

## ILOCOS NORTE ELECTRIC COMPANY, INC., PLAINTIFF-APPELLEE, VS. MUNICIPALITY OF LAOAG AND MUNICIPAL TREASURER OF LAOAG, DEFENDANTS-APPELLANTS.

*G. R. No. L-21058. November 23, 1966*

Ponente: REGALA, J.

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### REGALA, J.:

The Municipality of Laoag , Ilocos Norte, brought this appeal to this Court from a decision of the Ilocos Norte Court of First Instance which held a tax ordinance of the municipality null and void and ordered it to refund to the Ilocos Norte Electric Co., Inc. the amount of P1,200 paid by the latter under the ordinance.

The ruling was made in a suit filed by the electric power company. The lower court found that the company was granted a municipal franchise (Resolution No. 308), pursuant to Act No. 667 in relation to Act Nos. 1022, 3636 and 3108, to operate an electric plant within the municipality. Under Act No. 3636, the company paid a tax equal to 2 per cent of its gross earnings "in lieu of any and all taxes." [1]

On September 29, 1960 , however, the municipality enacted Ordinance No. 20, series of 1960 imposing an annual rate tax of P800 on persons engaged in the business of supplying electricity. By January, 1962, the company had paid under protest to the municipality the amount of P1,200.

The company contended that the ordinance impaired the obligations of its contract, [2] considering that under Act No. 3636, as well as under its franchise, it was exempted from the payment of any tax other than that provided therein. On the other hand, the municipality asserted its power to tax on the basis of the Local Autonomy Act of 1959 (Rep. Act No. 2264), section 2 of which provides in part as follows:

"Any provision of law to the contrary notwithstanding, all chartered cities, municipalities and municipal districts shall have authority to impose municipal license taxes or fees upon persons engaged in any occupation or business, or exercising privileges in chartered cities, municipalities or municipal districts by requiring them to secure licenses at rates fixed by the municipal board or city council of the city, the municipal council of the municipality, or the municipal district; xxx Provided, however. That no city, municipality or municipal district may levy or impose any of the following:

"x x x x

"(d) Taxes on persons operating waterworks, Irrigation and other public utilities except electric light, heat and power;

"x x x x

"(j) Taxes of any kind on banks, insurance companies, and persons paying franchise tax; x x x"

The lower court sustained the company's stand and held the ordinance null and void, prompting the municipality to bring this appeal to this Court.

The question, troublesome for some time because of the new orientation introduced by the Local Autonomy Act, was recently resolved in *Butuan Sawmill, Inc. v. City of Butuan*. G. R. No. L-21516, April 29, 1966. Through Mr. Justice J.B.L. Reyes, this Court held that local governments are without power to tax electric power companies already subject to franchise tax unless their franchise allows the imposition of additional tax. It said:

"The argument of the appellant city is that, under subparagraph (d) of the above-quoted provision, the business of electric light, heat and power, being an exception to those which it cannot tax like waterworks and irrigation is within the city's taxing power. This argument is untenable, because (1) subparagraph G) of the same section specifically withholds the imposition of taxes on persons paying franchise tax (like appellee herein), and (2) the city's interpretation of the provision would result in double taxation against the business of the appellee because the internal revenue code already imposes a franchise tax. The logical construction of section 2(d) of Republic Act No. 2264 that would not nullify section 2(j) of the same Act is that the local government may only tax electric light and power utilities that are not subject to franchise taxes, unless the franchise itself authorizes additional taxation by cities or municipalities.

WHEREFORE, the decision appealed from is affirmed without costs.

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Concepcion, C.J., Reyes, J. B. L., Barrera, Dizon, Makalintal, Bengzon, J. P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[1] Thus section 10 of the law provides:

".... In consideration of the franchise and rights hereby granted, the grantee shall pay into the municipal treasury of the municipality in which it is supplying electric current to the public under the franchise, a tax equal to two per centum of the gross earnings sold or supplied under this franchise in said municipality. Said tax shall be due and payable quarterly and, shall be in lieu of any and all taxes of any kind, nature or description levied, established, or collected by any authority whatsoever, municipal or provincial, or insular, now or in the future, on its poles, wires, insulators, switches, transformers and structures, installations, conductors, and accessories, placed in and over and under all public property, including public streets and highways, provincial roads, bridges and public squares, and on its franchise, rights, privileges, receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted."

[2] Const, art. III, sec. 1(10).

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