

## THIRD DIVISION

[ G.R. No. 181710, March 07, 2018 ]

**CITY OF PASIG AND CRISPINA V. SALUMBRE, IN HER CAPACITY  
AS OIC-CITY TREASURER OF PASIG CITY, PETITIONERS, VS.  
MANILA ELECTRIC COMPANY, RESPONDENT.**

### DECISION

**MARTIRES, J.:**

Under the Local Government Code (LGC) of 1991, a municipality is bereft of authority to levy and impose franchise tax on franchise holders within its territorial jurisdiction. That authority belongs to provinces and cities only.<sup>[1]</sup> A franchise tax levied by a municipality is, thus, null and void. The nullity is not cured by the subsequent conversion of the municipality into a city.

At bar is a petition for review under Rule 45 of the Rules of Court which seeks a reversal of the Decision<sup>[2]</sup> dated 28 August 2007, and Resolution<sup>[3]</sup> dated 8 February 2008 of the Court of Appeals (CA) in CA-G.R. CV No. 81255 entitled "The Manila Electric Company v. The City of Pasig, et al."

### THE FACTS

On 26 December 1992, the Sangguniang Bayan of the Municipality of Pasig enacted Ordinance No. 25 which, under its Article 3, Section 32, imposed a franchise tax on all business venture operations carried out through a franchise within the municipality, as follows:

#### ARTICLE 3 – FRANCHISE TAX

Section 32. *Imposition of Tax.* – Any provision of laws or grant of exemption to the contrary notwithstanding, any person, corporation, partnership or association enjoying a franchise and doing business in the Municipality of Pasig, shall pay a franchise tax at the rate of fifty percent (50%) of one percent (1%) of its gross receipts derived from the operation of the business in Pasig during the preceding calendar year.

By virtue of Republic Act (R.A.) No. 7829, which took effect on 25 January 1995, the Municipality of Pasig was converted into a highly urbanized city to be known as the City of Pasig.

On 24 August 2001, the Treasurer's Office of the City Government of Pasig informed

the Manila Electric Company (*MERALCO*), a grantee of a legislative franchise,<sup>[4]</sup> that it is liable to pay taxes for the period 1996 to 1999, pursuant to Municipal Ordinance No. 25. The city, thereafter, on two separate occasions, demanded payment of the said tax in the amount of P435,332,196.00, exclusive of penalties.

On 8 February 2002, *MERALCO* protested<sup>[5]</sup> the validity of the demand "claiming that the same be withdrawn and cancelled for the following reasons: (1) Ordinance No. 25 was declared void *ab initio* by the Department of Justice (*DOJ*) for being in contravention of law, which resolution was reiterated in another case that questioned the validity of the franchise tax, etc.; (2) The Regional Trial Court of Pasig City (*RTC*) ordered the Municipality of Pasig, now City of Pasig, to refund *MERALCO* the amount the latter paid as franchise tax because the former lacked legal foundation in collecting the same, as municipalities are not empowered by law to impose and collect franchise tax pursuant to Section 142 of the LGC; (3) The CA affirmed the *RTC* decision; and (4) The petition for certiorari filed by the then Municipality of Pasig before the Supreme Court, assailing the decision of the CA that sustained the *RTC*, was likewise dismissed and the motion for reconsideration of the Municipality of Pasig was denied with finality.

In view of the inaction by the Treasurer's Office, *MERALCO* instituted an action before the *RTC* for the annulment of the said demand with prayer for a temporary restraining order and a writ of preliminary injunction.<sup>[6]</sup> The *RTC* ruled in favor of the City of Pasig, disposing as follows:

**WHEREFORE,** premises considered, judgment is hereby rendered in favor of the defendant City of Pasig, declaring as valid its demand for payment of franchise tax upon [*MERALCO*] for the years 1996 to 1999, inclusive, subject to revision of the computation of the amount of such tax pursuant to the guidelines above-mentioned.<sup>[7]</sup>

*MERALCO* appealed before the CA.

### ***The Ruling of the CA***

On whether the City of Pasig can legally assess and collect franchise tax from *MERALCO* for the period 1996 to 1999, the court ruled in the negative.

The CA ratiocinated that the LGC authorizes cities to levy a franchise tax. However, the basis of the City of Pasig's demand for payment of franchise tax was Section 32, Article 3 of Ordinance No. 25 which was enacted at a time when Pasig was still a municipality and had no authority to levy a franchise tax. From the time of its conversion into a city, Pasig has not enacted a new ordinance for the imposition of a franchise tax. The conversion of Pasig into a city, the CA explained, did not rectify the defect of the said ordinance. Citing *San Miguel Corporation v. Municipal Council (SMC)*<sup>[8]</sup> and *Arabay, Inc. v. Court of First Instance of Zamboanga del Norte (Arabay)*,<sup>[9]</sup> the CA ruled that the conversion of a municipality into a city does not remove the original infirmity of the ordinance. The dispositive portion of the decision reads:

**WHEREFORE,** the foregoing premises considered, we resolve to REVERSE and SET ASIDE the decision appealed from. In its stead, a new judgment is hereby entered declaring the demand for payment of franchise tax from [MERALCO] as invalid for being devoid of legal basis.

[10]

The City of Pasig moved, but failed to obtain a reconsideration of the said decision. Thus, the instant appeal.

### **The Present Petition for Review**

The City of Pasig relied on the following reasons to support its petition:

#### **I.**

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN SETTING ASIDE THE DECISION OF THE TRIAL COURT AND IN DECLARING THAT THE CONVERSION OF THE MUNICIPALITY OF PASIG INTO A CITY DID NOT VEST THE LATTER WITH AUTHORITY TO LEVY FRANCHISE TAXES AS THE ORDINANCE GRANTING SUCH POWER WAS NULL AND VOID.

#### **II.**

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN SETTING ASIDE THE DECISION OF THE TRIAL COURT AND DECLARING THAT THERE IS NOTHING IN REPUBLIC ACT NO. 7892 WHICH INVESTS A CURATIVE EFFECT UPON ORDINANCE NO. 32.

#### **III.**

THE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR IN SETTING ASIDE THE DECISION OF THE TRIAL COURT CONTRARY TO THE RULE THAT IN CASE OF DOUBT IN THE APPLICATION OF A STATUTE, AN APPLICATION GIVING EFFECT TO THE LEGISLATIVE INTENT AND THE PRINCIPLE OF LOCAL AUTONOMY ENSHRINED IN THE CONSTITUTION SHOULD BE FOLLOWED.

For the Court's consideration is the following:

### **ISSUE**

Whether the CA was correct in ruling that the City of Pasig had no valid basis for its imposition of franchise tax for the period 1996 to 1999.

### **OUR RULING**

We answer in the affirmative.

***I. Unlike a city, a municipality is bereft of authority to levy franchise tax, thus, the ordinance enacted for that purpose is void.***

***The conversion of the municipality into a city does not lend validity to the void ordinance.***

***Neither does it authorize the collection of the tax under said ordinance.***

The power to impose franchise tax belongs to the province by virtue of Section 137 of the LGC which states:

## CHAPTER II

### Specific Provisions on the Taxing and Other Revenue-Raising Powers of Local Government Units

#### ARTICLE I

##### Provinces

Section 137. *Franchise Tax.* - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

x x x x

On the other hand, the municipalities are prohibited from levying the taxes specifically allocated to provinces, viz:

#### ARTICLE II

##### Municipalities

Section 142. *Scope of Taxing Powers.* - Except as otherwise provided in this Code, municipalities may levy taxes, fees, and charges not otherwise levied by provinces.

Section 151 empowers the cities to levy taxes, fees and charges allowed to both provinces and municipalities, thus –

### ARTICLE III

#### Cities

Section 151. *Scope of Taxing Powers.* - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

x x x x

The LGC further provides that the power to impose a tax, fee, or charge or to generate revenue shall be exercised by the Sanggunian of the local government unit concerned through an appropriate ordinance.<sup>[11]</sup> This simply means that the local government unit cannot solely rely on the statutory provision (LGC) granting specific taxing powers, such as the authority to levy franchise tax. The enactment of an ordinance is indispensable for it is the legal basis of the imposition and collection of taxes upon covered taxpayers. Without the ordinance, there is nothing to enforce by way of assessment and collection.

However, an ordinance must pass muster the test of constitutionality and the test of consistency with the prevailing laws.<sup>[12]</sup> Otherwise, it shall be void.

It is not disputed that at the time the ordinance in question was enacted in 1992, the local government of Pasig, then a municipality, had no authority to levy franchise tax. Article 5 of the Civil Code explicitly provides, "acts executed against the provisions of mandatory or prohibitory laws shall be void, except when the law itself authorizes their validity." Section 32 of Municipal Ordinance No. 25 is, thus, void for being in direct contravention with Section 142 of the LGC. Being void, it cannot be given any legal effect. An assessment and collection pursuant to the said ordinance is, perforce, legally infirm.

Consequently, the CA was correct when it declared that the demand of the City of Pasig upon MERALCO for the payment of the disputed tax was devoid of legal basis. It bears emphasizing that the DOJ and the RTC of Pasig City<sup>[13]</sup> had previously declared Section 32 of Municipal Ordinance No. 25 as void *ab initio*.<sup>[14]</sup> Even the City of Pasig, it seems, does not contest the invalidity of said ordinance.<sup>[15]</sup>

It is submitted, however, that when Pasig was converted into a city in 1995 by virtue