

JESUS T. PINEDA, PETITIONER, VS. MOISES G. CARANDANG, RESPONDENT.*G.R. Nos. 13270-71. March 24, 1960*

Ponente: GUTIERREZ DAVID, J.

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These are separate petitions filed by petitioner Jesus T. Pineda for the review of a decision rendered by the Public Service Commission in Cases Nos. 106152 and 106673.

The records disclose that on April 10, 1957, the now respondent Moises G. Carandang filed with the said Commission an application for a certificate of public convenience to install and operate an ice plant in the municipality of Mamburao, province of Occidental Mindoro with a productive capacity of 5 tons of ice daily. The territory where he proposes to sell the ice he manufactures includes the said municipality of Mamburao as well as those of Abra de Ilog, Paluan, Sta. Cruz and Sablayan of the same province. (Case No. 106152). On May 10, 1957, herein petitioner Jesus T. Pineda filed his own application seeking authority to install and operate a similar plant also in the municipality of Mamburao capable of producing 8 tons of ice daily and to sell the ice in the same municipalities proposed to be served by Carandang except Sablayan. (Case No. 106673.) Each applicant opposed the application of the other, claiming that he has a better right to a certificate and that he is better qualified to put up the proposed service. Maximo Anabo, an operator of an ice plant of one-ton capacity located in Abra de Ilog, one of the municipalities where both applicants propose to sell their ice, also opposed the applications. He withdrew his opposition, however, during the joint hearing of the applications when both applicants agreed to exclude the town of Abra de Ilog from among those they propose to serve.

From the evidence presented at the joint hearing, the Commission found that there is sufficient need for ice service in the territory covered by the two applications to warrant the authorization of another ice plant in the municipality of Mamburao, the one-ton of ice produced by the Abra de Ilog plant being inadequate to meet such need. The need or demand for ice, however, according to the Commission, does not justify the authorization of an ice plant with a productive capacity of more than 5 tons. The Commission, likewise, found both applicants identically qualified and financially capable of operating the ice plant which each one proposes. But considering that Moises G. Carandang was the first applicant, the Commission in its decision dated September 30, 1957 denied Jesus T. Pineda's application and approved that of the former, issuing to said Moises G. Carandang a certificate of public convenience to operate a 5-ton ice plant in Mamburao, Occidental Mindoro with authority to sell the ice it manufactures in that locality as well as in the municipalities of Paluan, Sta. Cruz and Sablayan of the same province.

In seeking a review of the decision below, counsel for petitioner contends that the Commission erred in giving undue importance to priority of application and in finding that a 5-ton ice plant would satisfy the need for ice service in Mamburao and the neighboring towns covered by the applications. It is claimed that, as between the two applicants, petitioner Jesus T. Pineda is in a position to render better service and that an 8-ton ice plant—and not one of only 5-ton capacity—will best serve the public interest and welfare in the territory proposed to be

served. The Commission, however, as already stated, found that both applicants, herein petitioner and respondent, are identically qualified and financially able to operate and maintain the public service utility applied for. From an examination of the records, we find this finding to be amply supported by the evidence. We may add that the herein respondent, whose application was granted, is a civil engineer, with experience in the installation of an ice plant, so that from the point of view at least of technical know-how, he is in a better standing than herein petitioner Jesus T. Pineda. As to the authorization of only a 5-ton ice plant in Mamburao, we also find this to be fully justified and supported by the evidence, and consequently, like the Commission's finding regarding the qualification and financial ability of both applicants, the same cannot now be disturbed. In reviewing a decision of the Public Service Commission, this Court is not required to examine the proof de novo and determine for itself whether or not the preponderance of evidence really justifies that decision. Our only function is to determine whether or not there is evidence before the Commission upon which its decision might reasonably be based. This Court will not substitute its discretion for that of the Commission on questions of fact, and will not interfere in the latter's decision unless it clearly appears that there is no evidence to support it. (See *Moran*, Comments on the Rules of Court, Vol. II, 1957 ed, p. 678.)

In the circumstances, we hold that the Public Service Commission committed no error in considering priority of application when it awarded to herein respondent the certificate of public convenience to operate a 5-ton ice plant. The rule, of course, where there are various applicants for a public utility over the same territory, is that priority of application, while an element to be considered, does not necessarily control the granting of a certificate of public convenience. The question to be considered in such cases is, which applicant can render the best service, considering the conditions and qualifications of the applicants to furnish the same. (*De los Santos vs. Pasay Transportation Co.*, 54 Phil., 557.) But where other conditions are equal—as in this proceedings—priority in the filing of the applications for a certificate of public convenience becomes an important factor in the granting or refusal of a certificate. (*Batangas Transportation Co., vs. Eliseo Silva vs. Orlanes and Banaag Transportation Co.*, 55 Phil., 745, cited in the recent cases of *Benitez vs. Santos*; *Lopez vs. Santos*, *supra*, p. 167.

There being no reason to disturb the decision brought here for review, the same is hereby affirmed, with costs.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Barrera, JJ., concur.

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