SECOND DIVISION

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

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

D E C I S I O N

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**.

To be sure, this is not a novel issue. Section 187 of the Local Government Code, which outlines the administrative procedure for questioning the constitutionality or legality of a tax ordinance or revenue measure, does not find application in cases where the imposition is in the nature of a regulatory fee.[35] The provision requires that an appeal of a tax ordinance or revenue measure should be made to the Secretary of Justice within thirty (30) days from the effectivity of the ordinance,[36] *viz*:

> **Section 187.** *Procedure for Approval and Effectivity of Tax, Ordinances and Revenue Measures; Mandatory Public Hearings*. - The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided*, That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further*, **That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice** who shall render a decision within sixty (60) days from the date of receipt of the appeal x x x. (Emphasis and underscoring supplied)

It can be gleaned from the provision that **review by the Secretary of Justice is mandatory only when what is being questioned is a tax ordinance or revenue measure. Section 187 does not require the same from parties who assail ordinances imposing regulatory fees**. Stated otherwise, the procedure found in Section 187 must be followed when an ordinance imposes a tax; the institution of an action in court without complying with the requirements of the provision will lead to the dismissal of the case on the ground of non-exhaustion of administrative remedies.[37] However, when an ordinance imposes a fee, direct recourse to the courts may be had without prior protest before the Secretary of Justice. Simply put, fees are not subject to the procedure outlined under Section 187.

CEPALCO additionally argued that, assuming that the ordinance does not impose a tax, it is still a revenue measure, which Section 187 expressly subjects to the exhaustion doctrine.[38]

The argument is speculative.

For clarity, that portion of Section 187 referred to by CEPALCO, as quoted above, states:

> x x x *Provided, further*, That any question on the constitutionality or legality of **tax ordinances or revenue measures** may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice x x x (Emphasis and underscoring supplied)

To be consistent with the rule that the imposition's purpose determines whether it is a tax or a fee, [39] the Court rules that the word "or," which the legislature placed in between the phrases "tax ordinances" and "revenue measures," should not be used in its regular disjunctive sense.

Ordinarily, the use of "or" connects a series of words or propositions indicating that the various

members of the enumeration are to be taken separately.[40] The term usually signifies disassociation and independence of one thing from each of the other things enumerated.[41]

However, jurisprudence has given the word another interpretation. In *Gonzales v. GJH Land, Inc.*,[42] the Court ruled:

> To clarify, the word "or" x x x was intentionally used by the legislature to particularize that [an antecedent phrase is the equivalent of a subsequent phrase]. This interpretation is supported by *San Miguel Corp. v. Municipal Council*, wherein the Court held that :
>
> The word "or" may be used as the equivalent of "that is to say" and gives that which precedes it the same significance as that which follows it. It is not always disjunctive and is sometimes interpretative or expository of the preceding word.[43] (Citations omitted)

Hence, the word "or" in Section 187 should be used in a non disjunctive sense. It should be construed in a way that the phrase "revenue measures" is read as another way of expressing "tax ordinances." Both refer to one and the same thing. After all, the Court has consistently held that a tax ordinance is primarily designed to raise revenue.[44]

Considering the foregoing, there was no procedural barrier preventing CEPALCO from instituting the instant petition for declaratory relief before the RTC at the first instance.

On the issue of the ordinance's substantive validity, petitioner maintained that the CA erred when it declared the fee exorbitant and unreasonable. The city posited that CEPALCO had the burden to prove the unreasonableness of the exaction.[45] Since the electricity distributor failed to present any evidence on the propriety of the amount, the city continued, the ordinance should be upheld, as it enjoys the presumption of validity.[46]

CEPALCO, on the other hand, submitted that the CA correctly declared the ordinance void, the amount of the Mayor's Permit Fee being unjust, excessive, oppressive, and confiscatory.[47] Since it owns 17,000 poles, more or less, the amount it will have to pay annually as its Mayor's Permit Fee alone will reach P8,500,000.00.[48] This, as argued by the electricity distributor, is by all reasonable and judicious standards shockingly unconscionable considering it is substantially in excess of the costs of regulation and inspection.[49]

The city's contention is impressed with merit.

At the outset, it is apt to state that the Court takes judicial notice of the practice of regulating the construction and installation of utility poles, which are not only eyesores when ill-maintained but, just as well, pose a serious threat to the safety of the general public. Local governments such as the petitioner, as well as the cities of Bacoor[50] and Angeles[51] and the Municipality of Kalibo,[52] curb the indiscriminate erection and establishment of electricity and telecommunications poles by levying regulatory fees from service providers that use such poles as an indispensable part of their business. These fees are imposed pursuant to the delegated legislative power of local government

units, exercised through duly enacted ordinances.

Few things are more established in this jurisdiction than the requisites of a valid ordinance. In order for an ordinance to be valid in substance, it (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit, but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.[53]

Equally established, however, is the presumption of validity in favor of all laws, which extends to ordinances.[54]

Nonetheless, the presumption, being just that, may be set aside when invalidity or unreasonableness (1) appears on the face of the ordinance; or (2) is established by proper evidence.[55]

In *Balacuit v. Court of First Instance*,[56] the Court, without examining matters of fact, struck down a Butuan City ordinance requiring theaters to sell tickets to children (between seven [7] and twelve [12] years of age) at half price. In that case, the ordinance was merely examined under the lens of police power, *sans* the need to take into account facts showing invalidity. The Court nullified the ordinance because, on its face, it offended the elementary tenets of due process.

More recently, in *City of Manila v. Hon. Laguio, Jr.*,[57] the Court annulled an ordinance prohibiting the establishment of certain businesses such as clubs, parlors, and inns, which were considered "houses of ill-repute." The ordinance was invalidated, *inter alia*, because it failed to meet the requisites for a valid exercise of police power, as it substantially curtailed property and personal rights of Manila's citizenry. Again, no evidence on extrinsic facts was needed to show the ordinance's invalidity; all the Court needed to do was analyze it in the light of the extent of a municipal corporation's police power and settled due process precepts.

The ordinances in *Balacuit* and *Laguio, Jr.* served as prime examples of facially apparent invalidity. In those cases, the Court did not need to make any fact-based appraisals to reach the conclusion that, as a matter of law, the ordinances had to be struck down. Their provisions were merely scrutinized against settled jurisprudential doctrines on the police power of local government units; save for the ordinances themselves and the circumstances of their enactment, nothing needed to be proved.

On the other hand, in *Morcoin Co., Ltd. v. City of Manila*,[58] an ordinance that sought to regulate coin-operated apparatuses, such as juke boxes and pinball machines, was held to be invalid only after an examination of proof showing unreasonableness. The Court in that case struck down an ordinance, which imposed an annual license fee of P300.00 on every coin-operated contraption, after a juke box operator was able to show that his machines had a yearly income of only around P211.00. It was held that such a showing of excessiveness invariably warranted the nullification of the ordinance.

Unlike in *Balacuit* and *Laguio, Jr.*, the alleged invalidity of the ordinance involved here is not apparent on its face. CEPALCO has not shown that the Mayor's Permit Fee ostensibly contravenes

any constitutional or statutory provision or settled public policy, or is *per se* unreasonable, oppressive, discriminatory, or in restraint of trade. Hence, it is only logical that the Court adheres to the methodology used in *Morcoin*, and thus evaluate the ordinance in the light of the evidence presented by CEPALCO to reach a conclusive determination of the fee's excessiveness.

CEPALCO contended that the ordinance was null and void due to the unjust, excessive, and confiscatory nature of the Mayor's Permit Fee.[59] In line with this contention, the electricity distributor now bears the burden of showing that the ordinance violates Sections 130, 147, and 186 of the Local Government Code.

Section 130 lays down several underlying axioms that must be adhered to by all fiscal impositions levied by municipal corporations, thus:

> **Section 130.** *Fundamental Principles*. - The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units:
>
> x x x x
>
> (b) Taxes, fees, charges and other impositions shall:
>
> (1) be equitable and based as far as practicable on the taxpayer's ability to pay;
>
> (2) be levied and collected only for public purposes;
>
> (3) **not be unjust, excessive, oppressive, or confiscatory**;
>
> (4) not be contrary to law, public policy, national economic policy, or in the restraint of trade; (Emphasis and underscoring supplied) x x x x

The tenor of paragraph (b) (3) of Section 130 is reiterated in Section 186, which reads:

> **Section 186.** *Power To Levy Other Taxes, Fees or Charges.* - Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: *Provided*, That the **taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy** x x x. (Emphasis and underscoring supplied)

On the other hand, Section 147, when read in conjunction with Section 151,[60] places a general limitation on the amount levied by regulatory fees imposed by cities, thus:

> **Section 147.** *Fees and Charges*. - The municipality may impose and collect such reasonable fees and charges on business and occupation and, except as reserved to the province in Section 139 of this Code, on the practice of any profession or calling, **commensurate with the cost of regulation, inspection and licensing** before any person may engage in such business or occupation, or practice such profession or calling. (Emphasis and underscoring supplied)

It can be gleaned from the foregoing that if a regulatory fee produces revenue in excess of the cost of the regulation, inspection, and licensing, it will be considered excessive, and hence fail the test of judicial scrutiny.[61]

Thus, the Court is faced with the question:

Whether or not the amount of P500.00 collected annually on a per post basis violated Sec. 147 of the Local Government Code, which provides that fees must be commensurate with the cost of regulation, inspection, and licensing[62]

For CEPALCO's failure to establish excessiveness, the Court rules in the negative. A judicious perusal of the record fails to reveal anything definitively showing the ordinance's unreasonable, excessive, oppressive, or confiscatory nature; hence, because it enjoys the presumption of validity, the Court is constrained to reverse the decision of the CA.

The presumption of validity is a corollary of the presumption of constitutionality, a legal theory of common-law origin developed by courts to deal with cases challenging the constitutionality of statutes.[63]

The presumption of constitutionality, in its most basic sense, only means that courts, in passing upon the validity of a law, will afford some deference to the statute and charge the party assailing it with the burden of showing that the act is incompatible with the constitution.[64] The doctrine comes into operation when a party comes to court praying that a law be set aside for being unconstitutional.[65] In effect, it places a heavy burden on the act's assailant to prove invalidity beyond reasonable doubt;[66] it commands the clearest showing of a constitutional infraction.[67] Thus, before a law may be stn1ck down as unconstitutional, courts must be certain that there exists a clear and unequivocal breach of the constitution, and not one that is speculative or argumentative.[68] To doubt, it has been said, is to sustain.[69]

The United States Supreme Court expressed the rationale for the presumption in *Ogden v. Saunders*,[70] thus: "**it is but a decent respect due to the wisdom, the integrity, and the patriotism of the legislative body by which any law is passed to presume in favor of its validity** x x x.[71]"

For the same reason, the presumption extends to legislative acts of local governments, as well. Thus, ordinances too are presumed constitutional,[72] and, in addition, they are also presumed consistent with the law. This is necessary because one of the requisites of a valid ordinance is that it does not contravene any statute.[73] An ordinance that is incompatible with the law is *ultra vires* and hence null and void.[74] To this end, when an action assailing an ordinance is brought before a court, the judge must, as a rule, presume that the ordinance is valid and therefore charge the plaintiff with the burden of showing otherwise. In *U.S. v. Salaveria*,[75] the Court, speaking through Justice Malcolm, laid down the basis for the presumption in this wise:

> The presumption is all in favor of validity x x x. The action of the elected representatives of the people cannot be lightly set aside. The councilors must, in the

> very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitate action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well-being of the people x x x.[76]

In the case at bar, the CA annulled Ordinance No. 9527-2005 for being exorbitant, unreasonable, and for lacking a basis. The appellate court held that the ordinance's enactment was tainted with legal infirmities. According to the CA, the city council should not have enacted the ordinance without divulging the method it used to arrive at the amount of the Mayor's Permit Fee. The city should have justified the ordinance by making known the parameters, guidelines, and computations it employed to set the fee at P500.00. In addition, it was ruled that the city was bound to explain how it would account for the proceeds collected by reason of the ordinance thus stating the probable expenses for the regulation and inspection of utility poles. This, the CA held, was necessary to inform electricity distributors like CEPALCO of the reasons of the fee. On this logic, the appellate court struck down the ordinance.

By holding that the city council should have explained the reasons for the ordinance's enactment, the CA effectively reversed the presumption of validity. In essence, the appellate court shifted the burden to Cagayan de Oro to show that the ordinance was reasonable and that the amount of the Mayor's Permit Fee was not excessive. Verily, no law requires that local governments justify the ordinances they pass by setting forth the grounds for their enactment. Thus, the CA's nullification of the ordinance was done in a manner contrary to principles established in jurisprudence.

After a meticulous scrutiny of the records, the Court finds that, in the proceedings *a quo*, the ordinance was never shown to be violative of the rule that fees must be commensurate with the cost of regulation, inspection, and licensing.

A review of the proceedings before the trial court shows that the allegation of the fee's unreasonableness was never substantiated. In fact, the memorandum[77] CEPALCO filed before the trial court is bereft of any allegations showing the impropriety of the amount exacted by the ordinance. Besides the self-serving statement that the sum of P500.00 was disproportionate to the cost of regulation and inspection of utility poles, CEPALCO showed nothing tending to prove the fee's excessiveness. The electricity distributor simply maintained that the amount was confiscatory, [78] and prayed that the ordinance be struck down for being unlawful and unjustified. The RTC, for its part, never ruled that the ordinance was void because the amount of the Mayor's Permit Fee was excessive. Instead, it dismissed the case for failure to exhaust administrative remedies.[79] Moreover, according to the trial court, the city had the discretion to determine the amount of the exaction.[80]

So, too, the record is devoid of any indication that the fee's excessiveness was established on appeal. CEPALCO never pointed out the particulars of the fee's unreasonableness. While it stated that the ordinance only ordered the inspection and inventory of electric poles erected in the city,[81] it never even bothered to allege, much less prove, the cost of such inspection and inventory. It merely argued that the simple and repetitive work that would be undertaken by reason of the ordinance would require minimal expenses on the city's part.[82] The CA agreed. However, the

appellate court never stated why it found the amount excessive. Instead, as mentioned earlier, the CA simply held that the city should have discussed the amount's basis so that public utility companies would be informed of the rationale of the fee's imposition and how the funds levied by the ordinance would be accounted for.[83]

Being a public utility engaged in the distribution of electricity and the owner of around 17,000 poles, CEPALCO could have certainly adduced evidence on maintenance, inspection, and inventory expenses. As an electricity distributor, CEPALCO is charged with keeping its utility posts well-preserved and in good condition. Necessarily, the cost of maintaining and inspecting such posts is well within its cognizance. Clearly, it had proof of such costs in its possession. Thus, CEPALCO could have easily showed that the annual exaction of P500.00 per post was in excess of the cost of regulation and, therefore, fee is excessive and unreasonable.

However, CEPALCO failed to do so. It simply maintained that the annual payment of P8,500,000.00 was, "by any fairly judicious standards, shocking to the conscience of man.[84]" The electricity distributor could have compared the fee with the annual costs it incurs on the preservation and inventory of its posts or, as in *Morcoin*, showed that the annual fee imposed on a single pole was greater than the same pole's yearly income. This would have readily shown the fee's alleged excessiveness. The record, nevertheless, fails to reveal that the imposition was not commensurate with the actual cost of regulation and inspection. Besides CEPALCO's bare, self-serving, and unsubstantiated allegations, nothing even remotely suggests the fee's excessiveness.

Without evidence indicating that the amount of the Mayor's Permit Fee is disproportionate to the cost of regulation, inspection, and licensing of utility poles located in Cagayan de Oro City, the Court cannot agree with the CA's invalidation of the ordinance.

Local governments are allowed wide discretion in determining the rates of imposable fees. In the absence of proof of unreasonableness, courts are bound to respect the judgment of the local authorities. Any undue interference with their sound discretion will imperatively warrant review and correction.

In this case, as the party assailing the ordinance, it was CEPALCO's responsibility to prove the amount's excessiveness; it had the burden to show that the fee was not commensurate with the cost of regulation, inspection, and licensing. Nevertheless, for the reasons discussed above, it failed to dismantle the presumption of validity because it never established that the city council abused its discretion in setting the amount of the fee at P500.00.

Thus, the CA erred in declaring the ordinance invalid. Courts, as a rule, must refrain from interfering with legislative acts, lest they stray into the realm of policy decision-making.[85] The public interest is best served by allowing the political processes to operate without undue interference.[86]

On a final note, the Court deems it appropriate to reiterate its ruling in *Victorias Milling Co., Inc. v. Municipality of Victorias*,[87] to wit:

> An ordinance carries with it the presumption of validity. The question of reasonableness though is open to judicial inquiry. Much should be left thus to the discretion of municipal authorities. Courts will go slow in writing off an ordinance as

unreasonable unless the amount is so excessive as to be prohibitive, arbitrary, unreasonable, oppressive, or confiscatory. x x x

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals dated June 10, 2015 in CA-G.R. CV No. 02771-MIN is **REVERSED** and **SET ASIDE**. City Ordinance No. 9527-2005 of Cagayan de Oro City is hereby declared valid and constitutional.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, Caguioa, and *J. Reyes, Jr.,*[*] *JJ.*, concur.

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[*] Designated additional Member per Special Order No. 2587, dated August 28, 2018.

[1] *City of Manila v. Hon. Laguio*, 495 Phil. 289, 337 (2005).

[2] *Balacuit v. Court of First Instance of Agusan del Norte and Butuan City, Branch II* , 246 Phil. 189, 200 (1988).

[3] *ABAKADA Guro Party-list v. Purisima*, 584 Phil. 246, 291 (2008).

[4] *Rollo*, pp. 28-54.

[5] Penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Henri Jean Paul B. Inting and Pablito A. Perez; id. at 55-63.

[6] Id. at 159-162.

[7] Id. at 232.

[8] Id. at 56.

[9] Id. at 232.

[10] Id. at 55-57.

[11] Id. at 71-80.

[12] Id. at 57.

[13] Id.

[14] Id. at 99-109.

[15] Id. at 57.

[16] Id.

[17] Id. at 58.

[18] Id.

[19] Id. at 62.

[20] Id. at 60-61.

[21] Id. at 45.

[22] Id. at 46.

[23] Id. at 291.

[24] *Film Development Council of the Philippines v. Colon Heritage Realty Corporation*, 760 Phil. 519, 537 (2015).

[25] **Section 5.** Each local government unit 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 government

[26] LOCAL GOVERNMENT CODE, Sec. 129.

[27] *Republic v. Philippine Rabbit Bus Lines, Inc.*, 143 Phil. 158, 163 (1970).

[28] **Section 131**. *Definition of Terms*. -When used in this Title, the term:

> xxxx
>
> (1) "Fee" means a charge fixed by law or ordinance for the regulation or inspection of a business or activity; xxxx

[29] *Philippine Airlines, Inc. v. Edu* , 247 Phil. 283, 292 (1988).

[30] *Chevron Philippines, Inc. v. Bases Conversion Development Authority*, 645 Phil. 84, 91 (2010).

[31] *Gerochi v. Department of Energy*, 554 Phil. 563, 580 (2007).

[32] 727 Phil. 430, 434 (2014).

[33] *Rollo*, p. 60.

[34] Id. at 232.

[35] Supra note 32, at 443-444.

[36] *Alta Vista Golf and Country Club v. The City of Cebu*, 778 Phil. 685, 701 (2016).

[37] *Aala v. Hon. Uy, et al.*, 803 Phil 36, 59 (2017).

[38] *Rollo*, p. 45.

[39] *Gerochi v. Department of Energy*, 554 Phil. 563, 580 (2007).

[40] *Vargas v. Cajucom*, 761 Phil. 43, 61 (2015).

[41] Id.

[42] 772 Phil. 483 (2015).

[43] Id. at 507.

[44] *Philippine Airlines, Inc. v. Edu*, 247 Phil. 283, 293. (1988).

[45] *Rollo*, p. 37.

[46] Id. at 38.

[47] Id. at 286.

[48] Id. at 287.

[49] Id. at 288.

[50] *See:* Ordinance No. 2013-051, which amended Ordinance No. 6, Series of 2009, entitled "An Ordinance Regulating the Installation and Maintenance of Distribution Lines of Various Public Utilities in the Municipality of Bacoor."

[51] *See:* Ordinance No. 442, Series f 2017, entitled "An Ordinance Regulating the Installation, Operation and Maintenance of Telecommunication Cables, Telecommunication Towers, Building Electronics Systems, Structured Cabling, Mobile Cellsites, Cable TV Facilities for Service Providers and Electronic Equipment, Providing Penalties for Violation Thereof and For Other Purposes."

[52] *See:* Ordinance No. 2012-009, entitled "An Ordinance Regulating the Installation, Rehabilitation and Maintenance of Telecommunication, Power/Electrical Lines/Wires, Cables and the Like Within the Municipality of Kalibo, Province of Aklan and Prescribing Penalties for Violation Thereof."

[53] *City of Batangas v. Philippine Shell Petroleum Corporation*, G.R. No. 195003, June 7, 2017.

[54] *Social Justice Society v. Atienza*, 568 Phil. 658, 683 (2008).

[55] *Balacuit v. Court of First Instance*, supra note 2, at 205.

[56] Id. at 200.

[57] *City of Manila v. Hon. Laguio*, supra note 1, at 315.

[58] 110 Phil. 921, 924 (1961).

[59] *Rollo*, p. 287.

[60] **Section 151.** *Scope of Taxing Powers.* - Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose x x x

[61] *Ferrer v. Bautista*, 762 Phil. 233, 283 (2015).

[62] R*ollo*, p. 36.

[63] Shuwakitha Chadrasekaran, "The Doctrine of Presumption of Constitutionality in Interpretation of Statutes in India - Addressing the Repercussions by Tracing the Judicial Pronouncements," *The World Journal on Juristic Polity*, Vol. 3, no. 3 (2017).

[64] Edward Dawson, "Adjusting the Presumption of Constitutionality Based on Margin of Statutory Passage," *Journal of Constitutional Law*, Vol. 16, no. 1 (2013).

[65] *See: ABAKADA Guro Party List v. Purisima*, 584 Phil. 246, 266 (2008).

[66] *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60, 74 (1974).

[67] *Drilon v. Lim*, 305 Phil 146, 150 (1994).

[68] *Garcia v. Executive Secretary,* 602 Phil. 64, 82 (2009).

[69] Id.

[70] 25, U.S. 213 (1827).

[71] Id. at 270.

[72] *Social Justice Society v. Atienza*, supra note 53, at 683-684.

[73] *White Light Corporation et al. v. Manila*, 596 Phil. 444, 459 (2009).

[74] *City of Batangas v. Philippine Shell Petroleum Corporation*, supra note 52.

[75] 39 Phil. 102 (1918), cited in *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 127 Phil. 306, 314-315 (1967).

[76] Id. at 111.

[77] *Rollo*, pp. 146-159.

[78] Id. at 152.

[79] Id. at 162.

[80] Id. at 161.

[81] Id. at 192.

[82] Id.

[83] Id. at 62.

[84] Id. at 287.

[85] *Bureau Veritas v. Office of the President*, 282 Phil. 734, 747 (1992).

[86] *Sinaca v. Mula*, 373 Phil. 896, 912 (1999).

[87] 134 Phil. 180 (1968), as cited in *Progressive Development Corporation v. Quezon City*, 254 Phil. 635, 646 (1989) and *Smart Communications, Inc. v. Malvar*, 727 Phil. 430, 446 (2014).
