

**SANCHO B. DE LEON AND VENANCIO F. LIM,
PLAINTIFFS-APPELLANTS, VS. MUNICIPALITY OF CALUMPIT,
BULACAN, DEFENDANT-APPELLEE.**

G.R. No. L-26906. November 28, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

The question in these two appeals to be decided jointly is whether a municipal license tax may be imposed by ordinance on a holder of a franchise to operate an electric plant? It may be observed that it is not impressed with novelty. The answer has been supplied by us in two cases decided in 1966, *Butuan Sawmill, Inc. v. City of Butuan*[1] and *Ilocos Norte Electric Co., Inc. v. Municipality of Laoag*. [2] It is in the negative. The lower court that heard these two cases, presided by the then Judge Samuel F. Reyes viewed the matter differently. It may be said in all fairness, however, that as of the time of its single decision in the two cases on November 4, 1964, there was no definite ruling from us as yet, our authoritative pronouncement in *Butuan Sawmill, Inc. v. City of Butuan* coming only on April 29, 1966.

There is no question that plaintiffs Sancho V. de Leon and Venancio F. Lim in both cases were holders of municipal franchises to operate electric plants in Calumpit, Bulacan as well as in Hagonoy, Bulacan. On April 18, 1962, they challenged the validity of a Calumpit municipal ordinance which imposed a municipal license tax of P700.00 as well as a license fee of P25 for a mayor's permit on any operator of an electric plant doing business in such municipality.[3] Earlier, on January 19, 1962, the same plaintiffs have challenged, in a complaint filed before the Court of First Instance of Bulacan, a municipal ordinance of Hagonoy, Bulacan, imposing an annual municipal license tax of P1,200.00 on persons, associations and corporations engaged in the business and operation of electric light, heat and power plants within such municipality.[4]

The answers of the respective municipalities to both complaints in seeking that they be dismissed relied on the Local Autonomy Act[5] which in express language, while negating the municipal power to tax persons operating waterworks, irrigation and other public utilities excepted those engaged in the operation of electric light, heat and power plants. They likewise called attention to rule of construction provided for in such Act. Thus: "Implied power of a province, city or municipality shall be liberally construed in its favor. Any fair and reasonable doubt as to the existence of the power should be interpreted in favor of the local government and it shall be presumed to exist." [6]

A joint decision was rendered by the lower court, on November 4, 1964, sustaining the power of both municipalities to enact such ordinances under the Local Autonomy Act. It relied on the proviso above referred to, which while denying the power of a city, municipality or a municipal district to levy or impose municipal taxes or fees on persons operating waterworks, irrigation and other public utilities, excepted electric light, heat and power plants from its operation and dismissed the complaints filed by plaintiffs.

Hence, these two appeals which we consider meritorious in the light of the *Butuan Sawmill, Inc.* as well as the

Ilocos Norte Electric Co., Inc. decisions rendered by us in 1966. In the former case, this Court, in an opinion by Justice J.B.L. Reyes, after referring to the above exception, took into consideration a later subsection placing it beyond the competence of a chartered city, municipality or a municipal district to impose taxes of any kind on banks, insurance companies and persons paying a franchise tax.[7] From which, emerged this conclusion: "The logical construction of section 2(d) of Republic Act 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."

Plaintiff Butuan Sawmill, Inc. in the above case did have a legislative franchise from the government.[8] In the subsequent Ilocos Norte Electric Co., Inc. case, decided seven months later the same year, the plaintiff was shown to have a municipal franchise. There was no change in our ruling. It was held likewise as not subject to the taxing power of the municipality in accordance with the Butuan Sawmill, Inc. decision. As set forth in the opinion of Justice Regala in the Ilocos Norte Electric Co. decision: "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."

Certainly, then, with the two above controlling decisions pointing the way, plaintiffs have made out a successful case for the reversal of the joint decision appealed from. They cannot, as municipal franchise holders, be considered as embraced within the taxing power of the municipalities of Calumpit and Hagonoy. The complaints filed by them, instead of being dismissed, ought to have prospered, at least to the extent of their being considered exempt from the operation of the ordinances complained of. At the very least, the challenged ordinances are invalid as applied to plaintiffs.[9]

WHEREFORE, the lower court decision of November 4, 1964 dismissing the two complaints filed by plaintiffs against the Municipalities of Calumpit and Hagonoy is reversed and another entered ordering each municipality to refund to plaintiffs any and all sums thus far collected by virtue of Municipal Ordinance No. 7 approved on March 21, 1959 in the case of Calumpit and Municipal Ordinance No. 2, Series of 1961, in the case of Hagonoy. Without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Teehankee, and Barredo, JJ., concur.

[1] 16 SCRA 755.

[2] 18 SCRA 703.

[3] Civil Case No. 2548 of the Court of First Instance of Bulacan, Branch II, now L-29606.

[4] Civil Case No. 2494 of the Court of First Instance of Bulacan, Branch II, now L-26907.

[5] Sec. 2 of Rep. Act No. 2264 (1959).

[6] Sec. 12, Ibid.

[7] Ibid, Sec. 2(j).

[8] Republic Act No. 399 (1949).

[9] Cf. *Switzer v. Municipality of Cebu*, 20 Phil. 111 (1911); *United States v. Pompeya*, 31 Phil. 245 (1915); *Bastida v. City Council of Baguio*, 53 Phil. 553 (1929); *People v. Cruz*, 54 Phil. 24 (1929); *Primicias v. Fugoso*, 80 Phil. 71 (1948); *Manila Race Horse Trainers v. de la Fuente*, 88 Phil. 60 (1951); *Manila Lighter Trans. v. Mun. Board*, 98 Phil. 872 (1956); *American Bible Society v. City of Manila*, 101 Phil. 386, 402 (1957); *Ah Nam v. City of Manila*, L-15502, Oct. 25, 1960; *Pampanga Bus Co. v. Mun. of Tarlac*, 3 SCRA 816 (1961); and *People v. Soria*, 7 SCRA 242 (1963).

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