

ONG HIN LIAN (PACIFIC ELECTRIC LIGHT), AND THE MUNICIPAL GOVERNMENT OF SURIGAO, PETITIONERS AND APPELLANTS, VS. THE SURIGAO ELECTRIC COMPANY, RESPONDENT AND APPELLEE.*G.R. No. 37560. February 14, 1933*

Ponente: HULL, J.

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This is a petition for review of the orders of the Public Service Commission dated March 23, 1932, March 29, 1932, and April 29, 1932, entered in cases Nos. 14973, 26811, 27697, and 28072 of the Public Service Commission. The four cases were, by agreement of the parties and by order of the commission, jointly heard.

Respondent-appellee, by Act No. 3419, approved December 7, 1927, was granted a franchise to install, operate and maintain an electric light, heat, and power system in the municipality of Surigao, Province of Surigao. The municipal government of Surigao, being opposed to this grant, granted a municipal franchise to another entity by name of the Surigao Electric Light Company. These two grants were submitted to the Public Service Commission and after hearing and much argument, that commission properly held that a holder of a legislative franchise had preference over the holder of a municipal franchise granted more than a year later.

Section 2, of Act No. 3419, among other things, provided for approval by the provincial and municipal authorities concerned of the distribution system and in its decision of August 12, 1930, the Public Service Commission directed that appellee submit within sixty days a plan of the municipality of Surigao showing the location and installation of the post and distribution line of the proposed electric plant duly approved by the corresponding municipal and provincial authorities. Within the extension of time granted by the Public Service Commission appellee submitted a plan for approval, that upon disapproval of such original plan, another was re-submitted with the information that the applicant was willing to accept any reasonable modification that the said municipal council might deem proper to make, and also submitted a tentative approval of the plans by the district engineer of Surigao.

The municipal council of Surigao, being hostile to appellee, refused to approve any plan submitted by appellee and believing that under the provisions of section 2, of Act No. 3419, requiring their approval of the lay-out, they could nullify the Act of the Philippine Legislature by arbitrary action.

About six months after the decision of the Public Service Commission upholding the legislative franchise, the municipal council granted to Ong Hin Lian a municipal franchise to install and operate an electric plant in that municipality. The municipality also approved Ong Hin Lian's plan of distribution which was approved by the provincial board of Surigao in which it was stated that the franchise was granted to the Pacific Electric Light Company, represented by Ong Hin Lian. This uncertainty as to the actual legal entity of the holder of the present municipal franchise is shown by the title of this case in which, both in the Public Service Commission and in this court, this petitioner-appellant appears as Ong Hin Lian (Pacific Electric Light). The municipal government of Surigao also appears as petitioner asking that the municipal franchise be upheld and the legislative franchise

declared defeated by the action of the municipal council in refusing to approve of any plan submitted by the appellee.

While the case was pending in the Public Service Commission appellee secured permission of the Public Service Commission to adopt as their own and submit for the consideration of the commission the plan of appellant which had been approved of by the provincial and municipal authorities. The Public Service Commission granted this application, authorized appellee to install his plan accordingly, and denied the application of appellant to grant a certificate of public convenience and necessity to the holder of the municipal franchise. From these orders the cases are brought here for review.

During the last hearing appellee challenged the personality of the Pacific Electric Light on the ground that it was not a registered entity, whereupon the personality of the Surigao Electric Company was challenged.

The record shows that on February 14, 1928, five individuals joined together for the purpose of organizing a company which they denominated the Surigao Electric Company. The original of this document was filed with the Public Service Commission. When its legal status was challenged the articles of incorporation were properly filed with the Bureau of Commerce and Industry and a proper certificate of registration was obtained.

Act No. 3419 provided that the franchise was not to take effect until the franchise was accepted, but made no provision as to within what period of time such acceptance must be filed. Appellee asserted good faith and claimed that the filing of the articles of incorporation with the Public Service Commission was an accident and even the appellants do not allege fraud. It is hard to believe that these business men accidentally failed to create a corporation. Appellants claim that a failure to incorporate within four years standing alone renders the franchise null and void. Our attention has not been called to any doctrine or authority that would prevent the Government acting through the Public Service Commission of permitting the appellee to cure this defect. The main contention of the municipal government of Surigao is their claim of legal right to nullify the legislative franchise by arbitrarily refusing to approve of the plans of the company. This was not sustained by the Public Service Commission, nor can it be sustained by this court. The provision was inserted in the Act granting the franchise to protect the municipality from unsightly or improper construction. By its very nature it presupposes action in accord with the facts and in the exercise of sound judgment. The action of a subordinate body must be taken with an end to accomplish the legislative intent, not to frustrate it. On the whole case we are of the opinion that the orders of the Public Service Commission are not contrary to law and are reasonably supported by the evidence.

There is one important feature of the case, however, that has not been given adequate consideration by the Public Service Commission. Apparently appellee has entered into an oral contract with another company to construct and operate for the time being the plant in which the electric power is generated. Being an oral contract it is difficult to see how the public is to be protected from excessive costs or an uncertain source of power.

The orders appealed from are therefore affirmed with the modification that the Public Service Commission will take proper steps at once to investigate and make of record and to approve or disapprove of the contract between the appellee and the Butuan Sawmill, Inc. Costs against the appellant. So ordered.

Villamor, Villa-Real, Vickers, and Imperial, JJ., concur.

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