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Third Division
APR 05 2018

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

CITY OF PASIG and CRISPINA V. SALUMBRE, in her capacity as OIC-City Treasurer of Pasig City,
Petitioners,

-versus-

MANILA ELECTRIC COMPANY,
Respondent.

G.R. No. 181710

Present:

VELASCO, JR., *J.*,
Chairperson,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, *JJ.*

Promulgated:

March 7, 2018

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DECISION

MARTIRES, *J.*:

Under the Local Government Code *(LGC)* of 1991, a municipality is bereft of authority to levy and impose franchise tax on franchise holders within its territorial jurisdiction. That authority belongs to provinces and cities only.[1] A franchise tax levied by a municipality is, thus, null and void. The nullity is not cured by the subsequent conversion of the municipality into a city.

At bar is a petition for review under Rule 45 of the Rules of Court which seeks a reversal of the Decision[2] dated 28 August 2007, and Resolution[3] dated 8 February 2008 of the Court of Appeals *(CA)* in CA-G.R. CV No. 81255 entitled "The Manila Electric Company v. The City of Pasig, et al."

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1 Local Government Code of 1991, Sections 137 and 151.

2 *Rollo*, pp. 28-35; penned by Associate Justice Apolinario D. Bruselas, Jr., and concurred in by Associate Justices Bievenido L. Reyes (former member of the Court) and Aurora Santiago-Lagman.

3 Id. at 36-37.

THE FACTS

On 26 December 1992, the Sangguniang Bayan of the Municipality of Pasig enacted Ordinance No. 25 which, under its Article 3, Section 32, imposed a franchise tax on all business venture operations carried out through a franchise within the municipality, as follows:

> ARTICLE 3 – FRANCHISE TAX
>
> Section 32. *Imposition of Tax.* – Any provision of laws or grant of exemption to the contrary notwithstanding, any person, corporation, partnership or association enjoying a franchise and doing business in the Municipality of Pasig, shall pay a franchise tax at the rate of fifty percent (50%) of one percent (1%) of its gross receipts derived from the operation of the business in Pasig during the preceding calendar year.

By virtue of Republic Act *(R.A.)* No. 7829, which took effect on 25 January 1995, the Municipality of Pasig was converted into a highly urbanized city to be known as the City of Pasig.

On 24 August 2001, the Treasurer's Office of the City Government of Pasig informed the Manila Electric Company *(MERALCO)*, a grantee of a legislative franchise,[4] that it is liable to pay taxes for the period 1996 to 1999, pursuant to Municipal Ordinance No. 25. The city, thereafter, on two separate occasions, demanded payment of the said tax in the amount of ₱435,332,196.00, exclusive of penalties.

On 8 February 2002, MERALCO protested[5] the validity of the demand claiming that the same be withdrawn and cancelled for the following reasons: (1) Ordinance No. 25 was declared void *ab initio* by the Department of Justice *(DOJ)* for being in contravention of law, which resolution was reiterated in another case that questioned the validity of the franchise tax, etc.; (2) The Regional Trial Court of Pasig City *(RTC)* ordered the Municipality of Pasig, now City of Pasig, to refund MERALCO the amount the latter paid as franchise tax because the former lacked legal foundation in collecting the same, as municipalities are not empowered by law to impose and collect franchise tax pursuant to Section 142 of the LGC; (3) The CA affirmed the RTC decision; and (4) The petition for certiorari filed by the then Municipality of Pasig before the Supreme Court, assailing the decision of the CA that sustained the RTC, was likewise dismissed and the motion for reconsideration of the Municipality of Pasig was denied with finality.

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4 Under Act No. 484, as implemented by Ordinance No. 44 and extended by Republic Act Nos. 150 and 4159, MERALCO is authorized to construct, maintain and operate an electric light, heat and power system in the City of Manila and its suburbs including the City of Pasig.

5 Records, pp. 14-22.

In view of the inaction by the Treasurer's Office, MERALCO instituted an action before the RTC for the annulment of the said demand with prayer for a temporary restraining order and a writ of preliminary injunction.[6] The RTC ruled in favor of the City of Pasig, disposing as follows:

> **WHEREFORE**, premises considered, judgment is hereby rendered in favor of the defendant City of Pasig, declaring as valid its demand for payment of franchise tax upon [MERALCO] for the years 1996 to 1999, inclusive, subject to revision of the computation of the amount of such tax pursuant to the guidelines above-mentioned.[7]

MERALCO appealed before the CA.

The Ruling of the CA

On whether the City of Pasig can legally assess and collect franchise tax from MERALCO for the period 1996 to 1999, the court ruled in the negative.

The CA ratiocinated that the LGC authorizes cities to levy a franchise tax. However, the basis of the City of Pasig's demand for payment of franchise tax was Section 32, Article 3 of Ordinance No. 25 which was enacted at a time when Pasig was still a municipality and had no authority to levy a franchise tax. From the time of its conversion into a city, Pasig has not enacted a new ordinance for the imposition of a franchise tax. The conversion of Pasig into a city, the CA explained, did not rectify the defect of the said ordinance. Citing *San Miguel Corporation v. Municipal Council (SMC)*[8] and *Arabay, Inc. v. Court of First Instance of Zamboanga del Norte (Arabay),*[9] the CA ruled that the conversion of a municipality into a city does not remove the original infirmity of the ordinance. The dispositive portion of the decision reads:

> **WHEREFORE**, the foregoing premises considered, we resolve to REVERSE and SET ASIDE the decision appealed from. In its stead, a new judgment is hereby entered declaring the demand for payment of franchise tax from [MERALCO] as invalid for being devoid of legal basis.[10]

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6 Filed before Branch 70, RTC-Pasig City, docketed as Civil Case No. 68944.
7 Records, p. 367.
8 152 Phil. 30 (1973).
9 160-A Phil. 132 (1975).
10 *Rollo*, p. 35.

The City of Pasig moved, but failed to obtain a reconsideration of the said decision. Thus, the instant appeal.

The Present Petition for Review

The City of Pasig relied on the following reasons to support its petition:

I.

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN SETTING ASIDE THE DECISION OF THE TRIAL COURT AND IN DECLARING THAT THE CONVERSION OF THE MUNICIPALITY OF PASIG INTO A CITY DID NOT VEST THE LATTER WITH AUTHORITY TO LEVY FRANCHISE TAXES AS THE ORDINANCE GRANTING SUCH POWER WAS NULL AND VOID.

II.

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN SETTING ASIDE THE DECISION OF THE TRIAL COURT AND DECLARING THAT THERE IS NOTHING IN REPUBLIC ACT NO. 7892 WHICH INVESTS A CURATIVE EFFECT UPON ORDINANCE NO. 32.

III.

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN SETTING ASIDE THE DECISION OF THE TRIAL COURT CONTRARY TO THE RULE THAT IN CASE OF DOUBT IN THE APPLICATION OF A STATUTE, AN APPLICATION GIVING EFFECT TO THE LEGISLATIVE INTENT AND THE PRINCIPLE OF LOCAL AUTONOMY ENSHRINED IN THE CONSTITUTION SHOULD BE FOLLOWED.

For the Court's consideration is the following:

ISSUE

Whether the CA was correct in ruling that the City of Pasig had no valid basis for its imposition of franchise tax for the period 1996 to 1999.

OUR RULING

We answer in the affirmative.

I. Unlike a city, a municipality is bereft of authority to levy franchise tax, thus, the ordinance enacted for that purpose is void.

The conversion of the municipality into a city does not lend validity to the void ordinance.

Neither does it authorize the collection of the tax under said ordinance.

The power to impose franchise tax belongs to the province by virtue of Section 137 of the LGC which states:

> CHAPTER II
>
> Specific Provisions on the Taxing and Other Revenue-Raising Powers of Local Government Units
>
> ARTICLE I
>
> Provinces
>
> Section 137. *Franchise Tax.* - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.
>
> x x x x

On the other hand, the municipalities are prohibited from levying the taxes specifically allocated to provinces, *viz*:

> ARTICLE II
>
> Municipalities
>
> Section 142. *Scope of Taxing Powers.* - Except as otherwise provided in this Code, municipalities may levy taxes, fees, and charges not otherwise levied by provinces.

Section 151 empowers the cities to levy taxes, fees and charges allowed to both provinces and municipalities, thus –

ARTICLE III

Cities

> Section 151. *Scope of Taxing Powers.* - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.
>
> x x x x

The LGC further provides that the power to impose a tax, fee, or charge or to generate revenue shall be exercised by the Sanggunian of the local government unit concerned through an appropriate ordinance.[11] This simply means that the local government unit cannot solely rely on the statutory provision (LGC) granting specific taxing powers, such as the authority to levy franchise tax. The enactment of an ordinance is indispensable for it is the legal basis of the imposition and collection of taxes upon covered taxpayers. Without the ordinance, there is nothing to enforce by way of assessment and collection.

However, an ordinance must pass muster the test of constitutionality and the test of consistency with the prevailing laws.[12] Otherwise, it shall be void.

It is not disputed that at the time the ordinance in question was enacted in 1992, the local government of Pasig, then a municipality, had no authority to levy franchise tax. Article 5 of the Civil Code explicitly provides, "acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." Section 32 of Municipal Ordinance No. 25 is, thus, void for being in direct contravention with Section 142 of the LGC. Being void, it cannot be given any legal effect. An assessment and collection pursuant to the said ordinance is, perforce, legally infirm.

Consequently, the CA was correct when it declared that the demand of the City of Pasig upon MERALCO for the payment of the disputed tax was devoid of legal basis. It bears emphasizing that the DOJ and the RTC of

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[11] See LGC, Section 132..

[12] *Ferrer, Jr. v. Bautista,* 762 Phil. 233, 263 (2015) citing *City of Manila v. Hon. Laguio, Jr.*, 495 Phil. 289, 308 (2005).

Pasig City[13] had previously declared Section 32 of Municipal Ordinance No. 25 as void *ab initio*.[14] Even the City of Pasig, it seems, does not contest the invalidity of said ordinance.[15]

It is submitted, however, that when Pasig was converted into a city in 1995 by virtue of R.A. No. 7829 (the cityhood law) it was authorized to collect and impose a franchise tax. Demurring from the rulings in *Arabay* and *SMC* cited in the assailed CA decision, the City of Pasig insists that the demand for payment of franchise tax was justified for the period 1996 up to 1999, or when Pasig was already a city. Unlike the present case, the City of Pasig continues, *Arabay* and *SMC* involved taxes paid *prior* to the respective municipalities' conversion into cities.

We are not persuaded.

The doctrinal rule on the matter still rings true to this day – that the conversion of the municipality into a city does not remove the original infirmity of the subject ordinance. Such doctrine, evoked in *Arabay* and *SMC*, is squarely relevant in the case at bar. In these two separate cases, the sales taxes were paid by the petitioners pursuant to ordinances enacted ***prior*** to the conversion of the respondents into cities, or at which time the latter were without authority to levy the said taxes. Finding the municipal ordinances to be void, the Court minced no words in declaring the payments of taxes under the ordinances to be without basis even if subsequently the respondents became cities. Fittingly, the Court ordered the refund of the said taxes to the petitioners.

We find the instant case no different from *Arabay* and *SMC*. As in those cases, the cityhood law (R.A. No. 7829) of Pasig cannot breathe life into Section 32 of Municipal Ordinance No. 25, ostensibly by bringing it within the ambit of Section 151 of the LGC that authorizes cities to levy the franchise tax under Section 137 of the same law. It is beyond cavil that Section 32 of Municipal Ordinance No. 25 is an act that is null and void *ab initio*. It is even of little consequence that Pasig sought to collect only those taxes ***after*** its conversion into a city. A void ordinance, or provision thereof, is what it is – a nullity that produces no legal effect. It cannot be enforced; and no right could spring forth from it. The cityhood of Pasig notwithstanding, it has no right to collect franchise tax under the assailed ordinance.

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[13] Filed before Branch 266, RTC-Pasig City, docketed as Civil Case No. 64881. The decision of the RTC declaring Section 32 of Ordinance No. 25 was later affirmed by the CA in its Decision, dated 16 March 2001, in CA-GR CV No. 55611. See *Rollo*, p. 11 and records, p. 365.

[14] Id.

[15] Id. at 18-19.

Besides, the City of Pasig had apparently misunderstood *Arabay*. In that case, the taxes subject of the refund claim included those paid ***after*** the conversion of Dipolog into a city. Thus, while the creation of the City of Dipolog was effective on 1 January 1970, the petitioner, Arabay, Inc., applied for the refund of taxes paid under the questioned ordinance for the period from December 1969 to July 1972.[16] As previously noted, the Court granted the refund.

II. The cityhood law of Pasig did not cure the defect of the questioned ordinance.

The petitioner cites –

> Section 45. *Municipal Ordinances Existing at the Time of the Approval of this Act.* – All municipal ordinances of the municipality of Pasig existing at the time of the approval of this Act shall continue to be in force within the City of Pasig until the Sangguniang Panlungsod shall, by ordinance, provide otherwise.

of R.A. No. 7829 as legal basis that gave curative effect upon Section 32 of Municipal Ordinance No. 25.

As we see it, the cited law does not lend any help to the City of Pasig's cause. It is crystal clear from the said law that what shall ***continue*** to be ***in force*** after the conversion of Pasig into a city are the municipal ordinances ***existing*** as of the time of the approval of R.A. No. 7829. The provision contemplates ordinances that are valid and legal from their inception; that upon the approval of R.A. No. 7829, their effectivity and enforcement shall continue. To 'continue' means (1) to be steadfast or constant in a course or activity; (2) to keep going: maintain a course, direction, or progress; or (3) to remain in a place or condition.[17] It presupposes something already existing.

A void ordinance cannot legally exist, it cannot have binding force and effect. Such is Section 32 of Municipal Ordinance No. 25 and, being so, is outside the comprehension of Section 45 of R.A. No. 7829.

We are not in full accord with the explanation given by the City of Pasig – that Section 45 of R.A. No. 7829 intended to prevent the City of Pasig from becoming paralyzed in delivering basic services. We can concede that Section 45 of R.A. No. 7829 assures the City of Pasig continued

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[16] The City of Dipolog had, however, previously refunded to plaintiff Arabay, Inc. the payments from April to July 1972.

[17] Webster's Third New International Dictionary, page 493.

collection of taxes under ordinances passed prior to its conversion. What the petitioner fails to realize is that Section 32, Municipal Ordinance No. 25 is not the singular source of its income or funds necessary for the performance of its essential functions. The argument of the City of Pasig is at best flimsy and insubstantial. The records, it should be noted, bear no evidence to demonstrate the resulting paralysis claimed by the City of Pasig. An unsupported allegation it is, no better than a mere conjecture and speculation.

III. There is no ambiguity in Section 45 of R.A. No. 7829.

As a last-ditch effort to persuade this Court, the City of Pasig calls out a latent ambiguity in Section 42 of R.A. No. 7829 in order to pave the way for the operation of the cardinal rule in statutory construction requiring courts to give effect to the legislative intent. It pounces on the same ambiguity so that it may be resolved in favor of promoting local autonomy.

We disagree. We have already established that the provision is clear enough to dislodge any notion that it gives curative effect to the legal infirmity of Section 32 of Municipal Ordinance No. 25. The legislative intent behind Section 42 of R.A. No. 7829, as previously discussed, did not comprehend the affirmance of void or inexistent ordinances.

Neither can the bare invocation of the principle of local autonomy provide succor to settle any ambiguity in Section 42 of R.A. No. 7829, if doubt as to its meaning may even be supposed. While we can agree that an ambiguity in the law concerning local taxing powers must be resolved in favor of fiscal autonomy,[18] we are hampered by the nullity of Section 32 of Municipal Ordinance No. 25. At the risk of being repetitive, the said ordinance cannot be given legal effect. It must be borne in mind that the constitutionally ordained policy of local fiscal autonomy was not intended by the framers to be absolute. It does not provide unfettered authority to tax objects of any kind. The very source of local governments' authority to tax[19] also empowered Congress to provide limitations on the exercise of such taxing powers. Precisely, Congress' act of withdrawing from municipalities the power to levy franchise tax by virtue of Section 142 of the LGC is a valid exercise of its constitutional authority.

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[18] See *Demaala v. Commission on Audit,* 754 Phil. 28, 42 (2015).

[19] Constitution, Article X, Section 5 which provides:

> Section 5 — Each Local Government unit shall have the power to create its own sources of revenue and to levy taxes, fees and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the Local Governments.

In this case, the validity of the municipal ordinance imposing a franchise tax cannot be made to rest upon the ambiguity of a provision of law (Section 42, R.A. No. 7829) operating supposedly, albeit mistakenly, under the context of promoting local autonomy. Regard, too, must be made for the equally important doctrine that a doubt or ambiguity arising out of the term used in granting the power of taxation must be resolved against the local government unit.[20]

In fine, the City of Pasig cannot legally make a demand for the payment of taxes under the challenged ordinance, which is void, even after its conversion into a city. The CA, thus, committed no reversible error.

WHEREFORE, the petition is **DENIED** for lack of merit. The 28 August 2007 Decision and the 8 February 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 81255 are hereby **AFFIRMED**.

SO ORDERED.

SAMUEL R. MARTIRES
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

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[20] See *Demaala v. Commission on Audit,* supra note 18 at 39 citing *Icard v. City Council of Baguio*, 83 Phil. 870, 873 (1949)

ALEXANDER G. GESMUNDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice

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