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[G.R. No. 87479. June 4, 1990]

NATIONAL POWER CORPORATION, *petitioner, vs.* **THE PROVINCE OF ALBAY, ALBAY GOVERNOR ROMEO R. SALALIMA, and ALBAY PROVINCIAL TREASURER ABUNDIO M. NUÑEZ,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. 776; FISCAL INCENTIVES REVIEW BOARD; HAS NO AUTHORITY TO IMPOSE TAXES OR REVOKE EXISTING ONES; CASE AT BAR.**— It is to be pointed out that under Presidential Decree No. 776, the power of the FIRB was merely to "recommend to the President of the Philippines and for reasons of compatibility with the declared economic policy, the withdrawal, modification, revocation or suspension of the enforceability of any of the above-cited statutory subsidies or tax exemption grants, except those granted by the Constitution." It has no authority to impose taxes or revoke existing ones, which, after all, under the Constitution, only the legislature may accomplish. The question therefore is whether or not the various tax exemptions granted by virtue of FIRB Resolutions Nos. 10-85, 1-86, and 17-87 are valid and constitutional. We shall deal with FIRB No. 17-87 later, but with respect to FIRB Resolutions Nos. 10-85 and 1-86, we sustain the provincial government of Albay. As we said, the FIRB, under its charter, Presidential Decree No. 776, had been empowered merely to "recommend" tax exemptions. By itself, it could not have validly prescribed exemptions or restore taxability. Hence, as of June 11, 1984 (promulgation of Presidential Decree No. 1931), NAPOCOR had ceased to enjoy tax exemption privileges. The fact that under Executive Order No. 93, the FIRB has been given the prerogative to "restore tax and/or duty exemptions withdrawn hereunder in whole or in part," and "impose conditions for . . . tax and/or duty exemption" is of no moment. These provisions are prospective in character and can not affect the Board's past acts.

2. **TAXATION; TAX EXEMPTIONS; CONSTRUED STRONGLY AGAINST THE CLAIMANT.**— As a rule finally, claims of tax

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exemption are construed strongly against the claimant. They must also be shown to exist clearly and categorically, and supported by clear legal provisions. Taxes are the lifeblood of the nation. Their primary purpose is to generate funds for the State to finance the needs of the citizenry and to advance the common weal.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Romulo L. Ricafort and *Jesus R. Cornago* for respondents.

D E C I S I O N

SARMIENTO, *J.*:

The National Power Corporation (NAPOCOR) questions the power of the provincial government of Albay to collect real property taxes on its properties located at Tiwi, Albay, amassed between June 11, 1984 up to March 10, 1987.

It appears that on March 14 and 15, 1989, the respondents caused the publication of a notice of auction sale involving the properties of NAPOCOR and the Philippine Geothermal Inc. consisting of buildings, machines, and similar improvements standing on their offices at Tiwi, Albay. The amounts to be realized from this advertised auction sale are supposed to be applied to the tax delinquencies claimed, as and for, as we said, real property taxes. The back taxes NAPOCOR has supposedly accumulated were computed at P214,845,184.76.

NAPOCOR opposed the sale, interposing in support of its non-liability Resolution No. 17-87, of the Fiscal Incentives Review Board (FIRB), which provides as follows:

BE IT RESOLVED, AS IT IS HEREBY RESOLVED, That the tax and duty exemption privileges of the National Power Corporation, including those pertaining to its domestic purchases of petroleum and petroleum products, granted under the terms and conditions of Commonwealth Act No. 120 (Creating the National Power Corporation, defining its powers, objectives and functions, and for other purposes),

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as amended, are restored effective March 10, 1987, subject to the following conditions:[1]

as well as the Memorandum of Executive Secretary Catalino Macaraig, which also states thus:

> Pursuant to Sections 1 (f) and 2 (e) of Executive Order No. 93, series of 1986, FIRB Resolution No. 17-87, series of 1987, restoring, subject to certain conditions prescribed therein, the tax and duty exemption privileges of NPC as provided under Commonwealth Act No. 120, as amended, effective March 10, 1987, is hereby confirmed and approved.[2]

On March 10, 1989, the Court resolved to issue a temporary restraining order directing the Albay provincial government "to CEASE AND DESIST from selling and disposing of the NAPOCOR properties subject matter of this petition."[3] It appears, however, that "the temporary restraining order failed to reach respondents before the scheduled bidding at 10:00 a.m. on March 30, 1989 . . . [h]ence, the respondents proceeded with the bidding where in the Province of Albay was the highest bidder."[4]

The Court gathers from the records that:

(1) Under Section 13, of Republic Act No. 6395, amending Commonwealth Act No. 120 (charter of NAPOCOR):

> Section 13. Non-profit Character of the Corporation; Exemption from All Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities. The Corporation shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operation, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, the Corporation, including its subsidiaries, is hereby declared exempt from the payment of all forms of taxes,

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[1] *Rollo*, 9.

[2] *Id.*, 10.

[3] *Id.*, 31.

[4] *Id.*, 79.

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duties, fees, imposts as well as costs and service fees including filing fees, appeal bonds, supersedeas bonds, in any court or administrative proceedings.[5]

(2) On August 24, 1975, Presidential Decree No. 776 was promulgated, creating the Fiscal Incentives Review Board (FIRB). Among other things, the Board was tasked as follows:

Section 2. A Fiscal Incentives Review Board is hereby created for the purpose of determining what subsidies and tax exemptions should be modified, withdrawn, revolved or suspended, which shall be composed of the following officials:

Chairman – Secretary of Finance
Members – Secretary of Industry
– Director General of the National Economic and Development Authority
– Commissioner of Internal Revenue
– Commissioner of Customs.

The Board may recommend to the President of the Philippines and for reasons of compatibility with the declared economic policy, the withdrawal, modification, revocation or suspension of the enforceability of any of the above-cited statutory subsidies or tax exemption grants, except those granted by the Constitution. To attain its objectives, the Board may require the assistance of any appropriate government agency or entity. The Board shall meet once a month, or oftener at the call of the Secretary of Finance.[6]

(3) On June 11, 1984, Presidential Decree No. 1931 was promulgated, prescribing, among other things, that:

Section 1. The provisions of special or general law to the contrary notwithstanding, all exemptions from the payment of duties, taxes, fees, impost and other charges heretofore granted in favor of government-owned or controlled corporations including their subsidiaries are hereby withdrawn.[7]

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[5] *Id.*, 28.

[6] Pres. Decree No. 776 (1975).

[7] *Id.*, 43.

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(4) Meanwhile, FIRB Resolution No. 10-85 was issued, "restoring" NAPOCOR's tax exemption effective June 11, 1984 to June 30, 1985;

(5) Thereafter, FIRB Resolution No. 1-86 was issued, granting tax exemption privileges to NAPOCOR from July 1, 1985 and indefinitely thereafter;

(6) Likewise, FIRB Resolution No. 17-87 was promulgated, giving NAPOCOR tax exemption privileges effective until March 10, 1987;[8]

(7) On December 17, 1986, Executive Order No. 93 was promulgated by President Corazon Aquino, providing, among other things, as follows:

SECTION 1. The provisions of any general or special law to the contrary notwithstanding, all tax and duty incentives granted to government and private entities are hereby withdrawn, except:[9]

and

SECTION 2. The Fiscal Incentives Review Board created under Presidential Decree No. 776, as amended, is hereby authorized to:

a) restore tax and or duty exemptions withdrawn hereunder in whole or in part;

b) revise the scope and coverage of tax and or duty exemption that may be restored;

c) impose conditions for the restoration of tax and/or duty exemption;

d) prescribe the date or period of effectivity of the restoration of tax and or duty exemption;

e) formulate and submit to the President for approval, a complete system for the grant of subsidies to deserving beneficiaries, in lieu of or in combination with the restoration of tax and duty exemptions or preferential treatment in taxation, indicating the source of funding

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[8] *Rollo, id.*, 67.

[9] *Id.*, 64.

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> therefor, eligible beneficiaries and the terms and conditions for the grant thereof taking into consideration the international commitments of the Philippines and the necessary precautions such that the grant of subsidies does not become the basis for countervailing action.[10]

(8) On October 5, 1987, the Office of the President issued the Memorandum, confirming NAPOCOR's tax exemption aforesaid.[11]

The provincial government of Albay now defends the auction sale in question on the theory that the various FIRB issuances constitute an undue delegation of the taxing power and hence, null and void, under the Constitution. It is also contended that, insofar as Executive Order No. 93 authorizes the FIRB to grant tax exemptions, the same is of no force and effect under the constitutional provision allowing the legislature alone to accord tax exemption privileges.

It is to be pointed out that under Presidential Decree No. 776, the power of the FIRB was merely to "recommend to the President of the Philippines and for reasons of compatibility with the declared economic policy, the withdrawal, modification, revocation or suspension of the enforceability of any of the above-cited statutory subsidies or tax exemption grants, except those granted by the Constitution." It has no authority to impose taxes or revoke existing ones, which, after all, under the Constitution, only the legislature may accomplish.[12] The question therefore is whether or not the various tax exemptions granted by virtue of FIRB Resolutions Nos. 10-85, 1-86, and 17-87 are valid and constitutional.

We shall deal with FIRB No. 17-87 later, but with respect to FIRB Resolutions Nos. 10-85 and 1-86, we sustain the provincial government of Albay.

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[10] *Id.*, 65.

[11] See above, 2.

[12] CONST. (1973), Art. VIII, Sec. 17, par. (4); also CONST. (1987), Art. VI, Sec. 28, par. (4).

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As we said, the FIRB, under its charter, Presidential Decree No. 776, had been empowered merely to "recommend" tax exemptions. By itself, it could not have validly prescribed exemptions or restore taxability. Hence, as of June 11, 1984 (promulgation of Presidential Decree No. 1931), NAPOCOR had ceased to enjoy tax exemption privileges.

The fact that under Executive Order No. 93, the FIRB has been given the prerogative to "restore tax and/or duty exemptions withdrawn hereunder in whole or in part,"[13] and "impose conditions for . . . tax and/or duty exemption"[14] is of no moment. These provisions are prospective in character and can not affect the Board's past acts.

The Court is aware that in its preamble, Executive Order No. 93 states:

> WHEREAS, a number of affected entities, government and private were able to get back their tax and duty exemption privileges through the review mechanism implemented by the Fiscal Incentives Review Board (FIRB);[15]

but by no means can we say that it has "ratified" the acts of FIRB. It is to misinterpret the scope of FIRB's powers under Presidential Decree No. 776 to say that it has. Apart from that, Section 2 of the Executive Order was clearly intended to amend Presidential Decree No. 776, which means, *mutatis mutandis*, that FIRB *did* not have the right, in the first place, to grant tax exemptions or withdraw existing ones.

Does Executive Order No. 93 constitute an unlawful delegation of legislative power? It is to be stressed that the provincial government of Albay admits that as of March 10, 1987 (the date Resolution No. 17-87 was affirmed by the Memorandum of the Office of the President, dated October 5, 1987), NAPOCOR's tax exemption had been validly restored. What

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[13] Exec. Order No. 93, Sec. 2, Par. (a).

[14] *Supra*, par. (c).

[15] *Rollo, id.*, 63.

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it questions is NAPOCOR's liability in the interregnum between June 11, 1984, the date its tax privileges were withdrawn, and March 10, 1987, the date they were purportedly restored. To be sure, it objects to Executive Order No. 93 as allegedly a delegation of legislative power, but only insofar as its (NAPOCOR's) June 11, 1984 to March 10, 1987 tax accumulation is concerned. We therefore leave the issue of "delegation" to the future and its constitutionality when the proper case arises. For the nonce, we leave Executive Order No. 93 alone, and so also, its validity as far as it grants tax exemptions (through the FIRB) beginning December 17, 1986, the date of its promulgation.

NAPOCOR must then be held liable for the intervening years aforesaid. So it has been held:

xxx xxx xxx

The last issue to be resolved is whether or not the private respondent is liable for the fixed and deficiency percentage taxes in the amount of ₱3,025.96 (*i.e.* for the period from January 1, 1946 to February 29, 1948) before the approval of its municipal franchises. As aforestated, the franchises were approved by the President only on February 24, 1948. Therefore, before the said date, the private respondent was liable for the payment of percentage and fixed taxes as seller of light, heat, and power — which, as the petitioner claims, amounted to ₱3,025.96. The legislative franchise (R.A. No. 3843) exempted the grantee from all kinds of taxes other than the 2% tax from *the date the original franchise was granted*. The exemption, therefore, did not cover the period before the franchise was granted, *i.e.* before February 24, 1948. x x x[16]

Actually, the State has no reason to decry the taxation of NAPOCOR's properties, as and by way of real property taxes. Real property taxes, after all, form part and parcel of the financing apparatus of the Government in development and nation-building, particularly in the local government level, Thus:

SEC. 86. *Distribution of proceeds.* — (a) The proceeds of the real property tax, except as otherwise provided in this Code, shall accrue to the province, city or municipality where the property subject

[16] *Commissioner of Internal Revenue v. Lingayen Gulf Electric Power Co. Inc.*, No. L-23771, August 4, 1988, 164 SCRA 27.

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to the tax is situated and shall be applied by the respective local government unit for its own use and benefit.

(b) Barrio shares in real property tax collections. — The annual shares of the barrios in real property tax collections shall be as follows:

(1) Five per cent of the real property tax collections of the province and another five percent of the collections of the municipality shall accrue to the barrio where the property subject to the tax is situated.

(2) In the case of the city, ten per cent of the collections of the tax shall likewise accrue to the barrio where the property is situated.

Thirty per cent of the barrio shares herein referred to may be spent for salaries or per diems of the barrio officials and other administrative expenses, while the remaining seventy per cent shall be utilized for development projects approved by the Secretary of Local Government and Community Development or by such committee created, or representatives designated, by him.

SEC. 87. *Application of proceeds.* — (a) The proceeds of the real property tax pertaining to the city and to the municipality shall accrue entirely to their respective general funds. In the case of the province, one-fourth thereof shall accrue to its road and bridge fund and the remaining three-fourths, to its general fund.

(b) The entire proceeds of the additional one per cent real property tax levied for the Special Education Fund created under R.A. No. 5447 collected in the province or city on real property situated in their respective territorial jurisdictions shall be distributed as follows:

(1) Collections in the provinces: Fifty per cent shall accrue to the municipality where the property subject to the tax is situated; twenty per cent shall accrue to the province; and thirty per cent shall be remitted to the Treasurer of the Philippines to be expended exclusively for stabilizing the Special Education Fund in municipalities, cities and provinces in accordance with the provisions of Section seven of R.A. No. 5447.

(2) Collections in the cities: Sixty percent shall be retained by the city; and forty per cent shall be remitted to the Treasurer of the Philippines to be expended exclusively for stabilizing the special education fund in municipalities, cities and provinces as provided under Section 7 of R.A. No. 5447.

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However, any increase in the shares of provinces, cities and municipalities from said additional tax accruing to their respective local school boards commencing with fiscal year 1973-74 over what has been actually realized during the fiscal year 1971-72 which, for purposes of this Code, shall remain as the based year, shall be divided equally between the general fund and the special education fund of the local government units concerned. The Secretary of Finance may, however, at his discretion, increase to not more than seventy-five per cent the amount that shall accrue annually to the local general fund.

(c) The proceeds of all delinquent taxes and penalties, as well as the income realized from the use, lease or other disposition of real property acquired by the province or city at a public auction in accordance with the provisions of this Code, and the proceeds of the sale of the delinquent real property or of the redemption thereof, shall accrue to the province, city or municipality in the same manner and proportion as if the tax or taxes had been paid in regular course.

(d) The proceeds of the additional real property tax on idle private lands shall accrue to the respective general funds of the province, city and municipality where the land subject to the tax is situated.[17]

To all intents and purposes, real property taxes are funds taken by the State with one hand and given to the other. In no measure can the Government be said to have lost anything.

As a rule finally, claims of tax exemption are construed strongly against the claimant.[18] They must also be shown to exist clearly and categorically, and supported by clear legal provisions.[19]

Taxes are the lifeblood of the nation.[20] Their primary purpose is to generate funds for the State to finance the needs of the citizenry and to advance the common weal.

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[17] Pres. Decree No. 464, Secs. 86, 87.

[18] *Commissioner of Internal Revenue v. Guerrero*, No. L-20942, September 22, 1967, 21 SCRA 180.

[19] *Supra.*

[20] *Commissioner of Internal Revenue v. Pineda*, No. L-22734, September 15, 1967, 21 SCRA 105.

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WHEREFORE, the petition is DENIED. No costs. The auction sale of the petitioner's properties to answer for real estate taxes accumulated between June 11, 1984 through March 10, 1987 is hereby declared valid.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Padilla, Bidin, Cortes, and *Medialdea, JJ.*, concur.

Feliciano, J., concurs in the result.

Gancayco and *Griño-Aquino, JJ.*,on leave.

Regalado, J., took no part; related to respondents' counsel.

SECOND DIVISION

[G.R. Nos. 84913-15. June 5, 1990]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PAULINO AQUINO AND ALEJANDRO AQUINO,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; RAPE; ELEMENT OF CARNAL KNOWLEDGE; PRESENT IN CASE AT BAR. — As can be gleaned from the records of the case, the trial court was morally convinced and unequivocably stated without doubt, "that indeed Alejandro and Paulino Aquino did really had sexual congress with Liza on the dates specified in the three (3) informations. Such fact is confirmed by the healed laceration in Liza's hymen at 6:00 o'clock position, and the fact that the vulva can admit two fingers, a circumstance strongly indicating that she had sexual intercourse more than once."