

ELPIDIO JAVELLANA, APPLICANT AND APPELLEE, VS. LA PAZ ICE PLANT AND COLD STORAGE CO., INC., OPPOSITOR AND APPELLANT.

G. R. No. 45163. October 26, 1936

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The oppositor La Paz Ice Plant and Cold Storage Co., Inc., appeals to this court for the review of the decision rendered by the Public Service Commission, the dispositive part of which reads as follows:

"Finding, therefore, after a careful consideration of all the evidence of record that the approval of this application will promote the public interests in a proper and suitable manner, as required by law, the opposition filed by the La Paz Ice Plant & Cold Storage Co., Inc., is hereby overruled and the applicant, Elpidio Javellana, is hereby authorized to install an additional producing unit with a capacity of 4 to 5 tons of ice daily in his ice plant in the municipality of Iloilo, Province of Iloilo, provided that the applicant should within 30 days from the date of notification hereof furnish this commission with more detailed information on the specifications of the additional producing unit herein authorized.

"This decision takes effect immediately." In support of its appeal the appellant assigns the following alleged errors as committed by the Public Service Commission in its decision in question, to wit:

- The Public Service Commission erred in granting the applicant Elpidio Javellana authority to install an ice producing unit with a capacity of from four to five tons of ice daily in his ice plant in the municipality of Iloilo.
- The Public Service Commission erred in overruling the opposition filed by the La Paz Ice Plant and Cold Storage Co., Inc., to the application of the respondent Elpidio Javellana.
- The Public Service Commission erred in not granting the motion for new trial presented by the oppositor-appellant."

The applicant attempted to prove the following facts:

That he is the sole owner and operator of an ice plant established in the municipality of Iloilo with a population of about five thousand inhabitants; that he is authorized by the Public Service Commission to produce 10 tons of ice daily to be sold not only in the municipality of Iloilo but also in the neighboring municipalities; that the daily capacity of the two producing units which he acquired from their former owner C. N. Hodges is only from 5 to 6 tons due to wear and tear thereof and to the scarcity of water for refrigeration; that the water used by him for refrigerating his machine is obtained from the Iloilo river by means of a pipe passing through the Iloilo pier; that the water reaching the plant through the pipe in question is insufficient for his needs; that said pipe cannot be replaced by a bigger one nor can an additional pipe be installed due to the fact that the pier is made of concrete; that the additional unit that the applicant plans to install, if his application is approved, will be driven by an electric motor which will not require refrigerating water; that the 5 or 6 tons of ice now produced daily in his plant are insufficient to meet the demand for ice from the municipalities served by him; that he often has to take incompletely formed blocks of ice from the refrigerating tank for the purpose of meeting urgent demands; and that he is the owner of 4 fishing motor launches, requiring about 120 tons of ice

monthly which had to be tied up for lack of ice.

The oppositor La Paz Ice Plant and Cold Storage Co., Inc., attempted to prove that it produces approximately 30 tons of ice daily, which amount is sufficient to satisfy the needs of the ice-consuming public of Iloilo; that the applicant's producing units may be repaired in order to reach at least 95 per cent of their original producing capacity, although the repair of the two units would cost more than the installation of an entirely new producing unit.

There is no question that notwithstanding the installation by the applicant of the new ice producing unit with a producing capacity of 15 tons daily, he cannot produce more than 10 tons of ice daily because his certificate of public convenience does not authorize him to do so. The question for the public and for the oppositor company is that the applicant, with the installation, of a new ice-producing unit, should not be authorized to produce a greater quantity of ice than what is fixed by his certificate. The fact that the applicant, with the new unit, may abuse and produce up to 15 tons of ice daily—as any public service may abuse—is no reason to withhold from the applicant permission to improve his machinery in order to make his production reach the limit fixed by the Public Service Commission for the benefit of the community. It should not be assumed that the applicant abuses his certificate and produces a greater quantity of ice than what he is authorized to produce; but should he do so there is the commission to discipline and penalize him by suspending his certificate.

The Public Service Commission stated in its decision that after a careful consideration of all the evidence of record, it is of the opinion that the approval of the application presented by Elpidio Javellana will promote the public interests in a proper and suitable manner, as required by law. Finding that the evidence of record reasonably supports and warrants the conclusions of the Public Service Commission, this court, not being permitted in such case to substitute by its own decision that of said commission, is constrained by the law to sustain the latter. (Manila Electric Company vs. Balagtas, 58 Phil., 429; Ampil vs. Public Service Commission, 59 Phil., 556; Calabia vs. Orlanes & Banaag Transportation Co., 55 Phil., 659; Aleosan Transportation Company vs. Public Service Commission, page 523, ante Mindanao Bus Company vs. Maria Cristina Transportation Co., G. R. No. 43628, promulgated September 9, 1935 [62 Phil., 956] and cases cited in this last decision.)

Wherefore, not finding any error in the appealed decision, it is affirmed in all its parts, with costs to the appellant. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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