

ESCUDERO ELECTRIC SERVICE COMPANY, PETITIONER AND APPELLANT, VS. MARGARITA ROXAS Y AYALA VIUDA DE SORIANO, RESPONDENT AND APPELLEE.

G.R. No. 33537. December 05, 1930

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

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This is an appeal taken from the denial of the certificate of public convenience applied for by the Escudero Electric Service Co. and from the grant of such certificate to Margarita Roxas y Ayala widow of Soriano.

The facts are as follows:

In October, 1928, the Escudero Electric Service Co. applied to the municipal council of Alaminos, Laguna, for a franchise to operate and maintain an electric light service in that municipality. Since the tariff submitted by the applicant was not satisfactory to the council, no action was taken on the petition.

In August, 1929, bill No. 1699 granting the franchise to the Escudero Electric Service Co., was presented in the House of Representatives of the Philippine Legislature.

In September, 1929, the municipal council of Alaminos resolved to oppose the petition for a franchise presented to the House of Representatives by said Escudero Electric Service Co.

On October 14, 1929, that entity filed an application with the Public Service Commission.

On October 15, 1929, Margarita Roxas widow of Soriano, applied to the municipal council of Alaminos for a franchise to establish an electric plant in the same municipality, under the provisions of Act No. 667 as amended by Act No. 1022, and of Act No. 3108.

On October 31, 1929, said municipal council granted Margarita Roxas the franchise applied for, which was approved by the provincial board of Laguna on November 7, 1929.

On November 11, 1929, Margarita Roxas y Ayala applied to the Public Service Commission for the certificate of convenience with regard to the service referred to in the franchise she had obtained.

On December 7, 1929, the Governor-General approved Act No. J648 of the Legislature (bill No. 1699) granting a franchise to the Escudero Electric Service Co. to install, operate, and maintain in the municipality of Alaminos, Laguna, and two other municipalities in the Province of Tayabas, an electric light, heat, and power service.

On December 14, 1929, the Escudero Electric Service Co. filed an opposition with the Public Service

Commission to the application of Margarita Roxas y Ayala for the aforementioned certificate of convenience.

After hearing, the Public Service Commission rendered judgment denying the application filed by the Escudero Electric Service Co. and granting that of Margarita Roxas y Ayala widow of Soriano.

The Escudero Electric Service Co. appealed from that decision, assigning the following points in error to the Public Service Commission:

"The Public Service Commission erred in denying the application of the Escudero Electric Service Co. for a certificate of public convenience and necessity with regard to the municipality of Alaminos (Case No. 21721), and granting the application of Margarita Roxas y Ayala Viuda de Soriano for approval of a municipal franchise (case No. 21371)."

It is true that the franchise granted by the law is superior to that granted by the municipal council. Besides, when that legislative franchise to the Escudero Electric Service Co. was by the Governor-General's signature converted into Act No. 3648 on December 7, 1929, the municipal franchise granted to Margarita Roxas y Ayala widow of Soriano, had not yet been perfected, for the reason that the Governor-General had not yet approved it, such approval being a requisite according to paragraph 7, section 2, Act No. 667.

But section 8, Act No. 3648, granting the franchise to the Escudero Electric Service Co. contains the following provision:

"Sec. 8. If the grantee does not file the proper application for a certificate or certificates of public necessity and convenience with the Public Service Commission or its legal successor, within ninety days from the date of approval of this Act, this franchise shall become null and void.

"The grantee shall not exercise any rights or privileges under this franchise nor commence any construction thereunder unless and until the grantee shall first file with the Public Service Commission, or, its legal successor, within one hundred and twenty days from the date of issuance by the Public Service Commission of the said first certificate or certificates of public necessity and convenience.

* * * * *

"The Public Service Commission or its legal successor shall have power to issue certificates of public necessity and convenience whenever it shall, after due hearing, determine that such construction or the exercise of the rights or privileges under this franchise is necessary and proper for the public convenience and properly conserves the public interest, and the commission or its legal successor shall have the power in so acting to impose all such conditions as to construction, equipment, maintenance or operation of the service as the public convenience and interest may reasonably require."

It may be reasonably contended that the condition precedent set forth in the first paragraph quoted, for the exercise of the franchise, namely, that a certificate of public convenience be first obtained from the Public Service Commission, was included in this Act in view of the fact that the grantee of the franchise had not obtained that certificate before resorting to the Legislature, as required by section 22 of Act No. 3108. The fact that such certificate was not previously secured does not annul the franchise obtained, since the Legislature, which passed Act No. 3108, did not in this case require it; but this does not make it any the less imperative to procure such certificate, which is to be granted in accordance with the last paragraph of section 8, Act No. 3648, quoted above.

According to the text of that part of the Act, the power of the Public Service Commission to issue said certificate is exercised by first determining whether the construction, or the exercise of the rights or privileges granted by the franchise are necessary and adequate for the public convenience, and properly subserve the public interests. And this question "has been determined by the commission. The decision appealed from states the following on this

point:

"Considering the evidence and the allegations made, which show that the public convenience and necessity require the installation, maintenance, and operation of an electric plant such as the applicant Margarita Roxas y Ayala widow of Soriano, proposes for the municipality of Alaminos, Laguna; and considering that said applicant has sufficient capital to engage in the business which she intends to establish, and for which the municipal council of Alaminos has given her a franchise, the commission finds that the concession of said municipal franchise is not only in accordance with Act No. 667 as amended, but also promotes the public interests; wherefore, said municipal franchise granted to the applicant Margarita Roxas y Ayala widow of Soriano, by the municipal council of Alaminos, by virtue of its resolution No. 59 adopted on October 31, 1929, and approved by the provincial board of Laguna by virtue of resolution No. 2284, adopted in November....., 1929, must be and is hereby, approved." (Pp. 33 and 34, appellee's brief.)

And the record supports these conclusions of the commission.

Inasmuch, then, as the franchise granted to the appellant is, by the terms of the Act through which it is granted, made to depend upon the issuance of a certificate of convenience by the Public Service Commission, such franchise thus conditioned is not by itself alone a ground for compelling the Public Service Commission to issue such certificate to the Escudero Electric Service Co., or for reversing its decision denying the same, so long as the record furnishes evidence supporting the action of said commission in denying the certificate to said Escudero Electric Service Co.

Furthermore, the record sufficiently supports the appellee's application, and therefore, with respect thereto, there is no ground for reversing the decision appealed from.

The court finds no merit in the assignments of error, and the "decision appealed from is affirmed, with costs against the appellant. So ordered.

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

Johnson, J., reserves his vote.

Johns, J.: dissents.

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