

CITY OF MANILA, PLAINTIFF AND APPELLEE, VS. MANILA ELECTRIC RAILROAD AND LIGHT CO., DEFENDANT AND APPELLANT.

G.R. No. 7627. November 30, 1912

Ponente: CARSON, J.

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CARSON, J.:

The object of this appeal is to set aside a judgment for P4,483.90, with interest from July 11, 1911, rendered in the Court of First Instance of favor of the city of Manila and against the Manila Electric Railroad and Light Company, for services rendered, in inspecting and listing, prior to their installation, electric meters belonging to the company to the number of 2,712. The fee, which it is claimed is fixed by a city ordinance, in force at the time when the tests were made, was P2 for each meter tested. The difference between the total fees for testing the 2,712 meters and the amount of the judgment arose from a credit of P1,085.10 in favor of the company for the electric current furnished the city laboratory in making the tests.

The defenses urged to the action are: (1) That the city was not authorize to make any charge for testing the company's meters; (2) that if it has such authority, a charge of P2 for each meter tested is excessive and illegal; and (3) that under the terms of ordinance No. 68, relied up the city, no such charge is authorized or prescribed for the testing of as is sought to be imposed and collected in this action.

In regard to the question of the authority of the city to enact an ordinance providing for the official inspection and test of the electric meters an a reasonable charge for. this service we think there can be no question unless it appears that there is something in the defendant company's franchise which relieves it from liability to charges for such services. under its charter and in the exercise of its police powers, is vested authority to provide for the official inspection and test of all electric meters before their installation, and this authority carries with it the right reasonable charges for the making of such inspections and tests. As stated by counsel for the appellant, "it has frequently been held that the granted to a municipality to license and regulate an occupation carries with it, by necessary implication if not by express grant, the right to fix and to impose reasonable charges for inspection and supervision."

Subsection (ii) of section 17 of the Charter of Manila provides Municipal Board shall have authority "To regulate, control, and prevent discrimination in the sale and supply of gas, electricity, and telephone street railway service, and fix and regulate rates and charges therefor where the same has not been fixed by Act of Congress or the Philippine Commission; and to provide for the inspection of all gas, electric, telephone and street-railway wires, conduits, meters, and other apparatus, and the condemnation and correction or removal of the same, when dangerous or defective."

By virtue of the power thus conferred upon the city we hold that it is clearly authorized to enact appropriate ordinances providing for such reasonable inspection and tests of electric meters used in the city of Manila as it deem proper or necessary, and to fix reasonable fees for the making of such tests. As is pointed out in the opinion of the trial judge, the me silence of the Charter on the question of charges does not prevent their imposition.

(Welch vs. Hotchkiss, 39 Conn., 140; 12 Am. Rep., 38 St. Paul vs. Dow, 37 Minn. 20; Am. St. Rep., Vol. 5, 811; Griggs vs. 103 Ga., 602; 68 Am. St. Rep., 134; Postal Telegraph Cable Co. vs Baltimore, 79 Md., 502; 24 L. R. A., 161, 163; Saginaw vs. Swift Co., 113 Mich., 660; 72 N.W., 6.)

Counsel for appellant points to the fact that in some cases wherein the Charter of Manila grants powers of inspection and regulation, express authority is granted to charge reasonable fees therefor, and he contends that the expression of the authority in those cases is an implied denial such authority in all other cases. We cannot agree with this contention. The argument might have some force if an express grant of authority to fix such fees were made in regard to certain inspections and tests made under the section of the Charter by authority of which the ordinance in question was enacted, and were silent as to the others. But it would be straining canon of construction on which counsel relies beyond all limits to hold the express grant of a power in one portion of a charter, which might have been inferred from the general terms of the Charter without have been expressly granted, forbids the application of the ordinary rules of construction to all the remaining provisions of the Charter, and justifies the inference that no powers were intended to be granted thereunder which are not expressly conferred. In the absence of an express prohibition, or language amounting by necessary implication to a prohibition, we think that the grant to the city of the power and the duty to inspect and to test carries with it the power to impose a reasonable fee thereunder.

In regard to the contention that the recovery of the fee for testing its meters impairs the obligations of the defendant's franchise, it should be sufficient to say, in the language of the trial judge, that "Until it is shown that the amount collected from this charge is enough more than the reasonable and proper cost to provide the city with a substantial surplus, the charge is not a revenue regulation and therefore not a tax." The claim of the defendant company is based on the fact that its franchise provide that the percentage of gross earnings which it is required to pay the city for the privileges granted by its franchise "shall be in lieu of all taxes and assessments of whatsoever nature, and by whatsoever authority upon the privileges, earnings, income, franchise, etc., of the grantor, from which and assessments the grantee is hereby expressly exempted." But it is very clear that so long as the fee charged for making the tests of the company's meters is merely a reasonable charge for the services actual involved, the charge is not in the nature of a tax or an assessment.

In regard to the contention that the fee of P2 for each meter tested is unreasonable and excessive charge we accept the conclusions of the trial judge that the evidence of record does not sustain an affirmative finding that it is so clearly unreasonable or excessive as to justify us in hold illegal and the ordinance invalid. We are not called upon in this action a reasonable charge for the services rendered. Appellant seeks to avoid liability on the ground that the charge is so unreasonable that as a matter of law the ordinance fixing it is, to that extent, illegal and invalid. "judicial authority to declare an ordinance unreasonable is a power to be cautiously exercised," and we are not prepared to disturb the conclusion the trial judge in this regard on the not wholly satisfactory evidence introduced by the appellant at the trial in the court below.

The third contention of appellant is that the ordinance by its terms does not authorize or prescribe a fee for the testing of the meters on account of which the action is brought. Counsel insist that section 23 of ordinance No. 68 of city of Manila, which provides fees for the official tests of meters has reference only to tests made under the provisions of the next preceding section (22), which relates to tests made when there is a new installation electric lights, and not to tests made under authority of section 5, which relates to tests made of meters disconnected for repairs. The fees for which this action was brought were for tests of this latter class.

We think it is very clear, however, that the scale of fees set out in s 23 was clearly intended to apply to all cases wherein tests of meters made under authority of the ordinance. The section provides that "The fees for each inspection and test herein provided shall be as follows." We think that the words "inspection and test herein

provided" clearly refer to a inspections and tests provided in the ordinance. The mere fact that section 23 immediately succeeds section 22, and that the scale of fees provided section 23 was undoubtedly intended to have application to cases arising under section 22 by no means justifies the conclusion that this scale has no reference to tests authorized under any other section of the ordinance. If the scale of fees set forth in section 23 applied only cases arising under section 22, it would seem that instead of using gen language, which is applicable to all tests made by authority of the ordinance, it would have limited the collection of fees to cases arising section 22 by specifically referring to tests provided "in section 22" next preceding section." Indeed, if the scale of fees were intended to apply only to section 22, its logical place in the ordinance would be within the body of that section itself. Moreover, looking at the purpose and object sought to be attained by establishing a scale of fees for the testing of meters, it would seem not less reasonable and proper that fees should be charged for tests made in cases where re-installations are be made of old and defective meters removed for the purpose of making repairs, than that they should be charged in cases where new meters are tested.

The judgment of the court below should be and is hereby affirmed.

Arellano, C. J., Torres, Mapa, and Trent, JJ., concur.

Johnson, J., concurs in the result.

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