

BALANGA POWER PLANT CO., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

G.R. No. L-20499. June 30, 1965

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Petitioner Balanga Power Plant Co., Inc. seeks the review of a decision of the Court of Tax Appeals.

The main facts, which have been stipulated by the parties, are:

"1. That the Balanga Power Plant Co., Inc., the petitioner herein, is a Filipino corporation with offices at Balanga, Bataan, organized and existing under the laws of the Philippines (See attached certified true copy of the Articles of Incorporation, Annex 'A') ; and the respondent is the head of the Bureau of Internal Revenue;

"2. That the petitioner is the grantee of six (6) municipal franchises to operate an electric power plant from the Municipal Councils of six municipalities in the Province of Bataan, and indicated below which include the date of the grant:

Balanga November 5, 1928

Orion September 20, 1929

Abucay July 16, 1930

Pilar July 10, 1930

Orani September 20, 1930

Samal April 8, 1932

"3. That the municipal franchises for Balanga and Samal were granted under the authority conferred by Act No. 667 of the Philippine Commission (See attached certified true copies of reconstituted municipal franchises for Balanga and Samal, Annexes 'B' and 'C, respectively);

"4. That the rate of franchise tax fixed in the municipal franchises for Balanga and Samal is one per cent (1%) of the gross earnings of the petitioner for the first twenty years and two per cent (2%) for the remaining fifteen (15) years and the pertinent provisions of the franchise are hereinbelow quoted:

'* * * en consideracion del privilegio quo aqui se concede abonara trimestraniento a lo Tesoreria Provincial de Balanga, el uno por ciento (1%) de los primeros veinte años y el dos por ciento (2%) de los mismos ingresos durante los quince años restantes de la vigencia de este mismo privilegio.'

"5. That the original demand for the amount of P12,892.91 as deficiency franchise tax for the period from October 1, 1953 to June 30, 1957 was made on November 17, 1958 (See BIR rec. pp. 26& 27). This original assessment

was amended and increased to P26,253.04 on the basis of the audit report of the General Auditing Office dated November 3, 1960 (Sec BIR rec. p. (55) payment of which was demanded on January 12, 1961 (See BIR rec. pp. 72-74);

"6. That the tax demanded by the respondent upon the petitioner herein in the amount of P26,253.04 as deficiency franchise tax from October 1, 1953 to June 30, 1957, is made under the authority of the ruling laid down by the Supreme Court in the two related cases entitled 'Hoa Hin Co., Inc. vs. Saturnino David and Silverio Blaquera vs. Hoa Hin Co., Inc., 105 Phil. 783;

"7. That the petitioner has already paid the amount of P14,228.57 covering the period from October 1, 1953 to June 30, 1957 on the basis of 2% franchise tax;

"8. That the deficiency franchise tax, payment of which is demanded by respondent from the petitioner herein, covers only the difference in the rate of the franchise tax from two percent (2%) which is provided in the municipal franchises to five per cent (5%) as provided by Section 259 of the National Internal Revenue Code;

"9. That the only issue involved in the present case is whether the Balanga Power Plant Co., Inc. is subject to the 2% franchise tax prescribed by the municipal franchises or the 5% franchise tax prescribed by Section 259 of the Tax Code, as amended;

"10. That the parties have agreed to present before this Honorable Court such other evidence as may be necessary or required to enable the Court to render a decision on this case. (See pages 28-30 C.T.A. records.)"

The only issue raised in the lower court, as well as before us, is whether the franchise tax of 5% provided in Section 259 of the National Internal Revenue Code (Commonwealth Act No. 466, as amended), the pertinent part of which reads:

"There shall be collected in respect to all existing and future franchises, upon the gross earnings or receipts from the business covered by the law granting the franchise a tax of five per centum or such taxes, charges, and percentages as are specified in the special charters of the grantees upon whom such franchises are conferred, whichever is higher, unless the provisions thereof preclude the imposition of a higher tax. * * *"

may be applied to petitioner herein, without violating the constitutional injunction against impairment of contractual obligations, inasmuch as some of the municipal franchises of the petitioner impose thereto a franchise tax of 2% of its gross earnings. The Court of Tax Appeals decided the question in the affirmative, upon the ground that said municipal franchises do not provide that said 2% tax shall be in lieu of all other taxes; that some of said municipal franchises were granted under the general authority vested in municipal corporations by Act 667 of the Philippine Commission, Section 5 of which provides:

"Every franchise granted hereunder shall contain a provision that it is granted subject to the power of Congress to alter, modify or repeal the same in accordance with the Act of Congress entitled 'An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands and for other purposes/ approved July first, nineteen hundred and two'.

and that, this case falls within the purview of the doctrine laid down in *Hoa Hin Co., Inc. vs. David and Blaquera vs. Hoa Hin Co., Inc.* (G.R. Nos. L-9616 and L-11783, May 25, 1959), in which we held:

"While the then Philippine Commission fixed the yearly tax to be paid to the Government by the original grantee, his successors and assigns at the rate of 1/2 of 1% of the gross earnings derived from the operation of the slipway or marine railway, the grantor reserved its right to assess and collect other business or income tax on the grantee's business. Section 259 of the National Internal Revenue Code, as amended, provides that 'whichever is higher' between the rate imposed by the special charter of the grantee and the National Internal

Revenue Code, shall apply to and be imposed upon, and paid by, the grantee of the franchise. The rate imposed by Section 259 of the National Internal Revenue Code, as amended, being higher than that imposed in the petitioner's charter, Act No. 1256, the petitioner has to pay the rate imposed by section 259 of the National Internal Revenue Code, as amended. The rule in *Manila Railroad Company vs. Rafferty*, 40 Phil. 224; *Philippine Railway Company vs. Collector of Internal Revenue*, 91 Phil. 35; *Visayan Electric Company vs. David*, 49 Off. Gaz. 1385; and *Carcar Electric & Ice Plant vs. Collector of Internal Revenue*, 53 Off. Gaz. 1068, cannot be invoked by the petitioner, because in the grantees' respective franchises there is a provision that 'Such annual payments, when promptly and fully made by the grantee, shall be in lieu of all taxes of every name and nature—municipal, provincial or central—upon its capital stock franchises, right of way, earnings, and all other property owned or operated by the grantee under this concession or franchise.' The petitioner's franchise Act No. 1256, does not embody such exemption clause."

In urging a review of the appealed decision, petitioner stresses the proposition that a franchise is a property and maintains that the *Hoa Hin* cases are not controlling in the one at bar because *Hoa Hin* had a legislative franchise, whereas petitioner has municipal franchises; the constitutionality of Section 259 of our National Internal Revenue Code was not passed upon the *Hoa Hin* cases; and the government had against *Hoa Hin* certain defenses (prescription of action and absence of a demand for refund) not available in the case at bar.

At the outset, it should be noted that the status of petitioner's municipal franchises as property and property right is dependent upon or qualified by the nature and limitations of the authority under which said franchises were granted by the municipal corporations concerned. Admittedly, such authority, as regards the franchises for Balanga and Samal, emanated from Act No. 667, pursuant to which franchises granted thereunder shall be "subject to the power of Congress to alter, modify or repeal the same". To the extent that Section 259 of our National Internal Revenue Code is inconsistent with the rate of taxes fixed in said municipal franchises—and the theory that said Section 259 as applied to petitioner herein is unconstitutional, necessarily implies such inconsistency—it is obvious that, for all intents and purposes, said legal provision alters the pertinent provisions of said franchises. In effecting such alteration our legislative department has merely exercised, however, a power expressly reserved thereto by said franchises, and has acted, therefore, in conformity therewith, not in violation of the provisions thereof or to the detriment of the rights thereby vested in petitioner herein. It is well settled that:

"A reservation to the legislature, either by constitution, statute, or in the charter itself, of the power to alter, amend, or withdraw any franchise or privilege granted in a corporate charter, in force when such charter is granted, qualifies such a grant so that a subsequent, exercise of such reserved power is not within the prohibition of the federal constitution impairing the obligation of a contract." (C.J.S., Vol. 16, p. 757).

Regardless of whether or not the validity of said Section 259 of the National Internal Revenue Code has been passed upon in the *Hoa Hin* cases, it is patent, therefore, that the application of said provision to petitioner herein, insofar as its franchises for Balanga and Samal are concerned, would not impair any contractual obligation. As regards the municipal franchises for Orion, Abucay, Pilar and Orani, the contents thereof have not even been established, so that there is no means by which it can be held that the obligations of contract arising therefrom would be impaired by the aforementioned provision of the National Revenue Code.

Neither does the fact that the franchise of *Hoa Hin* was granted directly by Congress detract from the applicability of the doctrine therein laid down to petitioner herein, whose franchises were granted by municipal corporation, not only because the latter cannot possibly command from the state more respect than that due to legislative franchises, but, also, because, in granting petitioner's franchises the local governments acted merely as agents of Congress or of the National Government.

Needless to say, the failure of *Hoa Hin* to demand a refund and the statute of limitations that barred his action have no bearing on the soundness of the view expressed in the *Hoa Hin* cases on the alleged impairment of

contractual obligations or on the applicability of that view to the present case. It may not be amiss to add, also, that the doctrine laid down in said cases was reiterated in *Lealda Electric Co., Inc. vs. Commissioner of Internal Revenue*, 117 Phil. 940.

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

Bengzon, C.J., Reyes, J.B.L., Regala, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

Decision affirmed.

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