

SECOND DIVISION

[G.R. No. 152675, April 28, 2004]

BATANGAS POWER CORPORATION, PETITIONER, VS. BATANGAS CITY AND NATIONAL POWER CORPORATION, RESPONDENTS.

[G.R. NO. 152771]

NATIONAL POWER CORPORATION, PETITIONER, VS. HON. RICARDO R. ROSARIO, IN HIS CAPACITY AS PRESIDING JUDGE, RTC, BR. 66, MAKATI CITY; BATANGAS CITY GOVERNMENT; ATTY. TEODULFO DEGUITO, IN HIS CAPACITY AS CHIEF LEGAL OFFICER, BATANGAS CITY; AND BENJAMIN PARGAS, IN HIS CAPACITY AS CITY TREASURER, BATANGAS CITY, RESPONDENTS.

D E C I S I O N

PUNO, J.:

Before us are two (2) consolidated petitions for review under Rule 45 of the Rules of Civil Procedure, seeking to set aside the rulings of the Regional Trial Court of Makati in its February 27, 2002 Decision in Civil Case No. 00-205.

The facts show that in the early 1990's, the country suffered from a crippling power crisis. Power outages lasted 8-12 hours daily and power generation was badly needed. Addressing the problem, the government, through the National Power Corporation (NPC), sought to attract investors in power plant operations by providing them with incentives, one of which was through the NPC's assumption of payment of their taxes in the Build Operate and Transfer (BOT) Agreement.

On June 29, 1992, Enron Power Development Corporation (Enron) and petitioner NPC entered into a Fast Track BOT Project. Enron agreed to supply a power station to NPC and transfer its plant to the latter after ten (10) years of operation. Section 11.02 of the BOT Agreement provided that NPC shall be responsible for the payment of all taxes that may be imposed on the power station, except income taxes and permit fees. Subsequently, Enron assigned its obligation under the BOT Agreement to petitioner Batangas Power Corporation (BPC).

On September 13, 1992, BPC registered itself with the Board of Investments (BOI) as a pioneer enterprise. On September 23, 1992, the BOI issued a certificate of registration^[1] to BPC as a pioneer enterprise entitled to a tax holiday for a period of six (6) years. The construction of the power station in respondent Batangas City was then completed. BPC operated the station.

On October 12, 1998, Batangas City (the city, for brevity), thru its legal officer Teodulfo A. Deguito, sent a letter to BPC demanding payment of business taxes and

penalties, commencing from the year 1994 as provided under Ordinance XI or the 1992 Batangas City Tax Code.^[2] BPC refused to pay, citing its tax-exempt status as a pioneer enterprise for six (6) years under Section 133 (g) of the Local Government Code (LGC).^[3]

On April 15, 1999, city treasurer Benjamin S. Pargas modified the city's tax claim^[4] and demanded payment of business taxes from BPC only for the years 1998-1999. He acknowledged that BPC enjoyed a 6-year tax holiday as a pioneer industry but its tax exemption period expired on September 22, 1998, six (6) years after its registration with the BOI on September 23, 1992. The city treasurer held that thereafter BPC became liable to pay its business taxes.

BPC still refused to pay the tax. It insisted that its 6-year tax holiday commenced from the date of its commercial operation on July 16, 1993, not from the date of its BOI registration in September 1992.^[5] It furnished the city with a BOI letter^[6] wherein BOI designated July 16, 1993 as the start of BPC's income tax holiday as BPC was not able to immediately operate due to *force majeure*. BPC claimed that the local tax holiday is concurrent with the income tax holiday. In the alternative, BPC asserted that the city should collect the tax from the NPC as the latter assumed responsibility for its payment under their BOT Agreement.

The matter was not put to rest. The city legal officer insisted^[7] that BPC's tax holiday has already expired, while the city argued that it directed its tax claim to BPC as it is the entity doing business in the city and hence liable to pay the taxes. The city alleged that it was not privy to NPC's assumption of BPC's tax payment under their BOT Agreement as the only parties thereto were NPC and BPC.

BPC adamantly refused to pay the tax claims and reiterated its position.^[8] The city was likewise unyielding on its stand.^[9] On August 26, 1999, the NPC intervened.^[10] While admitting assumption of BPC's tax obligations under their BOT Agreement, NPC refused to pay BPC's business tax as it allegedly constituted an indirect tax on NPC which is a tax-exempt corporation under its Charter.^[11]

In view of the deadlock, BPC filed a petition for declaratory relief^[12] with the Makati Regional Trial Court (RTC) against Batangas City and NPC, praying for a ruling that it was not bound to pay the business taxes imposed on it by the city. It alleged that under the BOT Agreement, NPC is responsible for the payment of such taxes but as NPC is exempt from taxes, both the BPC and NPC are not liable for its payment. NPC and Batangas City filed their respective answers.

On February 23, 2000, while the case was still pending, the city refused to issue a permit to BPC for the operation of its business unless it paid the assessed business taxes amounting to close to P29M.

In view of this supervening event, BPC, whose principal office is in Makati City, filed a supplemental petition^[13] with the Makati RTC to convert its original petition into an action for injunction to enjoin the city from withholding the issuance of its business permit and closing its power plant. The city opposed on the grounds of lack of jurisdiction and lack of cause of action.^[14] The Supplemental Petition was nonetheless admitted by the Makati RTC.

On February 27, 2002, the Makati RTC dismissed the petition for injunction. It held that: (1) BPC is liable to pay business taxes to the city; (2) NPC's tax exemption was withdrawn with the passage of R.A. No. 7160 (The Local Government Code); and, (3) the 6-year tax holiday granted to pioneer business enterprises starts on the date of registration with the BOI as provided in Section 133 (g) of R.A. No. 7160, and not on the date of its actual business operations. [15]

BPC and NPC filed with this Court a petition for review on certiorari [16] assailing the Makati RTC decision. The petitions were consolidated as they impugn the same decision, involve the same parties and raise related issues. [17]

In G.R. No. 152771, the NPC contends:

I

RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ARBITRARILY AND CAPRICIOUSLY RULED THAT PETITIONER NPC HAS LOST ITS TAX EXEMPTION PRIVILEGE BECAUSE SECTION 193 OF R.A. 7160 (LOCAL GOVERNMENT CODE) HAS WITHDRAWN SUCH PRIVILEGE DESPITE THE SETTLED JURISPRUDENCE THAT THE ENACTMENT OF A LEGISLATION, WHICH IS A GENERAL LAW, CANNOT REPEAL A SPECIAL LAW AND THAT SECTION 13 OF R.A. 6395 (NPC LAW) WAS NOT SPECIFICALLY MENTIONED IN THE REPEALING CLAUSE IN SECTION 534 OF R.A. 7160, AMONG OTHERS.

II

RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ARBITRARILY AND CAPRICIOUSLY OMITTED THE CLEAR PROVISION OF SECTION 133, PARAGRAPH (O) OF R.A. 7160 WHICH EXEMPTS "NATIONAL GOVERNMENT, ITS AGENCIES AND INSTRUMENTALITIES" FROM THE IMPOSITION OF "TAXES, FEES OR CHARGES OF ANY KIND."

III

RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ERRONEOUSLY AND CAPRICIOUSLY ADMITTED BPC'S SUPPLEMENTAL PETITION FOR INJUNCTION NOTWITHSTANDING THAT IT HAD NO JURISDICTION OVER THE PARTY (CITY GOVERNMENT OF BATANGAS) SOUGHT TO BE ENJOINED.

In G.R. No. 152675, BPC also contends that the trial court erred: 1) in holding it liable for payment of business taxes even if it is undisputed that NPC has already assumed payment thereof; and, 2) in ruling that BPC's 6-year tax holiday commenced on the date of its registration with the BOI as a pioneer enterprise.

The issues for resolution are: