

JOSEPH E. ICARD, PETITIONER AND APPELLEE, VS. THE CITY COUNCIL OF BAGUIO AND THE CITY OF BAGUIO, RESPONDENTS AND APPELLANTS.

G.R. No. L-1281. May 31, 1949

Ponente: REYES, J.

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REYES, J.:

This is an appeal from a decision of the Court of First Instance of the Mountain Province.

The facts are not in dispute.

The City of Baguio has enacted the following ordinances:

"1. No. 6-V, providing, among other things, for an amusement tax of P0.20 for every person entering a night club licensed to do business in the city;

"2. No. 11-V, providing for a property tax on motor vehicles kept and operated in the city; and

"3. No. 12-V, imposing a graduated license fee on every admission ticket sold by enterprises enumerated in said ordinance, among them, cinematographs."

Petitioner, a resident of the City of Baguio, is holder of a municipal license for the operation of a night club called "El Club Monaco." As owner and operator of said night club, he has to pay to the National Government an amusement tax on its total gross receipts under section 260 of the Internal Revenue Code, and to the City of Baguio the annual license fee provided for in said Ordinance No. 6-V. But in addition to said amusement tax and license fee he has also been required to pay the amusement tax imposed in that same ordinance, which, on the basis of P0.20 per person entering the night club, amounted to the total sum of P254.80 for the first quarter of 1946. This sum he paid under protest.

As owner of a six-passenger automobile for private use, a Chevrolet Ford or Sedan kept and operated in the City of Baguio, petitioner has already paid the sum of P37 as registration fee for 1946 under the Revised Motor Vehicle Law. But pursuant to Ordinance No. 11-V of said city, he would also have to pay, in addition, an annual property tax of P15 on the same automobile.

There is no showing that petitioner has any business subject to the payment of the graduated license fee on admission tickets imposed by Ordinance No. 12-V of the City of Baguio.

Contending that the ordinances above mentioned are unjust and ultra vires, petitioner brought the present action for declaratory relief to have the said ordinances declared void and also for the refund of the sum of P254.80 which he has paid to the city under protest.

In an able and well-considered decision, the lower court, presided over by Judge Conrado Sanchez, denied the petition for declaratory relief in reference to Ordinance No. 12-V on the ground that petitioner had not been

shown to be the owner or operator of any of the enterprises therein enumerated, but declared null and void Ordinance No. 11-V and also that portion of Ordinance No. 6-V which provides for an amusement tax of P0.20 on every person entering a night club, without pronouncement as to the legality or illegality of the remainder of the said ordinance. And, in consequence, the City of Baguio was ordered to refund to petitioner the sum of P254.80 paid as amusement tax under Ordinance No. 6-V, without special pronouncement as to costs.

Appealing from the above decision, the City Attorney of Baguio, as counsel for the respondents, presents the case here on the following assignment of errors:

"1, The lower court erred in declaring null and void Ordinance No. 11-V;

"2. The lower court erred in declaring null and void that portion of Ordinance No. 6-V, providing for an amusement tax of F0.20 per person entering a night club; and

"3. The lower court erred in ordering the respondent-appellant, the City of Baguio, to refund to the petitioner-appellee the sum of P254.80 paid as amusement tax under Ordinance No. 6-V."

The whole case boils down to this question: Is the City of Baguio empowered to levy a property tax on motor vehicles and an amusement tax on night clubs?

It is settled that a municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power or the municipality cannot assume it. And the power when granted is to be construed in strictissimi juris. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the municipality. Inferences, implications, deductions—all these—have no place in the interpretation of the taxing power of a municipal corporation (*Cu Unjieng vs. Patstone*, 42 Phil., pp. 818, 830; *Pacific Commercial Co. vs. Romualdez*, 49 Phil., pp. 917, 924; *Batangas Transportation Co. vs. Provincial Treasurer of Batangas*, 52 Phil., pp. 190, 196; *Baldwin vs. Coty Council*, 53 Ala., p. 437; *State vs. Smith*, 31 Iowa, p. 493; 38 Am. Jur., pp. 68, 72-73).

With the above principles in mind, let us now inquire into the authority of the City of Baguio to levy taxes. That part of the charter of this city which deals with the subject of taxation is found in section 2553 (6) of the Revised Administrative Code, which empowers its city council—

"To provide for the levy and collection of taxes and other city revenues, as provided by law, and apply the same to the payment of municipal expenses in accordance with appropriations."

As the lower court has correctly interpreted it, this provision simply means that the City of Baguio may impose taxes only in those cases specifically provided by law. In other words, for authority to levy a tax on specific subjects one must look elsewhere in the statute book. For, had the provision been meant as a blanket authority to levy taxes, there would have been no need for the phrase "as provided by law." The insertion of that phrase bespeaks the legislative intent to have the city exercise the power of taxation within given limits, that is, as the law may provide.

There is of course no question as to the authority of the City of Baguio to collect a license fee on dance halls and night clubs, such authority being specifically given by section 260 of the Internal Revenue Code. As a matter of fact petitioner has been paying such license fee without objection or protest. But what is objected to is the tax of P0.20 for every person entering those amusement places, as provided for in Ordinance No. 6-V, and this tax is apart and distinct from the license fee, for the ordinance itself says that it shall be in addition to the latter. This tax is not authorized by any Act of the Legislature. It is, therefore, beyond the power of the City of Baguio to levy.

Our attention has been invited to the fact that the charter of the City of Manila contains specific provisions

naming the subjects on which the said city may levy taxes, and the argument is made that the absence of such specific provisions from the Charter of the City of Baguio is indicative of the legislative intent to grant the latter city the general power of taxation. The argument is clearly untenable. The Manila Charter also contains a provision (section 2444 [a] of the Revised Administrative Code) empowering that city "to provide for the levy and collection of taxes for general and special purposes in accordance with law." This is the counterpart of the provision in the Baguio Charter (section 2553 [b] of the Revised Administrative Code) already quoted above. Though differently worded, the two provisions mean exactly the same thing. If those provisions were meant to grant an over-all authority to levy taxes, surely there would have been no need for those specific provisions in the Manila Charter which authorize the imposition of taxes in certain given cases. Those specific provisions are proof that the said city is to exercise the power of taxation granted it by section 2444 (a) of the Revised Administrative Code "in accordance with law" or, in the wording of the Baguio Charter, "as provided by law." In other words, there must be specific legislative authority for the tax. Applying these considerations to the City of Baguio, the logical conclusion is that, where a given tax is not expressly authorized by law, that city may not impose it despite the provision of section 2553 (b) of the Revised Administrative Code. This accords with the principle already stated that the power of a municipal corporation to tax, in order to exist, must be granted expressly, never impliedly or inferentially.

To the plea that the power of taxation is essential to the continued existence of a city government, the answer is that the City of Baguio is amply provided for by its Charter. It is authorized to levy and collect license fees on a long list of occupations (section 2553 [c] Rev. Adm. Code) ; to levy and collect taxes on real estates within its borders (section 2569, id.); to have a share in the internal revenue collections (section 357, Nat. Int. Rev. Code); and to receive a subsidy from the National Government (section 2553, id.). In addition, the city derives income from the sale of public lands within its limits and from the operation of its water system and electric plant. The city is thus provided with ample means with which to carry on the functions of government.

Having come to the conclusion that the City of Baguio may not levy taxes as it pleases but only as the Legislature may specifically provide, we have looked in the charter of that city for a specific provision empowering it to levy an amusement tax on night clubs and have found none. On the other hand, as the lower court points out, that power is expressly granted to the City of Manila by section 2444 (m) of the Revised Administrative Code. When it is recollected that, as already explained, both cities may, under a general provision of their charters, levy taxes only as the law authorizes, the absence of a similar express grant in the case of the city of Baguio is proof that the power to levy this particular tax has been intentionally withheld from it.

Coming now to Ordinance No. 11-V, a reading of its terms strikes us that what is therein designated as a property tax on motor vehicles kept in the City of Baguio has all the earmarks of a municipal license fee, a thing expressly forbidden by section 70 (b) of the Revised Motor Vehicle Law. But assuming that it is a property tax (since the point is not raised), we find that, like in the case of the amusement tax on cabarets and dance halls, there is no legal provision authorizing its levy by the City of Baguio. It is true that the section of the Revised Motor Vehicle Law just cited contains a proviso to the effect that nothing in that statute shall be construed to exempt any motor vehicle from the payment of any lawful and equitable insular, local or municipal property tax imposed thereon. But here again the question arises as to whether this proviso is in itself an authorization for any municipal authority to provide for the imposition of a tax. The wording of the proviso obviously refers to a tax lawfully imposed so that, in accord with the views we have expressed above, the City of Baguio may not collect the tax in the absence of a specific legal provision authorizing it to do so. It may be remarked in this connection that the charter of the City of Manila does contain such a provision (section 2444 [n]), Rev. Adm. Code), which is added proof that the proviso under consideration does not of itself authorize the imposition of the tax.

In view of the foregoing, it is our conclusion that Ordinance No. 6-V, in so far as it provides for an amusement tax of ₱0.20 for each person entering a night club, and Ordinance No. 11-V, which provides for a property tax on motor vehicles, should be declared illegal and void as beyond the authority of the City of Baguio to enact.

Wherefore, in so far as the judgment below makes that declaration and orders the City of Baguio to refund to petitioner-appellee the sum of P254.80 paid as amusement tax under Ordinance No. 6-V, the same is hereby affirmed, without special pronouncement as to costs.

Moran, C. J., Paras, Feria, Pablo, Perfecto, Bengzon, Tuason, and Montemayor, JJ., concur.

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