

SURIGAO ELECTRIC CO., INC. & ARTURO LUMANLAN, SR., PETITIONERS, VS. MUNICIPALITY OF SURIGAO AND HON. PUBLIC SERVICE COMMISSION, RESPONDENTS.

G.R. No. L-22766. August 30, 1968

Ponente: FERNANDO, J.

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FERNANDO, J.:

On June 18, 1960, Congress further amended the Public Service Act, one of the changes introduced doing away with the requirement of a certificate of public convenience and necessity from the Public Service Commission for "public services owned or operated by government entities or government-owned or controlled corporations," but at the same time affirming its power of regulation,[1] more specifically as set forth in the next section of the law, which while exempting public services owned or operated by any instrumentality of the government or any government owned or controlled corporations from its supervision, jurisdiction and control stops short of including "the fixing of rates." [2]

In this petition for review, a case of first impression, petitioner Surigao Electric Co., Inc., a legislative franchise holder, and petitioner Arturo Lumanlan, to whom, on February 16, 1962, the rights and privileges of the former as well as its plant and facilities were transferred, challenge the validity of the order of respondent Public Service Commission, dated July 11, 1963, wherein it held that it had "no other alternative but to approve as [it did approve] the tentative schedule of rates submitted by the applicant," the other respondent herein, the Municipality of Surigao.[3]

In the above order, the issue, according to respondent Commission, "boils down to whether or not a municipal government can directly maintain and operate an electric plant without obtaining a specific franchise for the purpose and without a certificate of public convenience and necessity duly issued by the Public Service Commission." [4] Citing the above amendments introduced by Republic Act No. 2677, respondent Commission answered the question thus: "A municipal government or a municipal corporation such as the municipality of Surigao is a government entity recognized, supported and utilized by the National Government as a part of its government machinery and functions; a municipal government actually functions as an extension of the national government and, therefore, it is an instrumentality of the latter; and by express provisions of Section 14(e) of Act 2677, an instrumentality of the national government is exempted from the jurisdiction of the PSC except with respect to the fixing of rates. This exemption is even clearer in Section 13(a)." [5]

The above formulation of respondent Commission could be worded differently. There is need for greater precision as well as further elaboration. Its conclusion, however, can stand the test of scrutiny. We sustain the Public Service Commission.

The question involved is One of statutory interpretation. We have to ascertain the intent of Congress in introducing the above amendments, more specifically, in eliminating the requirement of the certificate of public convenience and necessity being obtained by government entities, or by government-owned or controlled

corporations operating public services. Here, the Municipality of Surigao is not a government-owned or controlled corporation. It cannot be said, however, that it is not a government entity.

As early as 1916, in *Mendoza v. de Leon*,^[6] there has been a recognition by this Court of the dual character of a municipal corporation, one as governmental, being a branch of the general administration of the state, and the other as quasi-private and corporate. A well-known authority, Dillon, was referred to by us to stress the undeniable fact that "legislative and governmental powers" are "conferred upon a municipality, the better to enable it to aid a state in properly governing that portion of its people residing within its municipality, such powers [being] in their nature public, . . ."^[7] As was emphasized by us in the *Mendoza* decision: "Governmental affairs do not lose their governmental character by being delegated to the municipal governments. Nor does the fact that such duties are performed by officers of the municipality which, for convenience, the state allows the municipality to select, change their character. To preserve the peace, protect the morals and health of the community and so on is to administer government, whether it be done by the central government itself or is shifted to a local organization."^[8]

It would, therefore, be to erode the term "government entities" of its meaning if we are to reverse the Public Service Commission and to hold that a municipality is to be considered outside its scope. It may be admitted that there would be no ambiguity at all had the term "municipal corporations" been employed. Our function, however, is to put meaning to legislative words, not to denude them of their contents. They may be at times, as Cohen pointed out, frail vessels in which to embark legislative hopes, but we do not, just because of that, allow them to disappear perpetually from sight to find eternal slumber in the deep. It would be far from manifesting fidelity to the judicial task of construing statutes if we were to consider the order under review as a failure to abide by what the law commands.

The above construction gives significance to every word of the statute. It makes the entire scheme harmonious. Moreover, the conclusion to which we are thus led is reinforced by a manifestation of public policy as expressed in a legislative act of well-nigh contemporaneous vintage. We refer to the Local Autonomy Act,^[9] approved a year earlier. It would be to impute to Congress a desire not to extend further but to cut short what the year before it considered a laudatory scheme to enlarge the scope of municipal power, if the amendatory act now under scrutiny were to be so restrictively construed. Municipal corporations should not be excluded from the operation thereof.

There would be no warrant for such a view. Logic and common sense would be affronted by such a conclusion, let alone the sense of esteem which under the theory of separation of powers is owed a coordinate branch. Again, this is one instance where assuming the ambiguity of the words employed in a statute, its overriding principle, to paraphrase Holmes, fixes the reach of statutory language.

With the view we thus take of the amendatory statute, the errors assigned by petitioner, which would seek to fasten, mistakenly to our mind, an unwarranted restriction to the amendatory language of Republic Act No. 2677, need not be passed upon.

As alleged error imputed to respondent Commission, however, needs further discussion. Petitioners seek refuge in the legislative franchise granted them.^[10] Whatever privilege may be claimed by petitioners cannot override the specific constitutional restriction that no franchise or right shall be granted to any individual or corporation except under a condition that it shall be subject to amendment, alteration or repeal by Congress.^[11] Such amendment or alteration need not be express; it may be implied from a latter act of general applicability, such as the one now under consideration.

Moreover, under a well-settled principle of American origin, one which upon the establishment of the Philippine

Government under American tutelage was adopted here and continued under our Constitution, no such franchise or right can be availed of to defeat the proper exercise of the police power. An early expression of this view is found in the leading American case of *Charles River Bridge v. Warren Bridge*,^[12] an 1837 decision, the opinion being penned by Chief Justice Taney: "The continued existence of a government would be of no great value, if by implications and presumptions it was disarmed of the powers necessary to accomplish the ends of its creation; and the functions it was designed to perform, transferred to the hands of privileged corporations. . . . While the rights to private property are sacredly guarded, we must not forget that the community also have rights, and that the happiness and well-being of every citizen depends on their faithful preservation."^[13]

Reference by petitioners to the statute providing the procedure for the taking over and operation by the government of public utilities,^[14] in their view "to further strengthen [their] contention", as to the commission of this alleged error is unavailing, even if such statute were applicable, which it is not. In the language of their own brief: "This Act provides for the procedure to be followed whenever the Government or any political subdivision thereof decides to acquire and operate a public utility owned and operated by any individual or private corporation."^[15] What is to be regulated, therefore, by this enactment is the exercise of eminent domain, which is a taking of private property for public use upon the payment of just compensation. There is here no taking. There is here no appropriation. What was owned before by petitioners continue to remain theirs. There is to be no transfer of ownership.

Rather, a municipal corporation, by virtue of Commonwealth Act No. 2677, may further promote community welfare by itself engaging in supplying public services, without the need of a certificate of public convenience. If at all then, the exercise of this governmental prerogative comes within the broad, well-nigh, undefined scope of the police power. It is not here, of course, the ordinary case of restraint on property or liberty, by the imposition of a regulation. What the amendatory act in effect accomplishes is to lend encouragement and support for the municipal corporation itself undertaking an activity as a result of which, profits of a competing private firm would be adversely affected.

Clearly, then, the relevancy of the statute providing for the taking or operation of the government of public utilities, appears, to put it at its mildest, far from clear. Petitioners' contention as to this alleged error being committed, therefore, far from being strengthened by such a reference, suffers from a fate less auspicious.

No other alleged error committed need be considered.

WHEREFORE, the order of respondent Public Service Commission of July 11, 1963, as well as the order of February 7, 1964, denying the motion for reconsideration, are affirmed. Costs against petitioners.

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

Orders affirmed.

[1] According to Republic Act No. 2677, approved on June 18, 1960, Section 13(a) is amended to read as follows: "SEC. 13. (a) The Commission shall have jurisdiction, supervision, and control over all public services and their franchises, equipment, and other properties, and in the exercise of its authority, it shall have the necessary powers and the aid of the public force: Provided, That public services owned or operated by government entities or government-owned or controlled corporations shall be regulated by the Commission in the same way as privately-owned public services, but certificates of Public Convenience or certificates of public convenience and necessity shall not be required of such entities or corporations: And provided, further, That it shall have no authority to require steamboats, motorship lines, whether privately-owned, or owned or operated by any

Government controlled corporation or instrumentality to obtain certificate of public convenience or to prescribe their definite routes or lines of service."

[2] Section 14 as now amended by the same Republic Act No. 2677 reads as follows: "SEC. 14. The following are exempted from the provisions of the preceding section: . . . (e) Public services owned or operated by any instrumentality of the National Government or by any government-owned or controlled corporation except with respect to the fixing of rates." Formerly, public services owned or operated by any instrumentality of the government or by any government-owned or controlled corporation were totally beyond the jurisdiction of the Public Service Commission. See Commonwealth Act No. 454, approved June 8, 1939, Section 14(a).

[3] Order of July 11, 1963, Annex S of Petition for Review, p. 8.

[4] Ibid, p. 5.

[5] Ibid, p. 5.

[6] 33 Phil. 508. This case was cited with approval in the subsequent cases of Carreon v. Pampanga, 99 Phil. 815 (1956); Zulueta v. Nicolas, 102 Phil. 947 (1958); City of Baguio. v. Nawasa, 106 Phil. 153 (1959); Nawasa v. Consolidated Unions, L-18938, Aug. 31, 1964; and PLDT v. City of Davao, L-23080, Oct. 30, 1965. Among the United States cases relied upon by Justice Trent in the Mendoza decision are Lefrois v. Country of Monroe, 57 NE 185 (1900) and Wilcox v. City of Rochester, 82 NE 1119 (1907).

[7] Dillion, Commentaries on the Law of Municipal Corporations, 5th ed., p. 68 (1911).

[8] Ibid, p. 511.

[9] Republic Act No. 2264.

[10] Act No, 3419 (1927).

[11] Article XIV, Section 8, Constitution.

[12] 11 Pet. 420, 548. The Charles River Bridge case has been followed subsequently in Ohio Life Ins. and Trust Co. v. Debolt, 16 How. 416 (1853); Beloit v. Morgan, 7 Wall. 619 (1869); Kentucky Union Co. v. Kentucky, 219 US 140 (1911); Home Building and Loan Asso. v. Blaisdell, 290 US 398 (1934); United States v. Bekins, 304 US 27 (1938); Alma Motor Co. v. Tunken-Detroit Axle Co., 329 US 129 (1946); Peters v. Hobby, 349 US 331 (1955).

[13] Ibid, p. 1300

[14] Com. Act No. 358 (1938).

[15] Petitioners' Brief, p. 48.

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