

## THIRD DIVISION

[ G. R. NO. 152534, February 23, 2007 ]

**DIGITAL TELECOMMUNICATIONS PHILIPPINES, INC., P E T I T I  
O N E R, VS. PROVINCE OF PANGASINAN REPRESENTED BY  
RAMON A. CRISOSTOMO, PANGASINAN PROVINCIAL  
TREASURER, R E S P O N D E N T.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, as amended, seeking the reversal of the *Decision*<sup>[1]</sup> dated 14 June 2001, and the *Resolution*<sup>[2]</sup> dated 15 February 2002, both rendered by the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 68 in Civil Case No. 18037, with the latter ruling in favor of respondent Province of Pangasinan.

The present petition stemmed from a *Complaint*<sup>[3]</sup> for *Mandamus, Collection of Sum of Money and Damages* instituted by respondent Province of Pangasinan represented by its Provincial Treasurer, Ramon A. Crisostomo, against petitioner Digital Telecommunications Philippines, Inc. (DIGITEL) on 1 March 2000. Said *complaint* docketed as Civil Case No. 18037, was filed before RTC, Br. 68 of Lingayen, Pangasinan.

Republic Act No. 7160, otherwise known as the Local Government Code of 1991, took effect on 1 January 1992. Of significance to the present petition are Sections 137 and 232<sup>[4]</sup> of the Local Government Code. Section 137 of the Local Government Code, in principle, withdrew any exemption<sup>[5]</sup> from the payment of a tax on businesses enjoying a franchise. Expressly, it authorized local governments to impose a franchise tax on businesses enjoying a franchise within its territorial jurisdiction, to wit:

SECTION 137. **Franchise Tax.** - Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on business 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 income receipt, or realized, within its territorial jurisdiction. (Emphasis supplied.)

Section 232 likewise authorizes the imposition of an *ad valorem* tax on real property by the local government of a province, city or municipality within the Metropolitan Manila Area wherein the land, building, machinery and other improvement not thereafter specifically exempted. The particular provision reads:

SECTION 232. **Power to Levy Real Property Tax.** A province or city or a municipality within the Metropolitan Manila Area may levy an annual

ad valorem tax on real property such as land, building, machinery, and other improvement not hereinafter specially exempted. (Emphasis supplied.)

On 13 November 1992, petitioner DIGITEL was granted, under **Provincial Ordinance No. 18-92**, a provincial franchise to install, maintain and operate a telecommunications system within the territorial jurisdiction of respondent Province of Pangasinan. Under the said provincial franchise, the grantee is required to pay *franchise and real property taxes, viz:*

SECTION 6. The grantee shall pay to the Province of Pangasinan the applicable franchise tax as maybe provided by appropriate ordinances in accordance with the Local Government Code and other existing laws. Except for the foregoing and the real estate tax on its land and building, it shall be subject to no other tax. The telephone posts, apparatus, equipment and communication facilities of the grantee are exempted from the real estate tax. (Emphasis supplied.)

Pursuant to the mandate of Sections 137 and 232 of the Local Government Code, the *Sangguniang Panlalawigan* of respondent Province of Pangasinan enacted on 29 December 1992, **Provincial Tax Ordinance No. 1**, entitled "*The Real Property Tax Ordinance of 1992.*" Section 4 thereof imposed a real property tax on real properties located within the territorial jurisdiction of the province. The particular provision, however, technically expanded the application of Sec. 6 of the provincial franchise of petitioner DIGITEL to include *machineries and other improvements*, not thereafter exempted, to wit:

Section 4. Imposition of Real Property Tax. - There shall be levied an annual AD VALOREM tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted, situated or located within the territorial jurisdiction of Pangasinan at the rate of one percent (1%) of the assessed value of said real property. (Emphasis supplied.)<sup>[6]</sup>

On 10 September 1993, **Provincial Tax Ordinance No. 4**, otherwise known as "*The Pangasinan Franchising Ordinance of 1993,*" was similarly ratified. Sections 4, 5 and 6 thereof, positively imposed a franchise tax on businesses enjoying a franchise within the territorial jurisdiction of respondent Province of Pangasinan.

Thereafter, petitioner DIGITEL was granted by Republic Act No. 7678,<sup>[7]</sup> a legislative franchise authorizing the grantee to install, operate and maintain telecommunications systems, this time, *throughout the Philippines*. Under its legislative franchise, particularly Sec. 5 thereof, petitioner DIGITEL became liable for the payment of a franchise tax "as may be prescribed by law of all gross receipts of the telephone or other telecommunications businesses transacted under it by the grantee,"<sup>[8]</sup> as well as real property tax "on its real estate, and buildings "exclusive of this franchise." Sec. 5 reads in full that:

SECTION 5. Tax Provisions. - The grantee shall be liable to pay the same taxes on its real estate, buildings, and personal property exclusive of this franchise as other persons or corporations are now or hereafter may be required by law to pay. In addition thereto, the grantee shall pay to the Bureau of Internal Revenue each year, within thirty (30) days after the

audit and approval of the accounts, franchise tax as may be prescribed by law of all gross receipts of the telephone or other telecommunications business transacted under this franchise by the grantee: Provided, that the grantee shall continue to be liable for income taxes payable under Title II of the National Internal Revenue Code pursuant to Section 2 of Executive Order No. 72 unless the latter enactment is amended or repealed, in which case the amendment or repeal shall be applicable thereto. The grantee shall file the return with and pay the tax due thereon to the Commissioner of Internal Revenue or his duly authorized representative in accordance with the National Internal Revenue Code and the return shall be subject to audit by the Bureau of Internal Revenue. [Emphasis supplied.]

Later, respondent Province of Pangasinan, in its examination of its record found that petitioner DIGITEL had a franchise tax deficiency for the years 1992, 1993 and 1994. It was alleged that apart from the Php40,000.00 deposit representing the grantee's acquiescence or acceptance of the franchise, as required by respondent Province of Pangasinan, petitioner DIGITEL had never paid any franchise tax to respondent Province of Pangasinan since the former started its operation in 1992.

Accordingly, the *Sangguniang Panlalawigan* passed Resolution No. 364 on 14 October 1994, categorically directing petitioner DIGITEL to:

[C]ommunicate its conformity to Ordinance No. 40 to the Sanggunian thru the Sangguniang Panlalawigan Secretary and to pay the necessary and overdue franchise taxes to the Provincial Treasurer of Pangasinan within fifteen (15) days from receipt hereof otherwise its franchise shall be declared in operative (sic) and its operations terminated;"

In the *interregnum*, on 16 March 1995, Congress passed Republic Act No. 7925, otherwise known as "*The Public Telecommunications Policy Act of the Philippines.*" Section 23 of this law entitled Equality of Treatment in the Telecommunications Industry, provided for the *ipso facto* application to any previously granted telecommunications franchises of any advantage, favor, privilege, exemption or immunity granted under existing franchises, or those still to be granted, to be accorded immediately and unconditionally to earlier grantees. Section 23 reads below:

SECTION 23. Equality of Treatment in the Telecommunications Industry. - Any advantage, favor, privilege, exemption, or immunity granted under existing franchises, or may hereafter be granted, shall ipso facto become part of previously granted telecommunications franchises and shall be accorded immediately and unconditionally to the grantees of such franchises x x x. (Emphasis supplied.)

The provincial franchise and real property taxes remained unpaid despite the foregoing measures instituted. Consequently, in a letter<sup>[9]</sup> dated 30 October 1998, the Provincial Legal Officer of respondent Province of Pangasinan, Atty. Geraldine U. Baniqued, demanded from petitioner DIGITEL compliance with Provincial Tax Ordinance No. 4., specifically the first paragraph of Section 4 thereof but which was wittingly or unwittingly misquoted<sup>[10]</sup> to read:

'No persons shall establish and / or operate a public utility business enterprises (sic) within the territorial jurisdiction of the Province of

Pangasinan whether in one municipality or group of municipalities, except by virtue of a franchise granted by the Sangguniang Panlalawigan of Pangasinan.'

On 17 November 1998, petitioner DIGITEL took exception to respondent Province of Pangasinan's claim on the ground that prior to the approval of its legislative franchise, its operation of a telecommunications system was done under a *Facilities Management Agreement* it had previously executed with the Department of Transportation and Communication (DOTC). Such agreement was purportedly the result of a public bidding wherein petitioner DIGITEL was "awarded the right to manage the operation, maintenance and development of government telecommunications facilities under its Regional Telecommunications Development Project Phases A and B x x x and National Telephone Program Phase I Tranche 1 x x x covering Regions I to V."<sup>[11]</sup> It clarified that since "the facilities in the Province of Pangasinan are just part of the government owned facilities awarded to DIGITEL," not only did the DOTC retain ownership of said facilities, the latter likewise "provided for the budget for (the) expenses under its allocation from the government;" hence, "all revenues generated from the operation of the facilities inured to the DOTC;" and all the fees received by petitioner DIGITEL were purely for services rendered.

Further, it argued that under its legislative franchise, the payment of a franchise tax to the Bureau of Internal Revenue (BIR) would be "*in lieu of all taxes*" on said franchise or the earnings therefrom.

Unconvinced, on 8 December 1998, respondent Province of Pangasinan countered<sup>[12]</sup> the provisions of its franchise were subject not only to the provisions of the Constitution, but to "*applicable laws, rules and regulations*" as well; that among the *applicable laws* being referred to were Sec. 137 of the Local Government Code, which authorizes it to "impose a tax on business enjoying a franchise x x x;" and Sec. 6 of Provincial Ordinance No. 4, which similarly imposes a tax on a business enjoying a franchise.

On 1 March 2000, no settlement having been made, respondent Province of Pangasinan, represented by the latter's Provincial Treasurer, Ramon A. Crisostomo, filed a *Complaint*<sup>[13]</sup> for *Mandamus, Collection of Sum of Money and Damages* before Branch 68 of the RTC of Lingayen, Pangasinan, docketed as Civil Case No. 18037. The *Complaint* prayed that petitioner DIGITEL be ordered:

1. to x x x open its books, records and other pertinent documents so that the provincial government can make the proper assessment of the Taxes due.
2. after determination of the defendant's capital investment and subsequent gross receipts, to pay plaintiff the sum equivalent to 1/20<sup>th</sup> of one percent (1%) of the total capital investment for the first year of its operation and thereafter, fifty percent (50%) of one percent (1%) of the gross receipts realized during the preceding calendar year for the year 1993, 1994, 1995, 1996, 1997, 1998 and up to the present.
3. after determination of all of defendant's real properties, to pay the Real Property Tax due after its proper computation.

4. to pay legal interest of the amounts from the time it was due until the whole amount is fully complied with.
5. to pay the cost of this suit.

On 14 June 2001, the court *a quo* rendered a *Decision*<sup>[14]</sup> in favor of respondent Province of Pangasinan, the dispositive part of which reads:

WHEREFORE, foregoing premises considered, judgment is hereby rendered in favor of the plaintiff, as follows:

1. Ordering the defendant to open its books, records and other pertinent documents so that the provincial government can make the proper assessment of the franchise tax and real property tax due;
2. After the determination of the defendant's capital investment and subsequent gross receipts, to pay plaintiff the sum equivalent to 1/20<sup>th</sup> of one percent (1%) of the total capital investment for the first year of its operation (1993), and thereafter, fifty percent (50%) of one percent (1%) of the gross receipts realized during the preceding calendar year 1993, 1994, 1995, 1996, 1997, 1998 and up to the present;
3. After determination of all of defendant's real properties, to pay Real Property Tax due after its proper computation, pursuant to Section 4 of the Real Property Tax Ordinance of 1992 of the plaintiff;
4. To pay 1) A surcharge of twenty-five percent of the amount of the franchise tax due or a fraction thereof until the delinquent tax shall have been fully paid; 2) To pay an interest of two percent (2%) per month on the unpaid amount or a fraction thereof, until the delinquent tax shall have been fully paid, but in no case shall the total interest on the unpaid tax or proportion thereof exceed 36 months;
5. To pay the cost of this suit.

In ruling against the claimed exemption, the court *a quo* held that petitioner DIGITEL's legislative franchise does not work to exempt the latter from payment of provincial franchise and real property taxes. The court *a quo* reasoned that the provincial and legislative franchises are separate and distinct from each other; and, that prior to the grant of its legislative franchise, petitioner DIGITEL had already benefited from the use of it. Moreover, it pointed out that Section 137 of the Local Government Code had already withdrawn any exemption granted to anyone; as such, the local government of a province may impose a tax on a business enjoying a franchise.

On the other hand, petitioner DIGITEL maintains that its legislative franchise being an earlier enactment, by virtue of Section 23 of Republic Act No. 7925, the *ipso facto*, immediate and unconditional application to it of the *tax exemption* found in the franchises of Globe, Smart and Bell, *i.e.*, in *Section 9 (b) of Republic Act No.*