

CLEMENTE TANJANGCO, APPLICANT AND APPELLEE, VS. JOSE DE BORJA, OPPOSITOR AND APPELLANT.*G. R. No. 47658. April 22, 1941*

Ponente: LAUREL, J.

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This action was instituted on June (23, 1926, in the Court of Applicant-appellee herein, Clemente Tanjangco, filed an application for a certificate of public convenience to operate and maintain a 10-ton ice plant within the municipality of Cainta, Province of Rizal, about 20 meters from the boundary line between this municipality and the municipality of Taytay, with authority to sell ice in the municipalities of Cainta, Taytay, Antipolo, Angono, Binangonan, Pasig, Pateros, Taguig, and San Pedro Makati. The application was opposed by the San Miguel Brewery, Marikina Ice Plant, Jose Flores, and Jose de Borja, alleged operators of ice plants in the territory proposed or intended to be served by the applicant, on the ground that the establishment of the proposed ice plant is unnecessary and would result only in ruinous competition.

It appears, however, that sometime before November 25, 1939, an agreement was reached (marked Exhibit X) which was intended to allow the applicant-appellee to sell ice only in the municipalities of Cainta, Taytay, Antipolo, Angono, and Binangonan, thereby eliminating from his application the municipalities of Pasig, Pateros, Taguig, and San Pedro Makati. All the oppositors appear to have signed the agreement with the exception of the herein appellant, Jose de Borja.

As to this oppositor, "it should be stated that he has not prosecuted his opposition and merely asked for postponement of hearings which the Commission did not grant. In fact, oppositor de Borja cannot be affected by this application as the records of the Commission show that he (op- positor de Borja) stopped operating the ice plant authorized for him in Morong, Rizal, (case No. 19541), and has not established and operated the other ice plant in Taytay authorized by the certificate of public convenience issued to him in case No. 19542 since the year 1929, in view of which steps are now being taken by this Commission to cancel the certificates of public convenience issued to him in the cases already mentioned. His opposition is therefore hereby overruled."

"There being no ice plant operator in the municipality. of Cainta where the applicant proposes to establish his plant; the application filed in this case being practically uncontested; and it being established by the evidence of record that public interests will be promoted by a grant of the amended application, and that applicant is qualified and financially capable of operating and maintaining the service proposed by him, the Commission decides that upon payment of the corresponding fees, a certificate of public convenience be issued to the applicant * * *."

We find no reason for disturbing the conclusions reached by the Public Service Commission.

The contention of the appellant that the proposed service of the appellee would cause ruinous competition is without basis; for, as found by the Commission, there is no established operator in the place where the appellee proposes to establish and operate his plant; that the appellant stopped operating the ice plant authorized for him in

Morong, Rizal (case No. 19541), and he has not operated the other ice plant in Taytay authorized by the certificate of public convenience issued to him (Jose de Borja) in case No. 19542 since 1929, as a result of which the Commission has taken steps to cancel the certificate of public convenience issued to him in the aforementioned cases. Moreover, as held in the case of San Miguel Brewery vs. Espiritu (60 Phil., 751), "even in the case where an outside manufacturer has an ice depository in the locality, this court has found and held that it is always more advantageous to have an ice plant in the same locality." (San Miguel Brewery vs. Lapid, 53 Phil., 539.)

It follows that the grant of authority to the appellee to operate an ice plant in the municipality of Cainta under the conditions imposed by the Public Service Commission in its decision appealed from, should not be disturbed, and the same is affirmed in all respects, with costs against the oppositor-appellant. So ordered.

Imperial, Diaz, Moran and Horrilleno, JJ., concur.

Decision affirmed.

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