

SECOND DIVISION

[G.R. No. 224825, October 17, 2018]

**CITY OF CAGAYAN DE ORO, PETITIONER, V. CAGAYAN ELECTRIC
POWER & LIGHT CO., INC. (CEPALCO), RESPONDENT.**

DECISION

A. REYES, JR., J.:

Ordinances, like laws, enjoy a presumption of validity. However, this presumption may be rendered naught by a clear demonstration that the ordinance is irreconcilable with a constitutional or legal provision, that it runs afoul of morality or settled public policy, that it prohibits trade, or that it is oppressive, discriminatory, or unreasonable.^[1] Thus, unless invalidity or unreasonableness is ostensibly apparent,^[2] one seeking a judicial declaration of the invalidity of an ordinance is duty-bound to adduce evidence that is convincingly indicative of its infirmities or defects. Courts must exercise the highest degree of circumspection when called upon to strike down an ordinance; for, to invalidate legislation on baseless suppositions would be, to borrow the words of a former Chief Justice, "an affront to the wisdom not only of the legislature that passed it, but also of the executive that approved it."^[3]

In this petition for review on *certiorari*,^[4] the City of Cagayan de Oro (petitioner) seeks the reversal of the Court of Appeals' (CA) Decision^[5] dated June 10, 2015 in CA-G.R. CV No. 02771-MIN, which set aside the Resolution^[6] dated February 8, 2008 of Branch 17 of the Regional Trial Court of Cagayan de Oro City (Cagayan RTC) in Civil Case No. 2005-206.

The Factual Antecedents

On January 24, 2005, the petitioner, through its local legislative council, enacted Ordinance No. 9527-2005,^[7] which imposed an annual Mayor's Permit Fee of Five Hundred Pesos (P500.00) on every electric or telecommunications post belonging to public utility companies operating in the city.^[8] The ordinance reads:

AN ORDINANCE IMPOSING A MAYOR'S PERMIT FEE ON ELECTRIC AND/OR TELECOMMUNICATION POLES/POSTS OWNED BY PUBLIC UTILITY COMPANIES WHICH ARE ERECTED ON GOVERNMENT AND/OR PRIVATE LOTS ALONG GOVERNMENT STREETS, ROADS, HIGHWAYS AND/OR ALLEYS AT THE RATE OF FIVE HUNDRED PESOS (P500.00) PER POST PER YEAR, AND FOR OTHER PURPOSES

BE IT ORDAINED by the City Council (*Sangguniang Panlungsod*) of the City of Cagayan de Oro in session assembled that:

Whereas, electric and/or telecommunication poles, posts and towers are sprouting everywhere in the City;

Whereas, such poles or posts pose hazard to traffic and safety of the public if they are not well maintained, and even as nuisance to the panorama or skyline of the City;

Whereas, it is for this reason that the City Government imposes some form of regulation thereon;

Whereas, the City Government under the Local Government Code is vested with authority to impose regulatory fees and charges for activities and undertakings being done in the City;

BE IT ORDAINED by the City Council (*Sangguniang Panlungsod*) that:

SECTION 1. There shall be imposed a Mayor's Permit Fee on electric and/or telecommunication poles/posts owned by public utility companies which are erected on government and/or private lots along government streets, roads, highways and/or alleys at the rate of Five Hundred Pesos (P500.00) per post per year.

SECTION 2. For this purpose, the City Engineer shall conduct a regular inventory of all electric and telecommunication poles, posts and towers in the City, indicating the respective owners thereof, and submit the same to the City Treasurer for purposes of imposing the fee under this Ordinance.

SECTION 3. The provision of Section 1 hereof shall not apply to poles, posts or towers erected or owned by the national government, its instrumentalities and other local government units.

SECTION 4. The pertinent provisions of Ordinance No. 8847-2003, otherwise known as the 2003 Revenue Code, covering the imposition of Mayor's Permit Fee and other appropriate administrative provisions thereof shall apply in the imposition of the fee under this Ordinance.

SECTION 5. This Ordinance shall take effect after 15 days following its publication in a local newspaper of general circulation for at least three (3) consecutive issues.

UNANIMOUSLY APPROVED.^[9]

The respondent, Cagayan Electric Power & Light Co., Inc. (CEPALCO) is a public utility engaged in the distribution of electric power and the owner of an estimated 17,000 utility poles erected within Cagayan de Oro City. The ordinance entailed that the electricity distributor would have to pay an annual Mayor's Permit Fee of P8,500,000.00.^[10]

CEPALCO thus filed a Petition for Declaratory Relief with Damages & Prayer for Temporary Restraining Order & Preliminary Injunction^[11] dated September 30, 2005 before the Cagayan RTC assailing the ordinance's validity. CEPALCO contended that the imposition, in the guise of police power, was unlawful for violating the fundamental principle that fees, charges, and other impositions shall not be unjust,

excessive, oppressive, or confiscatory.^[12] Additionally, CEPALCO argued that, assuming the imposition was a valid regulatory fee, it violated the legislative franchise that specifically exempted the electricity distributor from taxes or fees assessed by Cagayan de Oro City.^[13]

On November 7, 2005, the city filed its Answer with Affirmative/Special Defenses and Compulsory Counterclaim.^[14] It countered that the ordinance was a valid exercise of its powers vested by the applicable provisions of the Constitution, the Local Government Code, and other laws. Also, the city maintained that Section 9 of CEPALCO's legislative franchise expressly subjected the latter to taxes, duties, fees, or charges.^[15]

On May 5, 2006, pending the determination of the ordinance's validity, the Cagayan RTC issued a writ of preliminary injunction.^[16]

The RTC's Ruling

On February 8, 2008, the Cagayan RTC issued a Resolution dismissing the petition for declaratory relief due to CEPALCO's failure to exhaust administrative remedies. The *fallo* reads:

WHEREFORE, premises considered, the Court hereby dismissed the petition for failure of petitioner CEPALCO to exhaust administrative remedies pursuant to Sec. 187, RA 7160 and for being time-barred under the circumstances. The writ of preliminary injunction issued on May 5, 2006 is hereby dissolved.

SO ORDERED.

The Cagayan RTC stated that it found the tax excessive, but could not interfere with the decision-making of the government agency concerned. It declared that the issue on excessiveness was a question best addressed to the sound discretion of the city council of Cagayan de Oro. Nonetheless, for CEPALCO's neglect to appeal the ordinance to the Secretary of Justice, the trial court dismissed the case and ruled that the electricity distributor failed to exhaust administrative remedies.^[17]

Aggrieved, CEPALCO elevated the case to the CA.^[18]

The CA's Ruling

On June 10, 2015, the CA promulgated the herein assailed decision granting CEPALCO's appeal. The dispositive portion reads:

WHEREFORE, the Appeal is **GRANTED**. The assailed Resolution dated February 8, 2008 of the Regional Trial Court, Branch 17, Cagayan de Oro City is hereby **REVERSED** and **SET ASIDE**. The City Ordinance No. 9527-2005 is declared void.

SO ORDERED.

The CA declared the ordinance void for being exorbitant and unreasonable. It held that, since the city failed to include a discussion on how the members of the city council arrived at the amount of P500.00 per pole, CEPALCO could not be appraised of the logistics of and reasons behind the imposition. According to the CA, the city

should have explained how the sum would be accounted for, stating the probable expenses of regulating and inspecting each of the poles.^[19] The appellate court additionally held that the doctrine of exhaustion of administrative remedies was inapplicable considering the case involved a regulatory fee and not a tax measure.^[20]

The foregoing ultimately led to the filing of the instant petition before this Court.

The Issues

In its petition, the petitioner raises issues that may be summed up as: (1) whether or not CEPALCO should have exhausted administrative remedies by challenging Ordinance No. 9527-2005 before the Secretary of Justice prior to instituting the present action; and (2) whether or not the amount of the Mayor's Permit Fee is excessive, unreasonable, and exorbitant.

This Court's Ruling

The petition is partly meritorious.

Anent the issue on exhaustion of administrative remedies, petitioner argued that CEPALCO should have raised the ordinance's alleged excessiveness before the Secretary of Justice because it imposes a tax.^[21] Hence, the city maintained that the case should have been dismissed at the first instance for failure to exhaust administrative remedies.^[22]

CEPALCO countered that the doctrine of exhaustion of administrative remedies applies only to taxes and other revenue measures, and not to regulatory fees.^[23]

Before delving into the parties' arguments, the Court deems it necessary to ascertain the nature of the Mayor's Permit Fee.

Unlike the national government, local government units have no inherent power to tax.^[24] They merely derive the power from Article X, Section 5 of the 1987 Constitution.^[25] Consistent with this provision, the Local Government Code was enacted to give each local government unit the power to create its own sources of revenue and to levy taxes, fees, and charges subject to statutory guidelines and limitations.^[26]

The term "taxes" has been defined by case law as "the enforced proportional contributions from persons and property levied by the state **for the support of government and for all public needs.**"^[27] While, under the Local Government Code, a "fee" is defined as "any charge fixed by law or ordinance **for the regulation or inspection of a business or activity.**"^[28]

From the foregoing jurisprudential and statutory definitions, it can be gleaned that the **purpose of an imposition will determine its nature as either a tax or a fee.** If the purpose is primarily revenue, or if revenue is at least one of the real and substantial purposes, then the exaction is properly classified as an exercise of the power to tax.^[29] On the other hand, if the purpose is primarily to regulate, then it is deemed an exercise of police power in the form of a fee, even though revenue is incidentally generated. ^[30] Stated otherwise, if generation of revenue is the primary

purpose, the imposition is a tax but, if regulation is the primary purpose, the imposition is properly categorized as a regulatory fee.^[31]

In *Smart Communications, Inc. v. Municipality of Malvar*,^[32] the Municipality of Malvar enacted Ordinance No. 18, entitled "An Ordinance Regulating the Establishment of Special Projects." By reason of the ordinance, Smart was assessed P389,950.00 on a telecommunications tower that it erected within the municipality. This prompted Smart to challenge the validity of the ordinance and the consequent assessment before the RTC of Batangas. When the case reached the Court, one of the issues raised was: *whether the ordinance imposed a tax or a fee*. The Court was able to address the issue after a simple reading of the ordinance's *whereas* clauses, which revealed that the primary purpose of the ordinance was to regulate cell sites or telecommunications towers, including Smart's. Thus, since the *whereas* clauses showed that the ordinance served a regulatory purpose, it was ruled that the case involved a fee and not a tax.

In the case at bar, the CA, adhering to the course of action taken in *Smart Communications*, concluded that the Mayor's Permit Fee serves a regulatory purpose.^[33] The appellate court properly took into account the *whereas* clauses of the ordinance, which read:

Whereas, electric and/or telecommunication poles, posts and towers are sprouting everywhere in the City;

Whereas, such poles or posts pose hazard to traffic and safety of the public if they are not well maintained, and even as nuisance to the panorama or skyline of the City;

Whereas, it is for this reason that the City Government **imposes some form of regulation** thereon;

Whereas, the City Government under the Local Government Code is vested with authority to impose regulatory fees and charges for activities and undertakings being done in the City; (Emphasis and underscoring supplied)^[34]

A cursory reading of the *whereas* clauses makes it is apparent that **the purpose of the ordinance is to regulate the construction and maintenance of electric and telecommunications posts** erected within Cagayan de Oro City.

On account of the foregoing, it is clear that the ordinance in this case serves a regulatory purpose and is, hence, an exercise of police power. Nowhere in the text of the ordinance is it shown that it was enacted to raise revenue. On the contrary, the third *whereas* clause expressly states the city's need to impose some form of regulation on the construction of electric and telecommunications poles. As in *Smart Communications*, the fee is not imposed on the structure itself, but on the activity subject of government regulation, which is the installation and establishment of utility posts. Thus, it can be concluded without argument that **the ordinance imposes a fee since it was enacted pursuant to the city's police power and serves to regulate, not to raise revenue**.

Proceeding to the question of non-exhaustion, the Court rules that **ordinances that impose regulatory fees do not need to be challenged before the Secretary of Justice**.