

ELPIDIO JAVELLANA, PETITIONER, VS. LA PAZ ICE PLANT & COLD STORAGE CO., INC., AND THE PUBLIC SERVICE COMMISSION, RESPONDENTS.*G. R. No. 45577. October 30, 1937*

Ponente: VILLA-REAL, J.

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This is a petition filed by Elpidio Javellana praying that the secretary of the Public Service Commission be ordered to certify and forward to this court for review all the records of cases Nos. 11282, 45123, 46741, and 46831 of the Public Service Commission, and that judgment later be rendered declaring null and void the order of said Public Service Commission dated April 9, 1937, issued in case No. 46831, for being inofficious and illegal.

The respondent La Paz Ice Plant & Cold Storage Co., Inc., was the holder of a certificate of public convenience issued by the other respondent Public Service Commission in case No. 11282 of said commission, to maintain and operate in the Province of Iloilo an ice plant capable of producing 10 tons of ice daily (Annex A of the motion for reconsideration Annex B).

The petitioner, Elpidio Javellana, is the holder of a certificate of public convenience authorized to maintain and operate in the same Province of Iloilo an ice plant capable of producing 10 tons of ice daily. Said petitioner later obtained authority, in case No. 46741 of the Public Service Commission, to increase the productive capacity of his ice plant and the production thereof to 30 tons of ice daily.

In case No. 23573 of said commission, the respondent La Paz Ice Plant & Cold Storage Co., Inc., was likewise authorized, in an order of June 6, 1930 (Exhibit 1), to install an additional 80 H. P. Blackstone Engine to be operated in accordance with the conditions imposed in the certificate of public convenience issued in its favor in the above-stated case No. 11282. Said respondent, however, installed a 130 H. P. Fairbanks-Morse Diesel Engine in place of said machinery, thereby increasing its production to 30 tons of ice daily from the year 1930, without having previously obtained authority therefor from the Public Service Commission (Record No. 46831, page 21).

On October 8, 1936, said respondent La Paz Ice Plant & Cold Storage Co., Inc., in case No. 46831 of the Public Service Commission, applied for the approval of its said petition to increase production to 30 tons of ice daily, and of another petition for authority to further extend the capacity of its machinery for the purpose of producing 20 tons more, thereby increasing its total daily production to 50 tons of ice. This petition was opposed by the herein petitioner Elpidio Javellana, alleging that such practice of increasing production before obtaining the approval thereof should not be sanctioned, and that said respondent should not produce more than 10 tons of ice daily inasmuch as the needs of the consuming public could be satisfied by all the operators authorized to supply said commodity (Record No. 46831, pages 23 and 31).

While said motion was pending decision by the Public Service Commission, the herein respondent La Paz Ice Plant & Cold Storage Co., Inc., began to install another unit in its machinery, consisting of a 200 H. P. Deutz Diesel Engine. In view thereof, the herein petitioner Elpidio Javellana, on February 13, 1937, filed a complaint

with the Public Service Commission, in case No. 48426, praying for the suspension of the installation in question as well as for the cessation of the operation of the other two units, that is, a Blackstone Engine 38-42 H. P. with one 7 1/2 X 71/2 York Ammonia Compressor and 130 H. P. Fairbanks-Morse Diesel Engine direct coupled to a 10 X 10 York Ammonia Compressor which according to said complaint, had been installed and operated without due authority.

On February 16, 1937, the Public Service Commission sent its engineer Teodoro Bacani to Iloilo to inspect the plant of the respondent corporation and to investigate whether the charges filed in the complaint were true or not. After the report of said engineer had been submitted (Record No. 48426, page 39), the Public Service Commission, in an order of February 19, 1937, ordered the respondent La Paz Ice Plant & Cold Storage Co., Inc., to cease the operation of the two units in question, to suspend the installation of the fourth unit above-stated, and to limit its production to 10 tons of ice daily, stating the production of a larger quantity was in violation of the condition imposed in its certificate of public convenience. As a result of said order, only one unit of its machinery, that is, the 40 H. P. Fairbanks-Morse crude oil engine connected with a York-Two cylinder 7 1/2 X 7 1/2 compressor labeled as of 7 tons ice making capacity, which is the only machine authorized in its above-stated certificate issued in case No. 11282 (see case No. 48426 of the Commission, pages 13-15).

A motion for the reconsideration having been filed by the herein respondent La Paz Ice Plant & Cold Storage Co., Inc., the Public Service Commission, in order to decide the case on its merits, set the hearing of the complaint for a date not specified in its order of February 25, 1937. In the meantime, however, considering the petition of several customers and believing it to be of public necessity and convenience, the Public Service Commission issued an order dated February 26, 1937, setting aside its order of the 19th of said month and year and authorizing said respondent corporation to resume its former operation (Record No. 48426 of the Commission, pages 33 to 35).

Meanwhile, said application of the respondent La Paz Ice Plant & Cold Storage Co., Inc., in the above-stated case No. 46831 of the Public Service Commission, was set for hearing on April 8, 1937. After the presentation of the evidence and pending the filing by both parties of their respective memoranda, the herein respondent Public Service Commission, on April 9, 1937, issued an order (Exhibit A), the pertinent part of which reads as follows:

"The Commission considers that public service cases are partly commercial in nature, not purely judicial, and therefore the time factor should be taken into account. It having been alleged by the petitioner that the harm it would suffer, should this case be not decided immediately by this Commission, consists in that it would yet have to continue operating the old machinery without being able to produce even the 30 tons already authorized, the petitioner is hereby authorized to replace the old machinery with the new one, but, until this case is decided by the Commission, it should produce only the 30 tons so far authorized."

On April 27, 1937, the herein petitioner Elpidio Javellana filed a motion for reconsideration of said order, alleging that the allegation contained therein to the effect that the La Paz Ice Plant & Cold Storage Co., Inc., had been authorized to produce 30 tons of ice daily is not true, and that said order was in conflict with the mandate in a writ of preliminary injunction issued by the Court of First Instance of Iloilo in civil case No. 10722, entitled "Elpidio Javellana vs. La Paz Ice Plant & Cold Storage Co., Inc." and addressed to the therein defendant, commanding it to refrain, until further orders, from operating new units in its plant, outside that authorized in its certificate of public convenience, and from producing more than 10 tons of ice daily, which is the only amount authorized in its certificate in question (Record No. 46831, page 350).

The respondent Public Service Commission, in an order of May 3, 1937, denied said motion for reconsideration on the ground that as the La Paz Ice Plant & Cold Storage Co., Inc., had been authorized in case No. 23573 to install new machinery "in order to increase its productive capacity, it clearly appears that productive capacity of

10 tons originally granted to the predecessor thereof in case No. 11282, "has been increased" (Record No. 46831, pages 351, 352).

Although the petitioner calls his petition a petition for review, it will be treated by this court as a petition for certiorari inasmuch as it does not seek the reversal but the annulment of an order authorizing the corporation La Paz Ice Plant & Cold Storage Co., Inc., to increase its ice production to 30 tons daily, the latter not having a certificate of public convenience therefor, which is the same as saying that the respondent commission exceeded its jurisdiction and abused its discretion.

In the case of *Barredo vs. Public Service Commission* (58 Phil., 79), it was stated that the action of the Public Service Commission in granting the special or provisional permits referred to therein was not only not authorized by their organic law but forbidden by the requirement to take evidence before issuing such permits. In said case no hearing on the merits was had and no evidence was presented, while in this case there was hearing on the merits and both parties presented evidence for and against the application to increase productive capacity and production filed by the respondent. The case could not be decided immediately because the parties asked for time to file memoranda. Inasmuch as the convenience and necessity of the ice-consuming public demanded the prompt decision thereof, the Public Service Commission was compelled to issue the order in question. Section 16, paragraph (h), of Commonwealth Act No. 146, approved on November 7, 1936, authorizes the Public Service Commission, upon proper notice and hearing, to require any public service to establish, construct, maintain, and operate any reasonable extension of its existing facilities, where, in the judgment of said commission, such extension is reasonable and practicable and will furnish sufficient business to justify the construction and maintenance of the same, and when the financial condition of the said public service reasonably warrants the original expenditure required in making and operating such extension. Therefore, the Public Service Commission has ample powers to require and authorize public services with certificates of public convenience to extend their service when the necessity of the public affected so demands.

Although the order, the annulment of which is sought, is provisional in nature, as it had been issued, for the purpose of remedying an urgent public necessity, in a case wherein the extension of an already existing certificate is asked for and after the interested parties had presented their respective evidence, said order is legal and valid and the respondent commission acted within the scope of its discretionary powers in issuing it.

For the foregoing considerations, this court is of the opinion and so holds that when an ice-producing company applies for permission to extend the productive capacity of its machinery and to increase its production, and the necessity of the ice-consuming public urgently demands the approval of said application, the Public Service Commission, after due hearing and presentation of evidence, may provisionally authorize the extension applied for, when it cannot decide the case within the shortest time possible, and in doing so does not exceed its jurisdiction.

Wherefore, the remedy applied for is denied, with costs to the petitioner. So ordered.

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

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