

CAMARINES SUR INDUSTRY CORPORATION, PETITIONER, VS. JAIME T. BUENAFLO, RESPONDENT.*G.R. Nos. 15490-93. April 29, 1961*

Ponente: CONCEPCION, J.

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Appeal by petitioner Camarines Sur Industry Corporation from a joint decision of the Public Service Commission in the above-entitled cases, insofar as it grants the application of respondent Jaime T. Buenaflor for a certificate of public convenience to install, maintain and operate a one-ton ice plant in the barrio, of Sabang, municipality of Calabanga, province of Camarines Sur, with authority to sell the ice therein produced in said barrio only, as well as a cold storage service of 5,000 cubic feet, and denies petitioner's application for such certificate of public convenience to install, maintain and operate the aforementioned cold storage service in the same barrio.

In said decision, the Commission, likewise, granted petitioner's application for a certificate of public convenience to install, maintain and operate a 5-ton ice plant in the barrio of Sabang and denied respondent's application for such certificate of public convenience. From this part of said decision respondent appealed to this Court, in which the appeal was docketed as cases G. R. No. L-14991 to L-14994, entitled "Jaime T. Buenaflor vs. Camarines Sur Industry Corporation," which were decided on May 30, 1960.[*] Inasmuch as the evidence and the facts in the two sets of cases (L-14991 to L-14994 and L-15490 to L-15493) are the same, we quote from the statement of facts made in our decision in cases L-14991 to L-14994:

"On June 25, 1957, Buenaflor filed his said application (P.S. Case 107548) together with another application to establish a cold storage and refrigeration service of about 6,000 cubic feet capacity (P.S. Case 107549). The Commission, by order of September 12, 1957, set the applications for hearing on October 9, 1957, requiring applicant to publish them in two newspapers, and to serve copy thereof to Inigo Daza and Camarines Sur Industry Corporation (hereinafter called Camarines Corporation). These owned ice plants in neighboring municipalities and had been apparently selling ice to Sabang's inhabitants.

After receiving a copy of Buenaflor's applications, the Camarines Corporation submitted to the Commission on October 1, 1957, its own two applications: one for authority to construct and manage a 5-ton ice plant, and another for a cold storage and refrigeration system, both in Sabang too (P.S. Cases 109874 and 109875). It likewise registered opposition, to Buenaflor's proposed ice business, on the ground that it was the pioneer distributor of the commodity in that particular locality.

When the petitions of Buenaflor were called for hearing on October 9, 1957, the attorney for Camarines Corporation voicing its opposition, invited attention to his client's applications, moved for postponement, and agreed to a joint hearing of the four applications of both parties on October 25, 1957.

On the last mentioned date, Buenaflor's attorneys presented a motion to dismiss the Camarines Corporation's applications, challenging its personality, inasmuch as its corporate life had expired in November 1953, in accordance with its own articles of incorporation. Surprised by the move, counsel of Camarines Corporation asked, and was granted, time to answer. Immediately thereafter, the incorporators of Camarines Corporation got

busy and executed on October 30, 1957, and registered October 31, 1957, new articles of incorporation of Camarines Sur Industry Corporation, and at the same time, notarized a deed of conveyance assigning to the new corporation, all the assets of the expired (old) corporation, together with its existing certificates of public convenience to operate ice factories in Naga and Magarao.

Without loss of time, the incorporators of the defunct (old) corporation and the newly organized corporation petitioned the Public Service Commission for the approval of the conveyance, and on November 7, 1957, the Commission provisionally approved the transfer of assets, plus the certificates of public convenience.

On November 8, 1957, the Caniarines Corporation (new) answered the motion to dismiss, by alleging—to the amazement of Buenaflor—its recent incorporation, plus its acquisition of the assets and certificates of the old Camarines Corporation with the Commission's approval, as above described.

Reiterating his application, while resisting the Camarines Corporation, Buenaflor argued: (a) he was first to apply; (b) although the old Camarines Corporation had been operating an ice plant in Magarao town, only six kilometers away, it neglected to take the trouble to applying until Buenaflor had made his application; (c) the preference which the new Camarines Corporation claims by virtue of the old corporation's having distributed ice in Sabang for the years previous to Buenaflor's application, should not be granted because since 1953 such old corporation had ceased to be a juridical entity, and could not lawfully continue in business nor invoke any protection or preference.

Evidence was presented in support of the applications and oppositions.

The Commission, in its decision of December 12, 1958, after setting forth the gist of the proofs submitted to it, made the following considerations and conclusions:

"There is a clear need for an ice plant and a cold storage service in the barrio of Sabang and the question to decide is who of the applicants should be granted the necessary authority inasmuch as we do not believe from the evidence that we should authorize two ice plants of 5 tons each and two cold storage chambers with a total capacity of 14,000 cubic feet. As to the ice plant service, we find that Buenaflor filed his application ahead of the Camarines Corporation but the evidence and our records show that the Camarines Corporation is really the pioneer ice plant operator in Sabang. It has operated an ice plant in Magarao since 1945 which now has a capacity of 10 tons, and another ice plant in Naga since 1946 which now has a capacity of 12½ tons. It is established that the Camarines Corporation has been rendering ice service thru delivery in Sabang but we doubt whether its service has been adequate because there is satisfactory proof that ice also comes from other places. The fact, however, is that the Camarines Corporation cannot be said to have neglected its duty to serve Sabang and we believe that the shortage in its service has been due to the fact that the produce of its Naga and Magarao plants are needed for its other territories with not much to spare for Sabang. We think that as the pioneer ice plant operator in Naga and Magarao with authority to serve Sabang the Camarines Corporation, which has not abandoned its service in Sabang, is entitled to the protection of its investments and to put an ice plant in Sabang. It having been shown that there is a need for a plant in Sabang, and that the Camarines Corporation has been rendering service therein although in a limited manner. We believe, therefore, that applicant Camarines Corporation has a better right than Buenaflor to the certificate for a 5-ton ice plant in Sabang. As to the cold storage service, we think that Buenaflor has a better right to the certificate. * * * By virtue of Buenaflor's right of priority in the filing of his application and the fact that he is as financially capable as the Camarines Corporation to install the service, we believe that the certificate for the cold storage service, in Sabang should be granted to Buenaflor, but inasmuch as we take notice of the fact that a cold storage operator also need& ice for the preservation of fish and other perishable foodstuffs when these cannot be immediately deposited in the refrigerating chambers and also to provide its customers with ice they need after the goods are removed from the chamber, we believe that applicant Buenaflor may also be granted a certificate for a one (1) ton ice plant in Sabang together with a certificate for 5,000 cubic feet cold storage service'." (Jaime T. Buenaflor vs. Camarines Sur Industry Corp. 108 Phil., 473).

In the present appeal, petitioner maintains that, being the pioneer ice plant operator in the City of Naga and Municipality of Magarao, with authority to serve the municipality of Calabanga, including its barrio of Sabang, and the pioneer cold storage operator in the City of Naga, it should be given preference and its capital investment should be protected as against a new comer, like respondent Buenaflor, and that the decision appealed from permitting the latter to establish and operate a one-ton ice plant and a 5,000 cubic feet cold storage service in Sabang, and, at the same time, authorizing petitioner to operate a 5-ton ice plant in said barrio, the total need of which is only five tons of ice, violates said preferential right of petitioner herein. The premise upon which this argument is based has been removed, however, by our decision in L-14991 to L-14994, which reversed the decision of the Public Service Commission granting petitioner's application for a certificate of public convenience to install, maintain and operate said 5-ton ice plant in the barrio of Sabang, and denying respondent's application for such certificate of public convenience, and approved the latter. What is more, in reaching such decision, we said:

"As to the ice plant, Buenaflor insists he should be given authority to establish a 5-ton ice plant—not the new Camarines Corporation. His line of argument centers around the expiration of the old Corporation's charter in 1953; and we think, he touches the vital spot.

It is admitted—and the Commission found—that the needs of Sabang Barrio will be conveniently served with the establishment of a 5-ton ice plant. But it elected to deny Buenaflor's application, even as it awarded the privilege to the new Camarines Corporation on the ground that it (the old corporation) had been serving ice in Sabang up to the time of Buenaflor's application, and was, consequently, the pioneer operator there.

The fact, however, is that since 1953, the old Corporation had been illegally plying its business of selling ice in Sabang because, under the Corporation Law, Sec. 77, after November 1953, it could not lawfully continue the business for which it had been established (operate ice plant, sell ice, etc.). After November 1953, it could only continue to exist for three years for the purpose of prosecuting and defending suits by or against it, and of enabling it gradually to settle and close its affairs, to dispose and convey its property and to divide its capital stock. It could not, without violating the law, continue to sell ice. And yet, the Commission awarded the certificate on the basis of such service and distribution of ice—applying the prior operator rule. In other words, the new Camarines Corporation is rewarded, precisely because the old corporation, its predecessor, had violated the law during that period (1953-1957). We can not, and should not countenance such anomalous result.

On the other hand, when the old Camarines Corporation docketed its application October 1, 1957, it had no juridical personality, it had ceased to exist as a corporation and could not sue nor apply for a certificate, for it was incapable of receiving a grant. It was not even a corporation de facto. And then, there is no application subscribed by the new Camarines Corporation. Far from being more technicality, these points support a conclusion which appears to be just and equitable, not only for the reasons already indicated, but also to compensate Buenaflor's diligence and courage in exposing the irregular practice of a 'ghost' corporation foisting its services upon the unsuspecting public of Sabang and neighboring territory—enjoying a franchise without paying, perhaps, the corporate income tax and other burdens attached to corporate existence.

Remembering the Camarines Corporation's automatic cessation in November 1956 (three years after November 1953) we must decline to regard the new Camarines Corporation (formed October 30, 1957) as a continuation of the old. At most, it is the transferee of the properties of the old corporation (or more properly, the assets of the stockholders) plus the certificate of public convenience to operate the ice plant in Naga and Magarao. And yet, as stated, the new corporation has not filed any application for a certificate of public convenience in Sabang and has not published such application.

On these grounds, we think it was error to grant preferential treatment to the new Camarines Corporation over Jaime T. Buenaflor who, besides being qualified in the eyes of the Commission, had applied for the privilege

months in advance of the old Camarines Corporation, and of the incorporation of the new Camarines Corporation.

Wherefore, revoking the appealed decision in so far as it awarded the certificate to said Corporation, we hereby approve Buenaflor's application for five tons, instead of one ton, subject to the usual conditions imposed by the Public Service Commission on the ice plant establishments.

Costs against Camarines Corporation."

Again, the petitioner herein is either the old corporation or the new one. If the former, then it has no authority to function, for its corporate existence expired years ago, and, hence, it can neither interpose the present appeal, nor seek a certificate of public convenience. If the latter, then it has no standing in these cases, for it has filed no application for authority to install, maintain and operate a cold storage service in the barrio of Sabang. Apart from this, had the old corporation complied with law, it would have ceased to function, except to liquidate its affairs, since 1953, when its' franchise expired, and it could not have invoked the right of preference upon which it relies, when respondent herein filed its aforementioned application in 1957. It is its continued operation after 1953 that gave it a semblance of right to such preference. To acknowledge it now would, however, be, as we held in L-14991 to L-14994, to reward the illegality thus committed by the old corporation.

Wherefore, the decision appealed from is hereby affirmed with costs against the petitioner. It is so ordered.

Bengzon, C.J., Labrador, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

[*] 108 Phil., 472.

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