before it and of the fact that the consumers could obtain ice at a much lower price under the certificate to be issued in favor of the applicant Fortunato G. Lapid, deemed it convenient for the inhabitants of the municipality of Cavite and of the other municipalities of the province to have an ice plant in that locality. And although we may concede the great facilities which the San Miguel Brewery has for sending its ice to the Province of Cavite, nevertheless, we do not believe it justified in the present case to substitute our judgment for that of the Public Service Commission, the power of the court being limited to reviewing its order and to see whether or not there is evidence in the case which reasonably supports the issuance of said order.

The appellant has invoked the doctrine laid down in the case of Batangas Transportation Co. vs. Orlanes (52 Phil., 455). We believe that the doctrine enunciated therein is not applicable to the present case, for the reason that the oppositor, San Miguel Brewery, is not a company which operates an ice plant in Cavite under a certificate issued by the Public Service Commission, but only sends its ice to several municipalities of that province through agents who sell this article to the consumers without being subject to any rule of the commission as to the price.

By virtue of the foregoing, the order appealed from is hereby affirmed, with the costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Street, Romualdez, and Villa-Real, JJ., concur.

Johns, J., dissents.

[1] Promulgated September 29, 1928, not reported.

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