

THE CITY OF NAGA, PETITIONER, VS. COURT OF APPEALS AND SAN MIGUEL BREWERY, RESPONDENTS.

G.R. No. L-24954. August 14, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

The City of Naga seeks a review on certiorari of a decision of the Court of Appeals. The facts are set forth in the decision of said Court, from which we quote:

"Defendant-appellant City of Naga is a municipal corporation existing and operating under and by virtue of its charter, Republic Act No. 305 which took effect on June 18, 1948.

"Plaintiff-appellee San Miguel Brewery, Inc. is a private corporation duly organized under the laws of the Philippines with principal office in the City of Manila, but has a plant and branch office located in the City of Naga.

"On October 15, 1954, the municipal board of Naga City passed Ordinance No. 141 which pro-vided, among other things, to wit:

"Section 1. - There shall be levied and collected from all breweries, distil-leries, bottling houses, toyo factories and other establish-ments whose business in-cludes the corking and capping of bottles, operating in the City of Naga, in addition to the municipal license tax imposed by existing laws, a municipal tax of 1/48 of a centavo for every bottle of Tru-Orange, Coca-Cola, 7-Up or other similar beve-rages so corked, capped or stoppered; x x x'

"Plaintiff-appellee paid 1/48 of a centavo muni-cipal tax per bottle from October, 1954 up to June 1961 in the total sum of P64,281.95.

"On June 19, 1959, Republic Act No. 2264 other-wise known as the Local Autonomy Act took effect. Section 2 thereof pertinently provides as follows:

"Sec. 2. Taxation. - Any provision of law to the contrary notwithstanding, all chartered cities, municipalities and muni-cipal districts shall have authority to im-pose municipal license taxes or fees upon persons engaged in any occupation or busi-ness, 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, or by the municipal district; to collect fees and charges of ser-vices rendered by the city, municipality or municipal district; to regulate and impose reasonable fees for services rendered in connection with any business, profession or occupation being conducted within the city, municipality or municipal district and otherwise to levy for public purposes, just and uniform taxes, licenses or fees; x x x.'

"Pursuant to this provision of the Local Autonomy Act, the municipal board of Naga City passed Ordinance No. 234 which took effect on January 1, 1961, imposing taxes on the business of plaintiff as manufacturer of aerated water - for each corking machine with a capacity of 16,000 bottles or more a day (Sec. 4). Plaintiff-appellee since then has been paying to defendant-appellant an annual tax of P2,300.00 on its business

in addition to the specific tax mentioned above. This triggered the present controversy. San Miguel Brewery, Inc. claimed that it was being doubly taxed: One under Ordinance No. 141 and the other under Ordinance No. 234.

"On August 4, 1961, plaintiff-appellee lodged the instant complaint in the Court of First Instance of Manila. It sought to annul Ordinance No. 141, s. 1954; demanded the refund of the taxes with in-terests which it paid as well as those other amounts that plaintiff-appellee may be compelled to pay to defendant-appellant Naga City under the said ordi-nance.

"The City of Naga, through counsel, answered interposing at the same time affirmative and special defenses - that the venue was improperly laid; that the plaintiff was guilty of laches; and that the ordi-nance in question is valid, it having been enacted and passed well within the statutory powers, granted to and inherent in defendant municipal corporation.

"After trial, the lower court rendered judgment in favor of the plaintiff-appellee (1) declaring Ordinance No. 141, series of 1954, not applicable to the plaintiff, (2) ordering the defendant to refund to the plaintiff the amount of P2,892.57 paid under protest with legal interest from August 9, 1961, the date of filing of the complaint until fully paid, and any other subsequent amount or amounts similarly paid by the defendant with legal interest from date of payment also until duly paid, and (3) to pay the costs.

"The City of Naga appealed to this Court.

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In due course, the Court of Appeals rendered its appealed decision annulling Ordinance No. 141, upon the authority of *Me-dina v. City of Baguio*[1]; declaring that, although the taxes paid by the plaintiff, under said Ordinance, from October 1954 to June 1961, in the aggregate sum of P64,281.95, had been "im-properly collected", the refund thereof was not in order, plaintiff having failed to prove that its payment had been made under protest, and that, having established that the sum of P2,892.57, collected from July to December 1961 had, however, been paid under protest, plaintiff was entitled to recover the same; and, accordingly, affirming the decision of the trial court, in all other respects. Hence, this petition for review on certiorari filed by the defendant City of Naga.

The latter maintains that Ordinance No. 141 is sanctioned by section 15 (kk) of Republic Act No. 305 - which is the charter of the City of Naga - vesting in its municipal board the authority to "regulate any other business or occupation not specifically mentioned in the preceding paragraphs, and to impose a license fee upon all persons engaged in the same or who enjoy privileges in the city." Said authority to "regulate" and "to impose a li-cense fee" involves, however, the grant of police power, which is the authority to enact rules and regulations for the promotion of the general welfare.[2] Such authority is irrelevant to the ordinance under consideration, which is an exercise of the power of taxation, the purpose of which is to raise funds for the general operation of the government[3] and is distinct and separate from the police power, which, in turn, does not and can not possibly permit the enactment of said ordinance.[4]

Defendant insists that the approval of Republic Act No. 2264, otherwise known as the Local Autonomy Act, authorizing cities to exercise, subject to specific limitations, the power of taxation in general, including the imposition of a "percentage tax on sales" and "taxes on articles subject to specific tax, except gasoline, under the provisions of the national internal revenue code,"[5] had validated Ordinance No. 141. The legality thereof is dependent, however, upon defendant's powers at the time of its enactment, on October 15, 1954. In this connection, it is clear that - under both its charter and Commonwealth Act No. 472, and as we held, under similar conditions, in *Medina v. City of Baguio*,[6] - de-fendant then had no authority to impose a tax on specific articles. The subsequent approval of Republic Act No. 2264, on June 19, 1959, did not remove the infirmity of origin of

the ordinance in question, because none of the provisions of said Act suggests the intent to give thereto either a curative nature or retroactive effect.

The case of *Bacolod v. Gruet*[7] cited by the defendant, refers to an ordinance which became effective on July 1, 1959, or subsequently to the approval of Republic Act No. 2264. This was precisely the reason why we refused to apply, in said case, the doctrine laid down in *Medina v. City of Baguio*, reiterated in *Stanvac v. Antigua*[8] and *Wa Yu v. City of Lipa*[9]. In short, the *Bacolod* case is not in point.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against defendant, City of Naga.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Zaldivar, Castro, Angeles, and Fernando, JJ., concur.
Sanchez, J., took no part.

[1] 91 Phil. 854.

[2] *Cu Unjieng v. Patstone*, 42 Phil. 818; *Primicias v. Fugoso*, 80 Phil. 71; *Ignacio v. Ela*, 99 Phil. 346; *Commonwealth v. Alger*, 7 Cush. 53, 61 Mass. 53.

[3] *Cooley on Taxation*, 4th ed., 72; *Gruen v. State Tax Com.*, 35 Wash. Id. 1, 211 Par. 2d 651; *Welch v. Henry*, 305 U.S. 568; *Florida v. Reynolds*, 183 U.S. 471; *Messer v. Lang*, 129 Fla. 546, 176 So. 548.

[4] *Medina v. City of Baguio*, 91 Phil. 854, 856-857.

[5] Section 2 of Republic Act No. 2264.

[6] *Supra*.

[7] G.R. No. L-18290, January 31, 1963.

[8] 96 Phil. 909, 913.

[9] 99 Phil. 975, 979-980.

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