
Board of Assessment Appeals vs. Manila Electric Company

No. L-15334. January 31, 1964.

BOARD OF ASSESSMENT APPEALS, CITY ASSESSOR
and CITY TREASURER OF QUEZON CITY, petitioners,
vs. MANILA ELECTRIC COMPANY, respondent.

Taxation; Real property tax; Steel towers of Meralco exempt under its franchise.—The tax exemption privilege of the Meralco on its poles, as granted by its franchise (Act No. 484), is *held* to include its steel towers.

Same; Same; Term "pole" includes steel towers.—The term "pole" refers to an upright standard to the top of which something is affixed or by which something is supported, and includes a steel tower of an electric power company, like the Meralco.

Same; Same; Steel towers of electric company not real property.—The steel towers of an electric company do not constitute real property for the purpose of the real property tax.

Same; Same; Refund; City Treasurer held responsible.—The City Treasurer of Quezon City is held responsible for the refund of real property taxes, despite his contention that Quezon City, which was not made a party to the suit, is the real party in interest, not only because this question was not raised in the lower court but also because, factually, actually, it was he who had insisted that the taxpayer pay the taxes now to be refunded.

PETITION for review of a decision of the Court of Tax Appeals.

The facts are stated in the opinion of the Court.

Assistant City Attorney Jaime R. Agloro for petitioners.

Ross, Selph & Carrascoso for respondent.

PAREDES, J.:

From the stipulation of facts and evidence adduced during the hearing, the following appear:

On October 20, 1902, the Philippine Commission enacted Act No. 484 which authorized the Municipal Board of Manila to grant a franchise to construct, maintain and operate an electric street railway and electric light, heat and power system in the City of Manila and its suburbs to the

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person or persons making the most favorable bid. Charles M. Swift was awarded the said franchise on March 1903, the terms and conditions of which were embodied in Ordinance No. 44 approved on March 24, 1903. Respondent Manila Electric Co. (Meralco for short), became the transferee and owner of the franchise.

Meralco's electric power is generated by its hydro-electric plant located at Botocan Falls, Laguna and is transmitted to the City of Manila by means of electric transmission wires, running from the province of Laguna to the said City. These electric transmission wires which carry high voltage current, are fastened to insulators attached on steel towers constructed by respondent at intervals, from its hydro-electric plant in the province of Laguna to the City of Manila. The respondent Meralco has constructed 40 of these steel towers within Quezon City, on land belonging to it. A photograph of one of these steel towers is attached to the petition for review, marked Annex A. Three steel towers were inspected by the lower court and the parties and the following were the descriptions given thereof by said court:

"The first steel tower is located in South Tatalon, España Extension, Quezon City. The findings were as follows: the ground around one of the four posts was excavated to a depth of about eight (8) feet, with an opening of about one (1) meter in diameter, decreased to about a quarter of a meter as it went deeper until it reached the bottom of the posts; at the bottom of the post were two parallel steel bars attached to the leg by means of bolts; the tower proper was attached to the leg by three bolts; with two cross metals to prevent mobility; there was no concrete foundation but there was

adobe stone underneath; as the bottom of the excavation was covered with water about three inches high, it could not be determined with certainty as to whether said adobe stone was placed purposely or not, as the place abounds with this kind of stone; and the tower carried five high voltage wires without cover or any insulating materials.

The second tower inspected was located in Kamuning Road, K-F, Quezon City, on land owned by the petitioner approximately more than one kilometer from the first tower. As in the first tower, the ground around one of the four legs was excavated from seven to eight (8) feet deep and one and a half (1-1/2) meters wide. There being very little water at the bottom, it was seen that there was no concrete foundation, but there was soft adobe beneath. The leg was likewise provided with two

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parallel steel bars bolted to a square metal frame also bolted to each corner. Like the first one, the second tower is made up of metal rods joined together by means of bolts, so that by unscrewing the bolts, the tower could be dismantled and reassembled.

The third tower examined is located along Kamias Road, Quezon City. As in the first two towers given above, the ground around the two legs of the third tower was excavated to a depth about two or three inches beyond the outside level of the steel bar foundation. It was found that there was no concrete foundation. Like the two previous ones, the bottom arrangement of the legs thereof were found to be resting on -soft adobe, which, probably due to high humidity, looks like mud or clay. It was also found that the square metal frame supporting the legs were not attached to any material or foundation."

On November 15, 1955, petitioner City Assessor of Quezon City declared the aforesaid steel towers for real property tax under Tax Declaration Nos. 31992 and 15549. After denying respondent's petition to cancel these declarations, an appeal was taken by respondent to the Board of Assessment Appeals of Quezon City, which required respondent to pay the amount of P11,651.86 as real property tax on the said steel towers for the years 1952 to 1956. Respondent paid the amount under protest, and filed a petition for review in the Court of Tax Appeals (CTA for

short) which rendered a decision on December 29, 1958, ordering the cancellation of the said tax declarations and the petitioner City Treasurer of Quezon City to refund to the respondent the sum of P11,651.86. The motion for reconsideration having been denied, on April 22, 1959, the instant petition for review was filed.

In upholding the cause of respondents, the CTA held that: (1) the steel towers come within the term "poles" which are declared exempt from taxes under part II paragraph 9 of respondent's franchise; (2) the steel towers are personal properties and are not subject to real property tax; and (3) the City Treasurer of Quezon City is held responsible for the refund of the amount paid. These are assigned as errors by the petitioner in the brief.

The tax exemption privilege of the petitioner is quoted hereunder:

"PAR. 9. The grantee shall be liable to pay the same taxes upon its real estate, buildings, plant (not including poles, wires, transformers, and insulators), machinery and personal property

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as other persons are or may be hereafter required by law to pay. x x x Said percentage shall be due and payable at the times stated in paragraph nineteen of Part One hereof, x x x *and shall be in lieu of all taxes and assessments of whatsoever nature, and by whatsoever authority upon the privileges, earnings, income, franchise, and poles, wires, transformers, and insulators of the grantee from which taxes and assessments the grantee is hereby expressly exempted.*" (Par. 9, Part Two, Act No. 484, Respondent's Franchise; italics supplied.)

The word "pole" means "a long, comparatively slender usually cylindrical piece of wood or timber, as typically, the stem of a small tree stripped of its branches; also, by extension, a similar typically cylindrical piece or object of metal or the like". The term also refers to "an *upright standard to the top of which something is affixed or by which something is supported*; as a dovecote set on a pole; *telegraph poles*; a tent pole; sometimes, specifically, a vessel's mast." (Webster's New International Dictionary, 2nd Ed., p. 1907.) Along the streets, in the City of Manila,

may be seen cylindrical metal poles, cubical concrete poles, and poles of the PLDT Co. which are made of two steel bars joined together by an interlacing metal rod. They are called "poles" notwithstanding the fact that they are not made of wood. It must be noted from paragraph 9, above quoted, that the concept of the "poles" for which exemption is granted, is not determined by their place or location, nor by the character of the electric current it carries, nor the material or form or of which it is made, but the use to which they are dedicated. In accordance with the definitions, a pole is not restricted to a long cylindrical piece of wood or metal, but includes "upright standards to the top of which something is affixed or by which something is supported." As heretofore described, respondent's steel supports consist of a framework of four steel bars or strips which are bound by steel cross-arms atop of which are cross-arms supporting five high voltage transmission wires (See Annex A) and their sole function is to support or carry such wires.

The conclusion of the CTA that the steel supports in question are embraced in the term "poles" is not a novelty. Several courts of last resort in the United States have called these steel supports "steel towers", and they have denominated these steel supports or towers, as electric poles.

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In their decisions the words "towers" and "poles" were used interchangeably, and it is well understood in that jurisdiction that a transmission tower or pole means the same thing.

In a proceeding to condemn land for the use of electric power wires, in which the law provided that wires shall be constructed upon suitable *poles*, this term was construed to mean either wood or metal poles and in view of the land being subject to overflow, and the necessary carrying of numerous wires and the distance between poles, the statute was interpreted to include *towers* or *poles*. (Stemmons v. Dallas Power & Light Co. (Tex) 212 S.W. 222, 224; 32-A Words and Phrases, p. 365.)

The term "poles" was also used to denominate the steel

supports or towers used by an association to convey its electric power furnished to subscribers and members, constructed for the purpose of fastening high voltage and dangerous electric wires alongside public highways. The steel supports or towers were made of iron or other metals consisting of two pieces running from the ground up some thirty feet high, being wider at the bottom than at the top, the said two metal pieces being connected with criss-cross iron running from the bottom to the top, constructed like ladder and loaded with high voltage electricity. In form and structure, they are like the steel towers in question. (Salt River Valley Users' Ass'n v. Compton, 8 P. 2nd, 249-250.)

The term "poles" was used to denote the steel towers of an electric company engaged in the generation of hydroelectric power and transmitting the power generated from its plant to the tower of Oxford and City of Waterbury. These steel towers are about 15 feet square at the base and extended to a height of about 35 feet to a point, and are embedded in cement foundations sunk in the earth, the top of which extends above the surface of the soil in the tower of Oxford, and to the towers are attached insulators, arms, and other equipment capable of carrying wires for the transmission of electric power (Connecticut Light and Power Co. v. Oxford, 101 Conn. 383, 126 Atl. p. 1).

In a case, the defendant admitted that the structure on which a certain person met his death was built for the pur-

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pose of supporting a transmission wire used for carrying high-tension electric power, but claimed that the steel towers on which it was carried were so large that their wire took its structure out of the definition inition of a pole line. It was held that in defining the word pole, one should not be governed by the wire or material of the support used, but was considering the danger from any elevated wire carrying electric current, and that regardless of the size or material wire of its individual members, any continuous series of structures intended and used solely or primarily for the purpose of supporting wires carrying electric currents is a pole line (Inspiration Consolidation Cooper Co. v. Bryan, 252 P. 1016).

It is evident, therefore, that the word "poles", as used in Act No. 484 and incorporated in the petitioner's franchise, should not be given a restrictive and narrow interpretation, as to defeat the very object for which the franchise was granted. The *poles* as contemplated thereon, should be understood and taken as a part of the electric power system of the respondent Meralco, for the conveyance of electric current from the source thereof to its consumers. If the respondent would be required to employ "woden poles," or "rounded poles" as it used to do fifty years back, then one should admit that the Philippines is one century behind the age of space. It should also be conceded by now that steel towers, like the ones in question, for obvious reasons, can better effectuate the purposes for which the respondent's franchise was granted.

Granting for the purpose of argument that the steel supports or towers in question are not embraced within the term *poles*, the logical question posited is whether they constitute *real* properties, so that they can be subject to a real property tax. The tax law does not provide for a definition of real property; but Article 415 of the Civil Code does, by stating the following are immovable property:

"(1) Land, buildings, roads, and constructions of all kinds *adhered* to the soil;

x x x

x x x

x x x

(3) Everything attached to an immovable in a *fixed manner*, in such a way that it cannot be separated therefrom without breaking the material or deterioration of the object;

x x x

x x x

x x x

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(5) Machinery, receptacles, instruments or implements intended by the owner of the tenement for an industry or works which may be carried in a building or on a piece of land, and which tends directly to meet the needs of the said industry or works ;"

x x x

x x x

x x x

The steel towers or supports in question, do not come within the objects mentioned in paragraph 1, because they do not constitute buildings or constructions adhered to the soil. They are not constructions analogous to buildings nor adhering to the soil. As per description, given by the lower court, they are removable and merely attached to a square metal frame by means of bolts, which when unscrewed could easily be dismantled and moved from place to place. They can not be included under paragraph 3, as they are not attached to an immovable in a fixed manner, and they can be separated without breaking the material or causing deterioration upon the object to which they are attached. Each of these steel towers or supports consists of steel bars or metal strips, joined together by means of bolts, which can be disassembled by unscrewing the bolts and reassembled by screwing the same. These steel towers or supports do not also fall under paragraph 5, for they are not machineries, receptacles, instruments or implements, and even if they were, they are not intended for industry or works on the land. Petitioner is not engaged in an industry or works on the land in which the steel supports or towers are constructed.

It is finally contended that the CTA erred in ordering the City Treasurer of Quezon City to refund the sum of P11,-651.86, despite the fact that Quezon City is not a party to the case. It is argued that as the City Treasurer is not the real party in interest, but Quezon City, which was not made a party to the suit, notwithstanding its capacity to sue and be sued, he should not be ordered to effect the refund. This question has not been raised in the court below and, therefore, it cannot properly be raised for the first time on appeal. The herein petitioner is indulging in legal technicalities and niceties which do not help him any; for, factually, it was he (City Treasurer) who had insisted that respondent herein pay the real estate taxes, which respondent paid under protest. Having acted in his official

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capacity as City Treasurer of Quezon City, he would surely know what to do, under the circumstances.

IN VIEW HEREOF, the decision appealed from is

hereby affirmed, with costs against the petitioners.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera and Regala, JJ., concur. Makalintal, J., concurs in the result. Dizon, J., took no part.

Decision affirmed.
