

EN BANC

[G.R. No. 198529, February 09, 2021]

MANILA ELECTRIC COMPANY, PETITIONER, VS. CITY OF MUNTINLUPA AND NELIA A. BARLIS, RESPONDENTS.

DECISION

HERNANDO, J.:

Petitioner Manila Electric Company (Meralco) filed the instant Petition for Review on *Certiorari*^[1] to assail the Court of Appeal's January 31, 2011 Decision^[2] in CA-G.R. CV No. 80558, which set aside the December 19, 2003 Decision^[3] of the Regional Trial Court (RTC) of Pasig City, Branch 67.

In its assailed judgment, the CA ordered Meralco to pay a franchise tax on the operation of public utilities pursuant to Section 25 of Municipal Ordinance No. 93-35 (MO 93-35) or the Revenue Code of the Municipality of Muntinlupa, reckoned from the effectivity of Republic Act No. 7926 (RA 7926),^[4] also known as the Charter of the City of Muntinlupa on March 1, 1995.

The Antecedents:

Meralco is a public utility corporation duly organized and existing under Philippine laws. Pursuant to RA 9209,^[5] the statute granting its franchise, Meralco is enfranchised to construct, operate and maintain a distribution system for the conveyance of electricity in the cities and municipalities in the National Capital Region, among others.

On the flip side, the City of Muntinlupa is a local government unit that has been converted from a municipality into a highly urbanized city by virtue of RA 7926. Respondent Nelia A. Barlis (Barlis) was the City Treasurer of Muntinlupa at the time Meralco was assessed to pay a franchise tax.

On January 1, 1994, MO 93-35 or the Revenue Code of the Municipality of Muntinlupa took effect.^[6] Section 25^[7] thereof imposed a franchise tax on private persons or corporations operating public utilities within its territorial jurisdiction at the rate of 50% of 1% of the gross annual receipts of the preceding calendar year.

Subsequently, RA 7926 was enacted and approved on March 1, 1995 which converted the Municipality of Muntinlupa into a highly urbanized city, now the City of Muntinlupa. Section 56 of the transitory and final provisions of RA 7926 adopted all existing municipal ordinances of the Municipality of Muntinlupa as of March 1, 1995, and shall all continue to take effect within Muntinlupa as of March 1, 1995, and shall all continue to take effect within the City of Muntinlupa unless its *sangguniang panglungsod* enacts an ordinance providing otherwise.

On June 28, 1999, Barlis sent a letter to Meralco demanding payment of the franchise tax it owed to Muntinlupa City from 1992 to 1999 pursuant to Section 25 of MO 93-35 and paragraph 7 of the Bureau of Local Government Finance Circular No. 20-98. Barlis likewise requested for Meralco's certified statement of gross sales/receipts for the years 1992 to 1999 that would support the computation of the franchise tax due.^[8]

On July 14, 1999, Meralco requested for the deferment of the submission of its statement of gross sales/receipts, and for a copy of MO 93-35.^[9] It also mentioned that its representatives had amicably discussed the matter with Barlis on July 13, 1999, and that the May 5, 1999 Decision of this Court in *Manila Electric Company v. Province of Laguna*^[10] is still pending reconsideration.^[11]

Meralco likewise ignored the August 21, 2001^[12] and the September 27, 2001^[13] demand letters for payment of the franchise tax for the years 1994 to 2000 on the premise that the City of Muntinlupa, then a municipality, did not have the power and authority to impose and collect a franchise tax. Pursuant to Section 142^[14] in relation to Sections 134,^[15] 137^[16] and 151^[17] of RA 7160 or the Local Government Code of 1991, the power and authority to impose and collect a franchise tax lies with the provinces and cities.

Meralco thus instituted a Petition With Prayer for a Writ of Preliminary Injunction^[18] before the RTC of Pasig City, Branch 67 to declare Section 25 of MO 93-35 as null and void for being contrary to law, unjust and confiscatory, and to enjoin the City of Muntinlupa from demanding the submission of its certified statement of gross sales/receipts for the computation of the franchise tax.

In its Answer With Compulsory Counterclaim,^[19] the City of Muntinlupa mainly argued that Section 137 of RA 7160 and Articles 227 and 237 of its Implementing Rules and Regulations (IRR) allow the imposition of a franchise tax by a local government unit. It also averred that it is entitled to moral damages and attorney's fees in view of Meralco's filing of a baseless and malicious suit which tainted its reputation and constrained it to engage the services of a counsel.

In its Reply and Answer to Compulsory Counterclaim,^[20] Meralco maintained that municipalities are not endowed with the authority to impose a franchise tax, which power exclusively belongs to provinces and cities pursuant to RA 7160. It argued that the presumption of validity does not apply because Section 25 of MO 93-35 is patently discordant with existing law and jurisprudence, and that the passage of the Charter of Muntinlupa City cannot breathe life into an ordinance that was void from the beginning. It countered that the City is not entitled to damages because Meralco acted in good faith in seeking relief for a transgression of a right.

The Pre-Trial Order^[21] enumerated the issues for resolution as follows: (1) whether Muntinlupa City could legally collect a franchise tax from 1992 to 1999; (2) whether Muntinlupa City could legally require Meralco to submit certain documents for the determination of its franchise tax; (3) whether MO 93-35 as incorporated in the Charter of Muntinlupa City is a valid ordinance; (4) whether Muntinlupa City is entitled to moral damages and attorney's fees; and (5) whether Meralco is entitled

to the issuance of a writ of preliminary and/or permanent injunction enjoining the City of Muntinlupa from collecting franchise tax.

On January 30, 2003, Meralco and Muntinlupa City filed a Joint Motion for Summary Judgment.^[22]

Ruling of the Regional Trial Court:

In a Decision^[23] dated September 19, 2003, the trial court struck down MO 93-35, particularly Section 25 thereof, for being *ultra vires* because it was enacted when Muntinlupa was still a municipality which, as such, had no power to levy taxes, fees or charges already conferred to the provinces following Sections 142 and 137 of RA 7160. It held that an ordinance that is invalid on its face may be set aside for being inoperative, and that the 30-day period within which an ordinance can be assailed is merely permissive by express use of the word "may" in Section 187 of RA 7160.

The trial court declared that Article 236 (b) of the IRR cannot contravene or go beyond Section 142 of RA 7160 which it seeks to implement. Also, Section 56 of the Charter of Muntinlupa City adopting Section 25 of MO 93-35 did not cure its infirmity. Thus, the trial court granted Meralco's prayer for the issuance of a writ of injunction enjoining Muntinlupa City from collecting the franchise tax.

The *fallo* of the trial court's ruling states:

WHEREFORE, the foregoing premises considered, judgment is hereby rendered:

1. Declaring the implementation of Section 25 of Municipal Ordinance No. 93-35 otherwise known as the revenue code of the Municipality of Muntinlupa null and void ab initio for being *ultra vires* and contrary to law;
2. Commanding the respondents and their agents, representatives, and successors to desist from enforcing or implementing the said Sections [sic] 25 of Municipal Ordinance No. 93-35[,] and Article 236 (b) of the Rules and Regulations Implementing the Local Government Code of 1991, as well as from collecting any amount pursuant thereto;
3. Enjoining and commanding the respondents, their agents, representatives, and successors to desist from demanding upon the petitioner to submit a certified statement of its gross sales/receipts derived from its business within the territorial jurisdiction of the City of Muntinlupa for the purpose of assessing franchise tax, and from demanding payment of franchise tax from the petitioner; and
4. On the counterclaim, dismissing and denying respondents' claim for moral damages and attorney's fees for lack of merit.

SO ORDERED.^[24]

Muntinlupa City elevated the case to the CA with the following assignment of errors:

I

WHETHER OR NOT THE LOWER COURT ERRED IN DECLARING AS NULL AND VOID FOR BEING ULTRA VIRES AND CONTRARY TO LAW SECTION 25 OF [MO] NO. 93-35.

II

WHETHER OR NOT THE LOWER COURT ERRED IN DECLARING AS NULL AND VOID FOR BEING CONTRARY TO SECTION 142 OF THE LOCAL GOVERNMENT CODE, ARTICLE 236 (B) OF [THE IRR].

III

WHETHER OR NOT THE LOWER COURT ERRED IN ENJOINING [APPELLANTS] FROM IMPOSING [AND] COLLECTING THE SUBJECT FRANCHISE TAX UPON [MERALCO], REQUIRING FOR THAT PURPOSE THE SUBMISSION OF ITS CERTIFIED STATEMENT OF GROSS SALES/RECEIPTS DERIVED WITHIN THE CITY.^[25]

Ruling of the Court of Appeals:

In its January 31, 2011 Decision,^[26] the appellate court concurred with the trial court that municipalities have no authority to levy and collect a franchise tax due to the *ultra vires* nature of Section 25 of MO 93-35. However, it declared that MO 93-35 was cured of its legal infirmities when the Municipality of Muntinlupa was converted into a highly urbanized city by virtue of its Charter in 1995. Moreover, it held that MO 93-35 is presumed to be valid since it had yet to be declared void by final judgment by any court at the time of its adoption. Section 56 of the Charter of Muntinlupa City effectively cured the defects and re-enacted Section 25 of MO 93-35, although the curative effect applies prospectively. Hence, the appellate court held that Meralco's obligation to pay franchise tax begins only from March 1, 1995, the date when the Charter of Muntinlupa City was enacted.

The dispositive portion of the appellate court's assailed Decision reads:

WHEREFORE, the foregoing premises considered, the Decision of the RTC of Pasig City, Branch 67, in Civil Case No. 68725, is **SET ASIDE** and a **NEW ONE ENTERED** as follows:

1. Declaring Sec. 25 of Municipal Ordinance 93-35, otherwise known as the Revenue Code of the (now) City of Muntinlupa, as having taken effect only from the date of effectivity of RA 7926, otherwise known as the Charter of the City of Muntinlupa;
2. Ordering appellee to comply with appellants' demands for a certified statement of its gross sales/receipts derived from its business within the territorial jurisdiction of the City of Muntinlupa, and other documents, for the purpose of assessing franchise tax, computed only from the date of RA 7926 took effect;
3. Ordering appellee to pay franchise tax to appellants based on said

assessment.

SO ORDERED.^[27]

Aggrieved, Meralco filed the instant Petition for Review on *Certiorari*^[28] raising the sole issue of:

WHETHER SECTION 25 OF MUNICIPAL ORDINANCE NO. 93-35 OF THE THEN MUNICIPALITY OF MUNTINLUPA IMPOSING A FRANCHISE [TAX], WHICH WAS DECLARED NULL AND VOID *AB INITIO* FOR BEING *ULTRA VIRES* AND CONTRARY TO THE LOCAL GOVERNMENT CODE OF 1991 BOTH BY THE TRIAL AND THE APPELLATE COURTS, WAS CURED BY SECTION 56 OF R.A. 7926 CONVERTING THE MUNICIPALITY OF MUNTINLUPA INTO A HIGHLY URBANIZED CITY.^[29]

Our Ruling

The Petition is meritorious.

Section 25 of MO 93-35 is null and void for being *ultra vires*.

Ferrer, Jr. v. Bautista^[30] enumerates the requirements for an ordinance to be valid, legally binding, and enforceable, to wit:

For an ordinance to be valid though, it must not only be within the corporate powers of the LGU to enact and must be passed according to the procedure prescribed by law, it should also conform to the following requirements: (1) not contrary to the Constitution or any statute; (2) not unfair or oppressive; (3) not partial or discriminatory; (4) not prohibit but may regulate trade; (5) general and consistent with public policy; and (6) not unreasonable.^[31]

Legaspi v. City of Cebu^[32] explains the two tests in determining the validity of an ordinance, *i.e.*, the Formal Test and the Substantive Test.^[33] The Formal Test requires the determination of whether the ordinance was enacted within the corporate powers of the LGU, and whether the same was passed pursuant to the procedure laid down by law. Meanwhile, the Substantive Test primarily assesses the reasonableness and fairness of the ordinance and significantly its compliance with the Constitution and existing statutes.

As correctly ruled by the RTC and the CA, MO 93-35, particularly Section 25 thereof, has failed to meet the requirements of a valid ordinance. Applying the Formal Test, the passage of the subject ordinance was beyond the corporate powers of the then Municipality of Muntinlupa, hence, *ultra vires*.

Based on the Substantive Test, Section 25 of MO 93-35 deviated from the express provision of RA 7160. While ordinances, just like other laws and statutes, enjoy the presumption of validity, they may be struck down and set aside when their invalidity or unreasonableness is evident on the face or has been established in evidence.^[34] In this case, Section 25 of MO 93-35 was evidently passed beyond the powers of a municipality in clear contravention of RA 7160.