

CEBU ICE & COLD STORES CORPORATION, PETITIONER AND APPELLANT, VS. CONSTANCIA VELEZ, RESPONDENT AND APPELLEE.*G. R. No. 35705. October 17, 1932*

Ponente: OSTRAND, J.

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This is a petition for review of a decision rendered by the Public Service Commission granting the application of the respondent herein, Qonstancia Velez, for a certificate of public convenience for the operation, installation, and maintenance of an ice and cold storage plant and a refrigerating system in the municipality of Cebu, Province of Cebu. The petitioner and opponent, Cebu Ice & Cold Stores Corporation, is duly organized under the laws of the Philippine Islands and has been engaged in the business of manufacturing and selling ice in the municipality of Cebu, Province of Cebu, since 1921, At present it is the only ice plant in Cebu.

Cebu is an important port in the Visayan Islands and has about 65,000 inhabitants. There are hospitals, hotels, refreshment parlors, restaurants, pansiterias, catrinderias, and Japanese fishermen, who use ice daily in large quantities.

Upon trial the Public Service Commission found that the present output of the petitioner, Cebu Ice & Cold Stores Corporation is insufficient and inadequate for the consumption of the general public in that territory and that the public opinion in Cebu demands more ice and better service than that which has been rendered by the opponent, Cebu Ice & Cold Stores Corporation, and the commission thereupon ordered the issuance of the certificate of public convenience for the respondent, Constancia Velez. From this decision the opponent, Cebu Ice & Cold Stores Corporation, brought the case to this court by petition for review.

The errors assigned by the appellant relate to questions of fact, and we are of the opinion that the findings of the commission are in accordance with the evidence adduced at the trial. While it is the duty of the Government as far as possible to protect public utility operators against unfair competition, it is nevertheless obvious that public convenience must have the first consideration. In this particular case the commission says:

"The evidence adduced by the applicant establishes the following facts:

"That the opponent's ice plant is insufficient, defective, and does not serve the public adequately, inasmuch as it can hardly supply inferior ice that has not been freezing the required length of time, on some occasions disposing of ice that instead of the 50 hours needed, has been freezing for only 15; that it has been unable to sell ice to many, because ice is first sold to regular customers and then to ticket-holders, rejecting small purchasers, especially those buying small quantities; that the applicant is ready to invest air the necessary money in the ice plant she intends to establish, with large refrigerators to preserve fish and other products not sold during the day in the municipality of Cebu; that the applicant proposes to sell ice from 6 in the morning till 6 in the afternoon; that the ice plant shall be established on F. Ramos Street, and the Cold Stores on Comercio Street; that there are candy and ice-cream manufacturers in the municipality of Cebu working day and night, who require 10 blocks of ice daily, but who can hardly purchase 4 blocks from the opponent's plant; that after 6 o'clock in the afternoon the opponent's plant shuts its doors, and there are hours when there is not

enough ice for sale.

"Several witnesses have testified in this case to show that the service rendered by the opponent is inadequate and improper, because it has not been able to supply them with ice at the time and in the amount desired; that the numerous Japanese fishermen in the municipality of Cebu do not have all the ice they need to preserve their catch in said municipality and along the sea coast; that some of these require as many as 17 to 18 tons of ice for each trip, and have not been able to get them because there was not enough ice.

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"It is true that the ice plant of the opponent, Cebu Ice & Cold Stores' Corporation, has a capacity of from 20 to 25 tons a day, but it is no less certain that the demand for ice in the municipality of Cebu, taking into account the population, the number of Japanese fishermen requiring ice-as much as ten tons daily-the ice-cream vendors, the restaurants, refreshment parlors, hotels, bars, and hospitals, is so great that it cannot be supplied by all the ice produced in the opponent's plant.

"Would the present situation be remedied by an increase in the production of ice by the opponent? It could have done so ere now if it had been more diligent and attentive to the public interests; but all the same, it is one thing to have but one ice plant in a given locality supplying it in great quantities, and another to have two or more (at least in provincial capitals, like Cebu), so far as ensuring a steady supply goes, for one can never tell when the machinery or motor will break down. Thus, in the City of Manila, we have three different plants, which the San Miguel Brewery has gradually acquired, and which still function distinctly and separately. Apart from them we have the Government plant, and in town so near as Paranaque, Claloocan, Malabon, and others adjoining Manila, notwithstanding the great quantity of ice manufactured in this city, there are ice plants operating in the suburbs. In the capital of Iloilo there are two ice plants. In one town of the Province of Laguna, namely, San Pablo, two ice plants are in operation.

"It is contended that to permit another ice plant in the municipality of Cebu would be to bring about a ruinous competition which would in the long run injure the public, but this argument is not decisive, for reasonable and well-regulated competition should be stimulated because it encourages and, promotes a public service as well as the interests of the community. Ruinous competition ought to be avoided, but constructive and well-regulated competition makes for the progress and development of the ice industry for the benefit of the community.

"A slight analysis of the operation of the ice plant of the opponent, the Cebu Ice & Cold Stores Corporation, would throw light on the decision of this case.

"The annual report submitted by the opponent-shows that with P150,200 paid up capital, the gross income of the business during the year 1930 was P131,371.83, the expenses P72,256.79, and the resulting net income P59,115.04, or 39 per cent of the capital invested. "Notwithstanding these profits, the reduction in the opponent's rates has gone on so slowly that today it still charges P0.0275 per kilo of ice made with undistilled water; whereas in Manila the price for each kilo is P0.015, although the manufacture of ice from distilled water is much more expensive; the applicant, on the other hand, undertakes to charge at the rate fixed by the commission, and at all events less than the opponent charges.

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"From the opponent's plan set forth in Exhibit 6, to reduce the charge to P0.02 per kilo of ice when the daily consumption reaches 15 tons, it appears that the public itself is expected to develop the industry, without any encouragement on its part, whereas it is the opponent alone who should try to bring about such increase by means of efficient service and a reasonable charge, sufficiently low to bring it within the reach of the majority of the public, to the end that the use of ice may benefit the greatest possible number of people.

"According to the very testimony of the manager of the opponent, the capacity of the plant is almost double

that of the original machine installed before the year 1924, and the demand for ice has been on the increase.

"Now then, according to the data contained in the opponent's annual report, two-thirds of the business is done in the plant itself, and only one-third of the ice sold is delivered, and with all that, according to the same manager, complaints have been received touching the delivery service, and no showing has been attempted of the means employed to obviate such complaints. It should not wait for the commission to say and advice what should be done in every separate case-the commission's supervisory function is merely regulative, and not directive or administrative, for these are by their nature things resting with the board of directors and management of the company concerned; it is for them to seek adequate means to render the service more efficient.

"It would seem, however, that the directors of the opponent have taken up a merely passive and expectant attitude; thinking perhaps that at any rate the public has to go to it, as being the only company supplying ice.

"The operation of an ice plant of the capacity specified in the application, which is one-fifth of the opponent's capacity, supposing the two companies rendered equal service with equal efficiency, would take away one-fifth of the opponent's business, about P26,000 which is 44 per cent of its net profit, and this would leave to the opponent a net profit of 22 per cent or 23 per cent, without taking into account such new customers as it might gain by the stimulated activity generated by competition.

"If, on the other hand, the opponent should come out second best in this competition, because the public favors the applicant as rendering a more efficient service, that, too, would be a benefit to the public, which would undoubtedly recompense the company rendering the better service. The opponent would not be greatly prejudiced, and on the other hand, the public would receive the benefit of a "more efficient service.

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"Apart from this, the Supreme Court of these Islands, at least in three cases which the commission has at hand, has stated:

" 'The proof in the record shows that the consumption of ice in the great municipality of San Pablo and neighboring towns is excessively low, and it is probable that with the fomentation of interest in the consumption of ice, there can be developed a clientele ample to take the product of both factories.' (Dauner vs. Unson, G. R. No. 28957.)

"In the case of San Miguel Brewery vs. Lapid, the Supreme Court said:

" '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.' (53 Phil., 539)

"In Limjoco vs. Cabrera, although Limjoco had an ice plant in the capital of Batangas: and the right to supply Lemery, the Supreme Court affirmed the decision of this commission, looking only to 'the better service and convenience of the necessities of its inhabitants, which would tend to stimulate the development of the industry and commerce so necessary to the economic life of a municipality.' (G. R. No. 32863.) And it cannot be held that the case of Batangas Transportation Co. vs. Orlanes (52 Phil., 455), is applicable to the present case, because the omnibus service is wholly distinct and different from the service of an ice plant.

"In the case of motor trucks, after the first and second trip, there are many other trips to be made by other

trucks which will go along the same way and the same route.

"One may imagine the great prejudice to the community, if owing to one of those accidents that are so frequent, the only ice plant in the locality, with the number of inhabitants that the Province of Cebu contains, should not be able to supply ice one day or a number of days, on account of some trouble in the motor or machinery, or because of a strike, or what not.

"The commission believes the public is entitled to protection against these contingencies, and so it may at any moment have the ice needed for the consumption of the neighborhood and the uses of life."

It seems evident that in and around the municipality of Cebu, the demand for ice is more than the opponent, Cebu Ice & Cold Stores Corporation, can properly supply.

The decision of the commission is well justified by the evidence, and the petition brought by the opponent, Cebu Ice & Cold Stores Corporation, is denied with the costs against the said opponent. So ordered.

Villamor, Villa-Real, Abad Santos, and Imperial, JJ., concur.

DISSENTING

HULL, J., with whom concur Malcolm, Vickers, and Butte, JJ.,

In my opinion, an examination of the evidence of record shows that the findings of fact, as made by the Public Service Commission, are not reasonably supported by the evidence. According to the testimony of the respondent, the capacity of the Cebu Ice & Cold Stores Corporation plant is more than three times the average sale of ice in Cebu. The plant itself, and the books of the company, are subject to the inspection of the Public Service Commission, and such a definite statement, that is subject to accurate check, is worth more than the vague testimony of interested parties. As an example of the testimony as compared with the findings of the commission, the testimony of Julian Santiago, an employee of the petitioner is a striking example. In his direct testimony he said that he needed ten blocks of ice daily for his ice cream parlor and that he had been able to buy only four or five blocks a day, yet on cross-examination stated that for the time that he had been in business he had taken only from two to four blocks a day, and had always been able to secure them except for a short time in November, 1928. On this testimony is based the finding of "10 cakes of ice" quoted in the majority opinion of this court.

The decision of the Public Service Commission shows clearly that they believe the oppositor is making too much money, and charging excessive price for ice, and that therefore, competition should be encouraged in order that the people of Cebu will have greater facilities and cheaper ice. Nothing is said about the fact that no formal complaint has been made as to the price of ice in Cebu; nor has the commission exercised its power to reduce the price charged by the oppositor, if in fact it is excessive.

It is also to be noted that a short time ago there was another small ice plant in Cebu that no longer exists as it lost money and went out of business.

As this court clearly pointed out, in *Batangas Transportation Co. vs. Orlanes* (52 Phil., 455), the control by the Public Service Commission over a public utility, is to take the place of competition; sound public policy prohibits the establishment of a second public utility when the existing utility is rendering a sufficient, adequate, and satisfactory service to the public; and even when the first operator is not rendering such service, he should be

given an opportunity to remedy the defects of service before competition is permitted.

Certainly it should be competition or regulation. Business can not well stand both. If the views of the Public Service Commission, as announced in this case, are to be followed, the policy of the law will be defeated. The exercise of their powers should be insisted upon rather than permitting competition, claimed to be necessary to protect the public interest, which claim, if true, arises from lack of action on the part of the Public Service Commission.

For the foregoing reasons, I believe the orders under review should be vacated.

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