

BUTUAN SAWMILL, INC., PETITIONER AND APPELLEE, VS. CITY OF BUTUAN, ET AL., RESPONDENTS AND APPELLANTS.*G.R. No. 21516. April 29, 1966*

Ponente: REYES, J.B.L., J.

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Direct appeal on questions of law from a decision of the Court of First Instance of Agusan, in its Special Civil Case No. 152, declaring as unconstitutional and ultra vires Ordinances Nos. 7, 11, 131, and 148 of the herein respondent-appellant City of Butuan "in so far as they impose a 2% tax on the gross sales or receipts of the business of electric light, heat and power of the petitioner(appellee) Butuan Sawmill, Inc." and annulling Ordinance No. 104, also of the said city, as unconstitutional, arbitrary, unreasonable and oppressive. The decision was rendered on a petition for declaratory relief.

The petitioner-appellee, Butuan Sawmill, Inc. was granted a legislative franchise, Republic Act No. 399, approved on 18 June 1949, for an electric light, heat and power system at Butuan and Cabadbaran, Agusan, subject to the terms and conditions established in Act 3636, as amended by Commonwealth Act No. 132 and the Constitution. It was also issued a certificate of public convenience and necessity by the Public Service Commission on 18 March 1954.

Ordinance No. 7, which took effect on 1 October 1950, imposes a tax of 2% on the gross sales or receipts of any business operated in the city, payable monthly within the first 20 days of the following month, and provides penalties for violation thereof. This ordinance was amended on 14 December 1950 by Ordinance No. 11, by enumerating the kinds of businesses required to pay the tax, aid further amended by Ordinance No. 131, enacted on 16 May 1961, by modifying the penal provision, and still further amended by Ordinance No. 148, approved on 11 June 1962, by including within the coverage of taxable businesses "Those engaged in the business of electric light, heat and power (sic) * * * (Rec. on Appeal, pp. 116-131).

Ordinance No. 104, enacted on 13 April 1960, makes it unlawful, and provides a penalty of fine and imprisonment—

"for any person, firm or entity to cut or disconnect electric wire or wires connecting the electric power plant of any franchise holder or electricity supplying current with any consumer in the City of Butuan without the consent of the said consumer except in cases of fire and/or when there is a clear and positive danger to the lives and properties of the residents of the community, or upon order by the proper authorities." (Rec. on App., pp. 133-134).

The stand of the respondents-appellants is that the franchise of the petitioner-appellee is subject to "amendment, alteration or repeal by the National Assembly * * *", as per Section 12 of Act 3636, as amended; that the city is empowered under its charter (Republic Act 523, approved on 15 June 1950) to "provide for the levy and collection of taxes for general and special purposes"; and that its taxing power was enlarged and extended by the Local Autonomy Law, Republic Act 2264, which was approved on 19 June 1959; and that all said statutory

enactments gave the city the authority to impose the 2% tax on the gross sales or receipts of the business of electric light, heat and power of the Butuan Sawmill, Inc.

The petitioner-appellee, Butuan Sawmill, Inc., on the other hand, disputes the constitutionality of the taxing ordinance, as amended, as one that impairs the obligation of contract, its franchise being a contract, and deprives it of property without due process of law; it maintains that the said ordinances are ultra vires and void.

Examination of the laws involved shows that the inclusion of the franchised business of the Butuan Sawmill, Inc. by the city of Butuan within the coverage of the questioned taxing ordinances is beyond the broad power of taxation of the city under its charter; nor can the power therein granted be taken as an authority delegated to the city to amend or alter the franchise, since its charter did not expressly nor specifically provide any such power. Be it noted that the franchise was granted by act of the legislature on 18 June 1949 while the city's charter was approved on 15 June 1950.

"Where there are two statutes, the earlier special and the later general—the terms of the general broad enough to include the matter provided for in the special—the fact that one is special and the other is general creates a presumption that the special is to be considered as remaining an exception to the general, one as a general law of the land, the other as the law of a particular case. (State vs. Stoll 17 Wall. (U.S.), 425)" (Manila Railroad Co. vs. Rafferty, 40 Phil. 224).

The Local Autonomy Act did not authorize the city of Butuan to tax the franchised business of the petitioner-appellee. Its pertinent provision states:

"Any provision of law to the contrary notwithstanding, all chartered cities * * * shall have authority to impose municipal license taxes or fees upon persons engaged in any occupation or business * * * Provided, however, That no city, municipality or municipal district may levy or impose any of the following:

* * * * *

(d) Taxes on persons operating waterworks, irrigation and other public utilities except electric light, heat and power.

* * * * *

(j) Taxes of any kind on banks, insurance companies, and person paying franchise tax.

(Sec. 2, Republic Act 2264) (Italics supplied).

The argument of the appellant city is that, under subparagraph (d) of the above-quoted provision, the business of electric light, heat and power, being an exception to those which it cannot tax (like waterworks and irrigation), is within the city's taxing power. This argument is untenable, because (1) subparagraph (j) of the same section specifically withholds the imposition of taxes on persons paying franchise tax (like appellee "herein), and (2) the city's interpretation of the provision would result in double taxation against the business of the appellee because the internal revenue code already imposes a franchise tax. 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.

The passage of ordinance No. 104, which prohibits the disconnection of any electrical wire connected to any consumer's building with the power plant, without the consent of the consumer, except in case of fire, clear and positive danger to the residents, or order of the authorities, is an unwarranted exercise of power for the general welfare. In effect, the ordinance compels the electric company to keep supplying electric current to a customer

even if the latter does not pay the bills thereof, and to that extent deprives the company of its property without due process. It is no answer to the objection that the company is not prevented from resorting to the courts for the collection of unpaid bills; for unless the supply of electricity is stopped, the bills will keep mounting during the pendency of the case, and the company will be unable to stop litigating. How the general welfare would be promoted under the ordinance has neither been explained nor justified; in fact, the respondents spare no bones in asserting that the ordinance was directed against the petitioner in protest against its allegedly inefficient service. But the general welfare clause was not intended to vent the ire of the complaining consumers against the franchise holder, because the legislature has specifically lodged jurisdiction, supervision and control over public services and their franchises in the Public Service Commission, and not in the city of Butuan.

For the foregoing reasons, the appealed decision is hereby affirmed in the result. Costs against appellant City of Butuan.

Bengzon, C.J., Bautista Angelo, Concepcion, Barrera, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

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