

**LA PAZ ICE PLANT & COLD STORAGE CO., INC., RESPONDENT,
VS. ELPIDIO JAVELLANA, PETITIONER.***G.R. No. 45740. July 30, 1938*

Ponente: CONCEPCION, J.

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This is a petition for review filed by the oppositor-appellant Elpidio Javellana for the purpose of having us set aside the decision rendered by the Public Service Commission on July 26, 1937 which was amended by order of September 18, of the same year. Said decision and order authorized the respondent La Paz Ice Plant and Cold Storage Co., Inc., to produce fifty tons of ice daily in Iloilo by the installation of a 2004-horse power motor and an additional 10 by 10 compressor, and to reduce its price from P15 to P12 per ton.

Both petitioner and respondent are ice plant operators in Iloilo. The former had a permit to produce thirty tons of ice and the latter ten tons. Their permits date back to the year 1930. In May, 1936 respondent filed an application with the commission, which was amended by another dated October 9, of the same year, praying for a permit to produce fifty tons of ice daily by the addition of a 200-horse power motor and an additional 10 by 10 compressor. It also asked that it be allowed to reduce its selling price. Petitioner opposed the application upon the grounds, among others, that respondent was not entitled to a new certificate of public convenience because from the commencement of its operation it had been and still was illegally operating by producing a greater quantity of ice-than it had been authorized to do so; that the territory which respondent was authorized to serve does not require more than twenty tons daily which can be met by said respondent with ten tons daily and by the oppositor-appellant; that the reduction applied for in the rates of respondent would result in ruinous competition with the petitioner.

The population of Iloilo and the neighboring towns is more than 85,000 inhabitants. Within their territory there are five hospitals, twenty-five or thirty hotels and restaurants, thirty ice cream factories, and a public market. According to the observations of the commission, a number of ships from Manila and the ports of other provinces and of foreign countries call at the City of Iloilo almost daily. Several fishing vessels provide themselves with ice daily therein. The city itself is progressive and the majority of its inhabitants, including the workingmen, now use ice daily. These facts justify the increase in the production of ice as prayed for by the respondent. The fact that respondent has been violating, as alleged, its certificate by producing a greater quantity of ice than that it is authorized to produce, is not a meritorious objection. Its application precisely shows its intention to operate within the law.

As to whether the giving of a permit to the respondent to produce fifty tons of ice would result in ruinous competition for the petitioner, we do not believe that this objection is supported by the actual facts, considering that there are not more than two ice plants in Iloilo, which are those of the petitioner and the respondent, and that the growing population of Iloilo and of the neighboring municipalities, the business houses therein, the ships and fishing vessels which arrived daily at said port, and the public in general require and use ice daily as an article of prime necessity so that a greater production thereof would not give rise to ruinous competition. If the needs of the

public would not result in the consumption of eighty tons of ice which the parties in this case are authorized to produce, they can, of course, reduce their production because the permit granted by the commission does not mean an obligation to produce fifty tons on the part of the respondent and thirty on that of the petitioner.

In granting a certificate to an ice plant operator to produce a greater quantity of ice than that it had before allowed, the commission ought to consider, as it has done in this case, not only the population, the markets, ships and vessels, and the industrial and commercial establishments which consume said article daily, but also the prospects of development and progress of the city, the activities of the public and of the government, and the possibility that by reason of some accident in the existing plant or plants they might not be able to produce the quantity of ice which the daily consumption requires.

We believe that the foregoing refutes the third, fourth and sixth errors attributed by petitioner to the decision of the commission. Whatever might be their result, the first and second errors would not alter our decision. The fifth error refers to the order of April 9, 1937 whereby the commission, after the presentation of evidence by both parties, for urgent reasons authorized the respondent to substitute its old machinery with a new one and to produce thirty tons of ice while this case was pending final decision. Petitioner having sought the setting aside of said order in this court and his petition for a writ of certiorari having been denied, there is, therefore, no occasion to discuss the fifth alleged error.

The decision under review and the order amending the same are hereby affirmed, with costs against petitioner. So ordered.

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

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