

**IMUS ELECTRIC COMPANY, INC., PLAINTIFF AND APPELLANT, VS.
THE MUNICIPALITY OF IMUS, PROVINCE OF CAVITE, ET AL.,
DEFENDANTS AND APPELLANTS.**

G. R. No. 39842. March 28, 1934

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

The question at issue in this case relates to the validity of a contract executed by the parties thereto, which reads as follows:

"CONTRACT FOR STREET LIGHTING SERVICE FOR THE MUNICIPALITY OF IMUS, PROVINCE OF CAVITE, PHILIPPINE ISLANDS

"The contract made and entered into at the Municipality of Imus, Province of Cavite, Philippine Islands, this eleventh day of June in the year nineteen hundred thirty-one (1931), A. D., by and between the Imus ELECTRIC Company, Incorporated, a corporation duly organized under the laws of the Philippine Islands, and in its name and behalf, Mr. Esteban C. Espiritu, in his capacity as President of the said company duly empowered to execute this contract, party of the first part, hereinafter called the company, and the Municipality of Imus, a municipal corporation duly organized and existing under and by virtue of the laws of the Philippine Islands, and in its name and representation, Mr. Epifanio E. Gabriel, Municipal President hereunto also duly authorized party of the second part, hereinafter called the municipality.

"WITNESSETH:

"1. That the company, for the consideration hereinafter mentioned and in strict accordance with the terms of this contract, does hereby agree to furnish the MUNICIPALITY with a public street lighting service which shall consist of furnishing and operating forty-five (45) multiple alternating current metallic filament incandescent lamps, at the rate and prices specified in the Electric Service Rate Schedule III hereof, which forms part of this contract, and shall be distributed as follows:

Location

No Lights

Wattage

Bayanluma (to corner going Tulay ng Julian).....

8

50-watt

Duihalo and Sinukuan

1

Do.

Dumalo and Dimasalang

1

Do.

Dumalo and Karaniwan

1

Do.

Dumalo and Carsadang Bago.....

1

Do.

Tansanluma (to Talon only)

3

Do.

Sinukuan

2

Do.

Sinukuan and Magtangol

1

Do.

Sinukuan and Tansanluma

1

Do.

Sinukuan and Pagasa

1

Do.

Sinukuan and Maestro G. Tirona

1

Do.

Sinukuan and Magwagi

1

Do.

Dimasalang and Magkaisa

1

Do.

Dimasalang and Maestro Tirona.....

1

Do.

Dimasalang between Sapinoso and Pagasa.....

1

Do.

Dimasalang and Magwagi.....

1

Do.

Sapinoso

1

Do.

Karaniwan and Magkaisa

1

Do.

Karaniwan and Tahimik

1

Do.

Karaniwan and Maestro Tirona

1

Do.

Karaniwan and Kaliwanagan

1

Do.

Karaniwan and Pagasa

1

Do.

Karaniwan and Magwagi

1

Do.

Karaniwan and Magtangol

1

Do.

Magtangol and Tagumpay

1

Do.

Tagumpay and Magwagi

1

Do.

Masikap and Kaliwanagan

1

Do.

Masikap and Pagasa

1

Do.

Masikap and Magwagi

1

Do.

Masikap and Magtangol

1

Do.

Magtangol, in front of slaughterhouse

1

Do.

Magtangol and Papaya.....

1

Do.

On Imus Bridge, Provincial Road

1

Do.

Palico, 2d polo from Provincial Road.....

1

Do.

On boundary line, Provincial Road.....

1

Do.

Any additional street lights hereafter ordered by the Municipality and installed by the Company in places where secondary lines are maintained shall be subject to the same conditions and rates stipulated in this contract.

"2. This contract shall run for a period of ten (10) years, beginning from the first day of July, 1931. It being understood and agreed that the Electric Service Rate Schedule III set forth hereof shall become effective upon the date of the execution of this contract.

"3. The municipality in consideration of the faithful and complete performance by the company of its part of this contract, hereby agrees to pay monthly the said company for the service herein described upon the basis shown on the Electric Service Rate Schedule III hereof, as follows:

"ELECTRIC SERVICE RATE

"SCHEDULE III

"FLAT RATE SCHEDULE FOR STREET LIGHTING SERVICE

"FOR METALLIC FILAMENT LAMPS

(Approved by the Public Service Commission)

including Installation and Maintenance:

For each 50-watt metallic filament lamp..... per month....

P4.50

For each 75-watt metallic filament lamp.....do.....

6.00

For each 100-watt metallic filament lamp.....do.....

8.00

For each 150-watt metallic filament lamp.....do.....

12.00

For each 200-watt metallic filament lamp.....do.....

16.00

For higher wattage lamps, a charge of P4 will be made for every 50 watts in excess of 200 watts.

"The installation of street lights, including the brackets, shades and lamps will be furnished by the Company, free of charge.

"The electric service herein referred to will be maintained between the hours of 5:45 P. M. and 5.45 A. M. It can be made between six (6:00) P. M. and six (6:00) A. M.

"The Company has the option to furnish either multiple or series street lighting service.

'4. That the Company shall not be responsible for interruptions to the service due to cases beyond the company's control.

"In witness whereof, the parties hereto have caused these presents to be signed and executed by their respective officers duly authorized to do so and cause their respective seals to be affixed hereto, the day and the year above written.

"FOR THE IMUS ELECTRIC CO., INC.

"BY (Sgd.)

ESTEBAN C. ESPIRITU

"President

"FOR THE MUNICIPALITY OF IMUS

"By (Sgd.) EPIFANIO E. GABRIEL

"Municipal President

"Attest:

"(Sgd.)

AURELIO ELISES

"Municipal Secretary

"Signed in the presence of:

"(Sgd.)

CECILIO DEL ROSARIO

"(Sgd.)

DIONISIO ANONUEVO**'UNITED STATES OF AMERICA**

}SS.

PHILIPPINE ISLANDS**PROVINCE OF CAVITE**

"I hereby certify that before me, a Notary Public in and for the Province of Cavite, personally appeared Esteban Espiritu in his capacity as President of the Imus Electric Company, Inc., with cedula No. F-8476, issued at Manila, on January 14, 1931, and Epifanio Gabriel, in his capacity as Municipal President of Imus, Cavite, with cedula No. F-2375125, issued at Imus, Cavite, to me known and known to me to be the persons who signed the foregoing instrument and they acknowledged to me that they executed the same as their free act and deed and the free act and deed of the corporation and municipality which they represent for the purposes therein set forth.

"I further certify that the said instrument relates to a contract for street lighting service for the Municipality of Imus, Province of Cavite, and that the same consists of three pages including the page on which this certificate is written.

"In witness whereof, I have hereunto set my hand and affixed my official seal this 11th day of June, 1931, at the Municipality of Imus, Province of Cavite, P. I.

(Sgd.) "FRANCISCO T. SAYOC

"Notary Public

"My commission expires December 31, 1937

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"Page 39

"Book III

"Series of 1930."

The municipality of Imus, represented by the defendant councilors, appropriated funds for the payment for electric light service corresponding to the months of January and February, 1932, and said monthly charges were actually paid to the plaintiff company. However, the defendants later refused to appropriate funds for the month of March of the said year and for subsequent months, and their refusal prompted the plaintiff to bring this action for the purpose of compelling them to comply with their obligation by appropriating the necessary funds. Notwithstanding the defendants' attitude, the plaintiff continued and still continues to render the electric lighting service on the streets specified in the contract and, it is needless to state that the inhabitants of the municipality of

Imus have been benefited by and still continue to enjoy the said public service.

The plaintiff appealed from the judgment rendered by the Court of First Instance of Cavite, which reads as follows:

"Wherefore, judgment is hereby rendered declaring:

"(A) That the contract for electric lighting executed by the plaintiff and the defendants on June 11, 1931, and quoted in paragraph III of the complaint, is null and void on the ground that it had been executed in open violation of the legal provisions contained in sections 606 and 607 of the Revised Administrative Code and in accordance with those of section 608 of the same Code; and

"(B) Sentencing the defendants to pay to the plaintiff the sum of P202.50 monthly, from March 1, 1932, until said public lighting service is suspended or stopped, without special pronouncement as to the damages and attorney's fees claimed by the plaintiff, nor as to costs. So ordered."

The defendants, in turn, appealed from that part of the judgment compelling them to pay to the plaintiff the sum of 202.50 monthly, from March 1, 1932, until the service is withdrawn by the aforesaid plaintiff.

A stipulation of facts was entered into and other oral and documentary evidence was presented. The following facts are practically admitted by both parties, to wit:

In March, 1930, the plaintiff applied to the then municipal council of Imus for a franchise to install an electric lighting system on different streets of the said municipality and to furnish electric current to the municipality and its inhabitants. The franchise was granted by the municipality on June 30th of the same year and subsequently approved by the Public Service Commission, together with the rates proposed therein. On June 10, 1931, the municipal council of Imus, by means of a resolution, authorized the municipal president to enter into a contract with the plaintiff whereby the latter should furnish the different streets of the said municipality with electric light. On the 11th of the same month, the municipal president and the president of the plaintiff corporation signed the above quoted contract. The contract, according to the terms thereof, was of ten (10) years' duration and the plaintiff was thereby bound to furnish forty-five 50-watt lamps at the rate of P4.50 each per month, or a total of P202.50 monthly. The contract thus executed was approved by the municipal council of Imus by means of resolution No. 40, series of 1931. On account of such approval, the said municipality, on the same date of June 11, 1931, approved a special appropriation for the sum of P1,200 for the purpose of covering the value of the electric current to be furnished by the plaintiff for a period of six (6) months. The special or additional appropriation was at first opposed by the provincial treasurer of Cavite, but later it was approved by the same official, and by the provincial board in its resolution No. 568.

Immediately after their election, the defendant councilors, tried to annul the contract for furnishing electric current, entered into with the plaintiff, as well as the former municipal council's resolution approving the same. For that purpose, they submitted the case to the Chief of the Executive Bureau, who expressed the opinion that the contract in question was null and void and that the resolution approving it should be revoked. In consequence thereof he also held that the resolution appropriating funds for six (6) months was contrary to law on the ground that the municipality lacked available funds for the entire period of ten (10) years covered by the contract in question. The Insular Auditor likewise expressed the same opinion. However, the Chief of the Executive Bureau was asked to reconsider his decision, which he did after further study of the case, and he finally declared valid the contract as well as the appropriation of funds for six (6) months and immediately ordered the defendants to include in the corresponding appropriation the amount necessary to pay for the service for one year or for three months, if no sufficient funds were available.

The defendants contend that the contract in question is null and void on the ground that the former municipal council of Imus approved it without having the necessary funds to pay for the value of the service to be rendered by the plaintiff for a period of ten (10) years, which amounted to P24,300, and without the provincial treasurer's previous certificate to the effect that said funds have been appropriated and were available, in violation of the provisions of sections 606, 607 and 608 of the Revised Administrative Code of 1917. The above cited legal provisions read as follows:

"SEC. 606. Appropriation antecedent to making of contract.—No contract involving the expenditure of public funds shall be made until there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure. This provision shall not, however, be construed to prevent the purchasing and carrying of supplies in stock, under the regulations of the Bureau of Audits, provided that when issued such supplies shall be charged to the proper appropriation account.

"SEC. 607. Certificate showing appropriation to meet contract.—Except in the case of a contract for personal service or for supplies to be carried in stock, no contract involving an expenditure by the Insular Government of three thousand pesos or more shall be entered into or authorized until the Insular Auditor shall have certified to the officer entering into such obligation that funds have been duly appropriated for such purpose and that the amount necessary to cover the proposed contract is available for expenditure on account thereof. When application is made to the Insular Auditor for the certificate herein required, a copy of the proposed contract or agreement shall be submitted to him accompanied by a statement in writing from the officer making the application showing all obligations not yet presented for audit which have been incurred against the appropriation to which the contract in question would be chargeable; and such certificate, when signed by the Auditor, shall be attached to and become a part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the Government is discharged from the contract in question.

"Except in the case of a contract for supplies to be carried in stock, no contract involving the expenditure by any province, municipality, township, or settlement of two thousand pesos or more shall be entered into or authorized until the treasurer of the political division concerned shall have certified to the officer entering into such contract that funds have been duly appropriated for such purpose and that the amount necessary to cover the proposed contract is available for expenditure on account thereof. Such certificate, when signed by the said treasurer, shall be attached to and become a part of the proposed contract and the sum so certified shall not thereafter be available for expenditure for any other purpose until the contract in question is lawfully abrogated or discharged.

"For the purpose of making the certificate hereinabove required ninety per centum of the estimated revenues and receipts which should accrue during the current fiscal year, but which are yet uncollected, shall be deemed to be in the treasury of the particular branch of the Government against which the obligation in question would create a charge.

"SEC. 608. Void contract; Liability of officer.—A purported contract entered into contrary to the requirements of the next preceding section hereof shall be wholly void, and the officer assuming to make such contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties."

The defendants contend that the additional appropriation made by the then municipal council was inadequate on the ground that it was the duty of the latter to appropriate funds for the whole term of the contract and that the contract in question falls within the prohibition of section 608 because in reality there was no appropriation for the sum of P24,300, nor did the provincial treasurer certify that such appropriation was made and that the funds for the same were available.

The inconsistency of the defendants' claim becomes obvious merely by taking into consideration that the contract

entered into by the parties was for the sale of electric current at the rate of P4.50 monthly for every lamp or light of 50 watts, or the sum of P202.50 every month. Under this agreement, the municipality of Imus was not bound, nor it is bound, to pay the price of the electric current until the same has been furnished, and inasmuch as the period of one month was made the basis thereof, there is no doubt but that neither is the said municipality obliged to pay for the current except at the end of every month. It is true that the duration of the contract was fixed at ten (10) years, a period which was accepted by the municipality on the ground that only under that condition could the plaintiff furnish electric current at a very much reduced rate, but it is also true that under the terms of the contract and the law, the municipality was not bound to make advanced payments and, consequently, there was no reason for it to appropriate funds for the said public service except for a period of one month or one year, at most, if it had sufficient funds, in order to comply with the provisions of section 2296 of the Revised Administrative Code, which requires that municipalities should, at the beginning of every year, make a general appropriation containing the probable expenses which they would have to incur.

From the foregoing, it is obvious that the contract in question is not in conflict with the provisions of sections 607 and 608 above quoted because in reality the same does not necessarily involve an appropriation of funds in excess of P2,000. As the Chief of the Executive Bureau has finally decided, the municipality of Imus may appropriate funds for three (3) months or for six (6) months in the same manner the former councilors of the said municipality have done.

There is no evidence to establish the damages claimed by the plaintiff and, therefore, it is not entitled thereto.

Wherefore, the appealed judgment is hereby reversed and the contract for furnishing electric current, executed by the parties and quoted in the complaint and in the stipulation of facts, is hereby declared valid and binding, with the costs of this instance against the defendants-appellants. So ordered.

Malcolm, Villa-Real, Hull, and Goddard, JJ., concur.

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