

ANDRES SUGUITAN, PETITIONER AND APPELLEE, VS. LAOAG ELECTRIC LIGHT & POWER CO., INC., RESPONDENT AND APPELLANT.

G. R. No. 33439. March 02, 1931

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

By virtue of Act No. 3078, approved on March 16, 1923, the respondent Laoag Electric Light & Power Co., Inc., obtained a franchise to construct, maintain, and operate an electric light, heat, and power system, for the purpose of generating and distributing electric light, heat, and power in the municipality of Laoag, Ilocos Norte.

On October 23, 1925, said corporation obtained from the Public Service Commission, the certificate corresponding to said franchise.

In June, 1928, the municipal council of Laoag, Ilocos Norte, requested the Public Service Commission, to cancel said certificate issued to the respondent, which request was granted, the commission declaring the franchise forfeited for lack of acceptance in due form and deposit under the law.

But on December 7, 1928, the Legislature approved Act No. 3458 providing that notwithstanding any provision in the original franchise to the contrary, the term for accepting the franchise should be extended thirty days from the approval of said Act.

In view of this Act, No. 3458, the Public Service Commission, on April 22, 1929, reconsidered its order and reinstated the respondent's franchise, but providing as follows:

"It appearing of record, however, that the electric plant installed by the respondents the municipality of Laoag, and its transmission and distribution system have deteriorated to such an extent as to be unable to furnish service to the population of said municipality, and in order to avoid a repetition of what happened to the respondent, namely, that the service rendered by it was deficient and inadequate to the needs of the population, the commission deems it wise to require the respondent to install a completely new plant as well as a new transmission and distribution system, thereby guaranteeing a sure, sufficient, efficient, and adequate service to the inhabitants of the municipality of Laoag, bearing in mind the size and importance of the town as the capital of the Province of Ilocos Norte; wherefore, the respondent is hereby required to construct and install a new electric plant with a new transmission and distribution system, within the periods fixed by the law, and subject to the following:

"The concessionaire and respondent herein, the Laoag Electric & Power Co., is hereby required and ordered to carry out the proposed improvements in its plant, constructing a new building therefor; improving its present transmission and distribution system; setting up concrete standard poles on the streets; and installing two group generators of seventy horse-power apiece, 220/380 volts, alternating current, and, within the year from the date of this decision, to install another group of one hundred and twenty horse-power with the requisite dynamo or generator; which improvements shall be carried out under the direction and supervision of a technical expert, in addition to the electrical engineer of this commission, and in accordance with the provisions herein set forth,

and with the plans and specifications submitted not in conflict herewith.

"The concessionaire and respondent herein is further required :

- "(1) To notify this commission upon the completion of the improvements herein provided for, so that the commission electrical engineer may inspect them with a view to determining whether they have been carried out in accordance with the plans and specifications herein submitted;
- "(2) To employ proper personnel to be approved by this commission, to take charge of the technical workings of the plant;
- " (3) To keep its books in accordance with that prescribed by this commission; and
- "(4) When the new plant begins functioning to submit a monthly report of its expenditures and income, according to a form to be furnished it." (Pages 73 and 74, Original Record.)

On July 30, 1929, the appellee herein, petitioner in case No. 13073 of the Public Service Commission, requested said commission to cancel the franchise granted to Laoag Electric Light & Power Co., Inc., in view of the fact that said corporation had not yet commenced to install the new electric plant called for in the last order of the commission dated April 22, 1929, nor even showed any indication to do so.

At the hearing upon said petition, both the petitioner and the respondent putting in an appearance, the Public Service Commission, in its decision of January 15, 1930, ordered the following:

"In view of the foregoing, the commission finds ,that the respondent has not commenced the installation of the electric plant and the transmission and distribution system in the municipality of Laoag, Province of Ilocos Norte, within the six months prescribed by section 8 of Act No. 3078, nor made use of the power conferred upon it by section 16 of said Act, the commission does hereby order the confiscation of said franchise and all its inherent rights, as well as the forfeiture to the provincial government of Ilocos Norte of the P1,000 deposit made in the Insular Treasury in accordance with section 9 of the aforesaid Act, with damages for non-fulfillment of the implied contract involved in the acceptance of said franchise." (Page 77, Original Record.)

The respondent appealed therefrom assigning the following as errors:

- The Public Service Commission erred in finding that the respondent-appellant failed to commence the construction and installation of an electric light plant in the municipality of Laoag, Ilocos Norte, within the six months prescribed by section 8 of Act No. 3078.
- The commission erred in declaring the confiscation of the franchise of the respondent company and all its rights inherent thereto.
- The commission erred in confiscating in favor of the provincial government of Ilocos Norte the deposit of P1,000 made by the respondent company in the Insular Treasury in conformity with section 9 of Act No. 3078.
- The commission erred in denying the motions for reconsideration filed on behalf of the respondent company."

The appellant alleges that the plans of the new electric plant required by the commission have already been prepared and submitted, and arrangements made with the Manila Engineering and Machine Co. for the purchase of the new plant, and P300 spent for the necessary lumber; and that these acts constitute the first steps in the installation of the aforesaid electric plant, and amount to a compliance with the provision of section 8 of the original Act No. 3078 reinstated by the subsequent Act No. 3458. The commission did not so regard the matter, and considering the circumstances of the case, neither are we of the opinion that such acts constitute a fulfillment of the requirement of section 8 of Act No. 3078.

Said section 8 provides that the concessionaire—

"* * * shall commence work under the supervision and subject to the approval of the electrical engineer of the Public Utility Commission, in accordance with the plan, specifications, and estimates previously approved by the Public Utility Commission, within six months time from and after the date of filing such acceptance, unless prevented by act of God or force majeure, usurped or military power, martial law, riot, or civil commotion or other inevitable cause" etc.

In the first place, none of the unavoidable events listed in the law has been shown to be present in this case. Now then, does the drafting and submission of the plans and the purchase of lumber for the plant amount to a commencement of the work according to the spirit and the letter of the law? It should be noted with reference to the plans, that, according to section 8 of Act No. 3078 above quoted in part, they must be approved before "commencing work;" and as to the timber purchased, we do not think its acquisition amounts to such a commencement of the work. We are therefore of opinion that neither the drafting nor the submission of the plans, nor the purchase of the timber, constitutes a compliance with said Act.

With regard to the forfeiture of the P1,000 deposit, the appellant, having failed in the aforementioned obligation according to section 8 of said Act, violated the provision of paragraph 2 of section 9, Act No. 3078, and therefore the commission did not err in ordering the forfeiture of the P1,000 deposit made by the appellant.

There being no error in the decision appealed from, it is hereby affirmed in its entirety, with costs against the appellant. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Johns, and Villa-Real, JJ., concur.

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