

THIRD DIVISION

[G.R. No. 131359, May 05, 1999]

MANILA ELECTRIC COMPANY, PETITIONER VS. PROVINCE OF LAGUNA AND BENITO R. BALAZO, IN HIS CAPACITY AS PROVINCIAL TREASURER OF LAGUNA, RESPONDENTS.

DECISION

VITUG, J.:

On various dates, certain municipalities of the Province of Laguna including, Biñan, Sta Rosa, San Pedro, Luisiana, Calauan and Cabuyao, by virtue of existing laws then in effect, issued resolutions through their respective municipal councils granting franchise in favor of petitioner Manila Electric Company ("MERALCO") for the supply of electric light, heat and power within their concerned areas. On 19 January 1983, MERALCO was likewise granted a franchise by the National Electrification Administration to operate an electric light and power service in the Municipality of Calamba, Laguna.

On 12 September 1991, Republic Act No. 7160, otherwise known as the "Local Government Code of 1991," was enacted to take effect on 01 January 1992 enjoining local government units to create their own sources of revenue and to levy taxes, fees and charges, subject to the limitations expressed therein, consistent with the basic policy of local autonomy. Pursuant to the provisions of the Code, respondent province enacted Laguna Provincial Ordinance No. 01-92, effective 01 January 1993, providing, in part, as follows:

"Sec. 2.09. Franchise Tax. - There is hereby imposed a tax on businesses enjoying a franchise, at a rate of fifty percent (50%) of one percent (1%) of the gross annual receipts, which shall include both cash sales and sales on account realized during the preceding calendar year within this province, including the territorial limits on any city located in the province"^[1]

On the basis of the above ordinance, respondent Provincial Treasurer sent a demand letter to MERALCO for the corresponding tax payment. Petitioner MERALCO paid the tax, which then amounted to P19,520,628.42, under protest. A formal claim for refund was thereafter sent by MERALCO to the Provincial Treasurer of Laguna claiming that the franchise tax it had paid and continued to pay to the National Government pursuant to P.D. 551 already included the franchise tax imposed by the Provincial Tax Ordinance. MERALCO contended that the imposition of a franchise tax under Section 2.09 of Laguna Provincial Ordinance No. 01-92, insofar as it concerned MERALCO, contravened the provisions of Section 1 of P.D. 551 which read:

"Any provision of law or local ordinance to the contrary notwithstanding, the franchise tax payable by all grantees of franchises to generate,

distribute and sell electric current for light, heat and power shall be two per cent (2%) of their gross receipts received from the sale of electric current and from transactions incident to the generation, distribution and sale of electric current.

"Such franchise tax shall be payable to the Commissioner of Internal Revenue or his duly authorized representative on or before the twentieth day of the month following the end of each calendar quarter or month, as may be provided in the respective franchise or pertinent municipal regulation and shall, any provision of the Local Tax Code or any other law to the contrary notwithstanding, be in lieu of all taxes and assessments of whatever nature imposed by any national or local authority on earnings, receipts, income and privilege of generation, distribution and sale of electric current."

On 28 August 1995, the claim for refund of petitioner was denied in a letter signed by Governor Jose D. Lina. In denying the claim, respondents relied on a more recent law, *i.e.*, Republic Act No. 7160 or the Local Government Code of 1991, than the old decree invoked by petitioner.

On 14 February 1996, petitioner MERALCO filed with the Regional Trial Court of Sta Cruz, Laguna, a complaint for refund, with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order, against the Province of Laguna and also Benito R. Balazo in his capacity as the Provincial Treasurer of Laguna. Aside from the amount of P19,520,628.42 for which petitioner MERALCO had priority made a formal request for refund, petitioner thereafter likewise made additional payments under protest on various dates totaling P27,669,566.91.

The trial court, in its assailed decision of 30 September 1997, dismissed the complaint and concluded:

"WHEREFORE, IN THE LIGHT OF ALL THE FOREGOING CONSIDERATIONS, JUDGMENT is hereby rendered in favor of the defendants and against the plaintiff, by:

"1. Ordering the dismissal of the Complaint; and

"2. Declaring Laguna Provincial Tax Ordinance No. 01-92 as valid, binding, reasonable and enforceable."^[2]

In the instant petition, MERALCO assails the above ruling and brings up the following issues; *viz*:

"1. Whether the imposition of a franchise tax under Section 2.09 of Laguna Provincial Ordinance No. 01-92, **insofar as petitioner is concerned**, is violative of the non-impairment clause of the Constitution and Section 1 of Presidential Decree No. 551.

"2. Whether Republic Act. No. 7160, otherwise known as the Local Government Code of 1991, has repealed, amended or modified Presidential Decree No. 551.

"3. Whether the doctrine of exhaustion of administrative remedies is applicable in this case."^[3]

The petition lacks merit.

Prefatorily, it might be well to recall that local governments do not have the **inherent** power to tax^[4] except to the extent that such power might be **delegated** to them either by the basic law or by statute. Presently, under Article X of the 1987 Constitution, a general delegation of that power has been given in favor of local government units. Thus:

"Sec. 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanisms of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions, and duties of local officials, and all other matters relating to the organization and operation of the local units.

"x x x x x x x x x

"Sec. 5. Each local government shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees and charges shall accrue exclusively to the local governments."

The 1987 Constitution has a counterpart provision in the 1973 Constitution which did come out with a similar delegation of revenue making powers to local governments.^[5]

Under the regime of the 1935 Constitution no similar delegation of tax powers was provided, and local government units instead derived their tax powers under a limited statutory authority. Whereas, then, the delegation of tax powers granted at that time by statute to local governments was confined and defined (outside of which the power was deemed withheld), the present constitutional rule (starting with the 1973 Constitution), however, would broadly confer such tax powers subject only to specific exceptions that the law might prescribe.

Under the now prevailing **Constitution**, where there is neither a grant nor a prohibition by **statute**, the tax power must be deemed to exist although Congress may provide statutory limitations and guidelines. The basic *rationale* for the current rule is to safeguard the viability and self-sufficiency of local government units by directly granting them general and broad tax powers. Nevertheless, the fundamental law did not intend the delegation to be absolute and unconditional; the constitutional objective obviously is to ensure that, while the local government units are being strengthened and made more autonomous,^[6] the legislature must still see to it that (a) the taxpayer will not be over-burdened or saddled with multiple and unreasonable impositions; (b) each local government unit will have its fair share of available resources; (c) the resources of the national government will not be unduly