

ESTEBAN C. ESPIRITU, APPLICANT AND PETITIONER, VS. SAN MIGUEL BREWERY, CAVITE ICE PLANT CO., INC., AND FORTUNATO G. LAPID, OPPOSITORS AND RESPONDENTS.*G. R. No. 45161. October 26, 1936*

Ponente: DIAZ, J.

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This is a petition to review case No. 27378 of the Public Service Commission, filed by Esteban C. Espiritu who does not agree with the decision of said commission denying his application for a certificate of public convenience to construct and establish an ice plant capable of producing five tons daily, in the municipality of Rosario, Province of Cavite, and to sell ice not only in said municipality but also in those of Caridad, Noveleta, Imus, Kawit, Bacoar, General Trias, Tanza, Naic and Indang. His petition is based upon the fact that, according to him, the commission erred: (1) In denying his motion for a new trial; (2) in not declaring that there can be no ruinous competition in the ice business; (3) in not declaring that the ice deposits established by his oppositors in the municipalities stated by them in their pleadings are not beyond the supervision of the commission; (4) in not declaring that the public convenience demands the establishment of an ice plant in the municipality of Rosafio; and (5) in denying his petition to be permitted to establish, erect and operate an ice plant in the municipality of Rosario, Province of Cavite, to sell said commodity therein and in the municipalities of Noveleta, Caridad, Bacoar, Kawit, Imus, General Trias, Tanza, Naic and Indang all within said province.

When the applicant filed his pleading that gave rise to case No. 27378 of the Public Service Commission, seeking permission, to erect and establish an ice plant capable of producing five tons of ice daily, in said municipality, for the purpose of selling it in said municipalities at the rate of 2 centavos a kilo when sold at the plant and at 2 1/2 centavos when delivered at the homes of the consumers, the following persons filed opposition: (1) Fortunate G. Lapid, owner of the Rizal Ice Plant established in the municipality of Paranaque, Rizal, who claimed he could supply a sufficient quantity of ice to take care of his customers residing in the municipalities where the applicant proposes to establish said service; (2) Lapid & Flores who, in turn, claimed to have another ice plant formerly called Cavite Ice Plant Company established in Cavite, now known as the Cavite Ice Plant Co., Inc., stated that said ice plant produces ten tons of ice daily; that it has always had on hand, daily, two hundred and fifty blocks in its bodegas at the disposition of its customers; and that for the convenience of the latter it has established deposits of said commodity in each and every one of the municipalities of Salinas, Rosario, Tanza, Malabon or General Trias, Imus, Bacoar and Naic; and (3) that the San Miguel Brewery claimed to have ice distributors in each and every one of the municipalities mentioned by the applicant in his application.

The Public Service Commission, after hearing the interested parties, decided to deny the applicant's petition and ordered the dismissal of the case instituted by him on the ground that it was neither necessary nor prudent to permit the establishment of a new plant in the Province of Cavite, to avoid a ruinous competition which would destroy the ice business actually existing in said province or, at least, in the municipalities stated by the applicant, wherein the oppositors who already have established factories and deposits have invested a considerable capital.

The first error relied upon by the applicant in his brief cannot be taken into consideration on account of his own abandonment and neglect. If it is true that the oppositor Cavite Ice Plant Co., Inc., failed to maintain its ice deposits in said municipalities on account of having transferred them to the oppositor San Miguel Brewery after the rendition of the decision the review of which is sought, as affirmed by him in his motion for a new hearing, he should have opportunely informed the Public Service Commission thereof and not fold his arms, as he did, letting almost two years pass before filing his said motion. Public interest requires that proceedings already terminated should not be altered at every step. The rule of non *quieta movere* prescribes that what has already been terminated should not be disturbed. For this reason, the law provides that motions for new trial be filed within thirty days after notice of the decision and judgment (sec. 145, Act No. 190), or within a reasonable time if filed for the first time in this court, after a showing that the alleged newly discovered evidence constituting the basis of said motions could not have been discovered before notwithstanding the exercise of due diligence (sec. 497, Act No. 190). It should be noted that the applicant's motion was not presented in this court but in the Public Service Commission and it gives no explanation why it was not filed on time but after the lapse of almost two years. The decision of the Public Service Commission was promulgated on February 29, 1936; the last hearing took place on October 5, 1934, and said motion for a new hearing was filed only on April 17, 1936. If the applicant was aware of the alleged transfer of the Cavite Ice Plant during the pendency of the case, as claimed in his motion, to Gustav Mattman, a Swiss, who incorporated it, named it Cavite Ice Plant Co., Inc., and later established the ice deposits in the municipalities above stated; and if he was aware of the assignment or transfer of said company's business to the oppositor San Miguel Brewery, which facts certainly do not appear *prima facie* in his motion alleging nothing but a mere conclusion, and yet kept silent until April 17, 1936, he undoubtedly incurred neglect and this neither vested him with any right to nor justifies the alteration of the decision and judgment in question.

The fact that Gustav Mattman is not a Filipino citizen is of no avail because he acquired his rights in the former Cavite Ice Plant long before the case under consideration was submitted to the Public Service Commission for decision which, as stated, took place on October 5, 1934; and consequently long before the taking effect of the Constitution of the Philippines containing the prohibition against all persons not Filipino citizens to establish or operate a public service (Art. XIII, sec. 8, of the Constitution). The universally accepted rule is that a constitution, as any other statute, has no retroactive effect except when it so expressly provides and the Constitution of the Philippines certainly does not do so, much less if it affects vested rights (6 R. C. L., 33, 34, 310; art. 3, Civil Code; *In re Will of Riosa*, 39 Phil., 23). Furthermore, Gustav Mattman is not an applicant in said case but a mere oppositor.

The second error attributed by the applicant to the commission is based upon false premises. In the ice business as in every public service business there can be ruinous competition, not because the commission which exercises direct supervision over the companies engaged in said business may prevent it by prescribing therefor a fixed rate for observance by everybody under the same circumstances or operating in the same locality or within the same territory, but because if the production of said article becomes greater than the demand and the applicant is permitted to share in the business, there being already more than two ice plants in the same territory, the latter would go to ruin and the applicant would not in the least profit thereby.

The last three errors assigned by the applicant are not more justified than the former two.

In fact if the oppositors Cavite Ice Plant Co., Inc., and San Miguel Brewery have ice deposits and ice distributors, respectively, in the municipalities where the applicant proposes to establish the same business, as the two are under the supervision and authority of the commission, so also necessarily are their agencies, deposits, distributors, properties or whatever they may be, in said municipalities, as expressly provided by section 13 of Act No. 3108 which reads:

"Sec. 13. The Commission shall have general supervision and regulation of, jurisdiction and control over, all public utilities, and also over their property, property rights, equipment, facilities and franchises so far as may be necessary for the purposes of carrying out the provisions of this Act. * * *"

The evidence conclusively shows that the oppositor Cavite Ice Plant Co., Inc., has at all times a deposit of two hundred and fifty blocks of ice in its plant and a sufficient quantity thereof in its deposits, which are open day and night, established in the municipalities of Salinas, Rosario, Tanza, Malabon or General Trias, Imus, Bacoor and Cavite, all at the disposal of its customers; that the latter have never experienced the lack of said commodity; and that the oppositors Rizal Ice Plant and San Miguel Brewery likewise send their ice to said points or to the majority thereof. The following conclusion of the commission is supported by the evidence:

"The conditions obtaining in the municipality of Rosario, Province of Cavite, and in the other municipalities above stated * * * are such that they do not warrant the grant of the certificate of public convenience sought for the establishment and operation of an ice plant. * * * we are convinced that the production of the Cavite Ice Plant in the municipality of Caridad * * * and said plant's supply of ice thus produced in the municipality of Rosario and others already stated are more than sufficient to take care of the needs of the inhabitants thereof. * * *"

This being so, and as our authority to modify or set aside a decision or order of the Public Service Commission is limited by law to cases in which said decision or order is not clearly supported by sufficient evidence (sec. 35, Act No. 3108), it follows that, the errors attributed to the commission by the applicant being groundless, his application must be denied and the commission's decision affirmed in all respects.

Wherefore, the petitioner's application is denied, thus affirming the decision of the Public Service Commission, with costs to said applicant. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, and Laurel, JJ., concur.

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