Library

VARIED SERVICES, INC.
Petitioner,

- versus - C.T.A. CASE NO. 3214

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.
x - - - - - - - - - - - - - x

1/7/83

D E C I S I O N

The case involves an assessment for deficiency franchise tax in the total amount of ₱14,036.09 inclusive of surcharge for the period May, 1972 to December 31, 1976 against petitioner.

By virtue of R.A. No. 4636 approved on June 19, 1965, petitioner corporation was granted a franchise to conduct a messenger and delivery service for packages and/or oral or written messages for a period of twenty-five years (Sec. 1) subject to the taxes imposed by the Internal Revenue Code and an additional annual tax at the rate of one percent on its net profit (Sec. 3).

On July 9, 1973 Presidential Decree No. 240 was promulgated authorizing the Postmaster General to supervise, regulate and control the operation of private express and/or messenger delivery service firms and to issue, grant, extend, suspend or cancel franchises or permits for such firms. Further providing, among others, that "All express and/or messenger delivery service firms now operating under any franchise or other authority granted either by the former Congress of the Philippines or the defunct Public Service Commission or any government office, shall, within thirty (30) days from the date of approval of this Decree, secure the necessary 'Authority to Operate an Express and/or Messenger Delivery Service' from the Postmaster General otherwise their present franchises and/or authority to operate such service shall be considered cancelled and of no effect after the lapse of said thirty days." (Sec. 2).

Accordingly on August 7, 1973 petitioner sought the necessary permit or authority. The Postmaster General in a letter dated August 20, 1973, advised, "pending issuance by this Office of your 'Authority to Operate Private Express and Messenger Delivery Service' your franchise to conduct messenger and delivery service under Republic Act No. 4636 is hereby extended for a period of ninety (90) days commencing August 9, 1973." Petitioner would consider this extension a new ball game so to speak reducing its franchise to an ordinary contractual duty. Petitioner thus opted for the payment of the 3% contractor's tax under Section 191 of the Tax Code instead of the 5% franchise tax (Sec. 259, ibid.) prescribed by the terms of the grant under RA No. 4636.

As must be expected the Commission on Audit's report of examination of petitioner's books of account dated November 29, 1977 by authority of Commonwealth Act No. 325 which transferred the audit of the books and accounts of public services from the Public Service Commission to the General Auditing Office (now the Commission on Audit) disclosed that petitioner realized taxable gross receipts of ₱674,408.00 instead of a declared amount of ₱482,565.79 in the returns. Computed at the rate of 5% in accordance with Section 259 of the Tax Code by the terms in RA No. 4636, the franchise tax due is ₱33,720.39. Petitioner paid only the amount of ₱22,531.53. Accordingly, the respondent Commissioner of Internal Revenue furnished of such findings assessed petitioner the amount of ₱14,036.09 representing deficiency franchise tax inclusive of surcharge for the period covered - May, 1972 to December 31, 1976.

On September 24, 1979, petitioner protested the assessment alleging essentially of the change of business status as well of tax burden brought about by the promulgation of PD 240. In a letter dated January 16, 1981 respondent denied the protest and reiterated the deficiency assessment of ₱14,036.09. Thus, this petition.

The record raises the basic issues: 1) That the Commission on Audit had no authority to conduct an audit and examination of the books of accounts of a private corporation, and 2) That the franchise under RA No. 4636 of June 19, 1965 was repealed by PD No. 240 on July 9, 1973.

It is contended as reasons of appeal that the Commission on Audit exceeded its authority in auditing and examining the books of accounts of petitioner, a private corporation, and not among the "public services" contemplated much less enumerated under Section 13(b) of CA No. 146 (Public Service Act). Moreover, PD No. 240 modified its franchise under RA No. 4636 to that of a mere permittee or a contractor of the Bureau of Posts.

In faulting the <u>first</u>, respondent maintains that "while it is not denied, as contended, that messengerial firms, such as petitioner corporation, are not among those enumerated in the statutory definition, such non-inclusion does not support petitioner's contention that the Commission on Audit has no authority to conduct audit and examination of its books of accounts. At the time CA 146 was passed in 1936, there were no messengerial firms allowed to operate because the business of carrying letters/mails was a government monopoly as embodied in Article IV, Section 1974 of the Revised Administrative Code, quoted, 'The business of carrying letter-mails is a Government monopoly and no person shall engage therein except as hereinafter provided; xx'". As to the second question, P.D. No. 240 "does not in any manner revoke the franchise or the permit to operate, except when the firm fails to secure the required authority from the Postmaster General. In other words, revocation of a franchise would be the effect of failure to secure the permit. Where the franchise holder secures the required authority, no revocation of the franchise follows. The franchise continues to be in force."

What we have in the case before us is simply a private corporation under a legislative franchise chartered to perform some special function that of a "carriage of letter-mails" which used to be a "Government monopoly and no person shall engage therein except as hereinafter provided" (Sec. 1974, Revised Administrative Code). It is in this respect we think that petitioner corporation comes in that class of "private corporations that owe the duty of exercising their corporate powers for the interest of the public that they differ from ordinary private corporations." (Nebbia v. State of New York, 291 US 502). Such "a business carried under authority of a grant of privilege which either expressly or impliedly imposes the affirmative duty of rendering a public service demanded by any member of the public is clothed with public interest justifying some public regulations." (Wolf Packing Co. v. Ct. of Ind. Rel., 262 US 522). We cannot therefore avoid the obvious that petitioner corporation is a public service "by reason of the nature and extent of its operation and effect upon the welfare of the public the duty of regarding the public interest is thrust upon it". (13 Am. Jur. 173). Expedient piffle indeed if the kind of undertaking cannot validly be infused cognizance as a "public service" within the legal contemplation unless petitioner is unwilling to take the responsibilities or simply unable to discern what they are.

We now come to the proposition that "public service" could be none of petitioner's business by reason of its exclusion in Section 13(b) of CA 146 (Public Service Act), which reads:

> "The term 'public service' includes every person that now or hereafter may own, operate, manage or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, sub-way motor vehicle, either for freight or passenger, or both with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries, and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine rail-way, marine repair shop, wharf or deck, ice plant, ice refrigeration plant, canal, irrigation system, gas electric light, heat and power, water supply and power, petroleum, sewerage system, wire or wireless communications system, wire or wireless broadcasting stations and other similar public services; x x" (Underscored are amendments introduced by RA No. 2677 approved June 18, 1960)

By stressing upon the restrictive application of the above-enumerated "public service" entities, petitioner overlooks, as earlier pointed out, the nature and purpose which its franchise was granted and the public interest it must serve. Let alone the reason interposed by the respondent that "such non-inclusion does not support petitioner's contention that the Commission on Audit has no authority to conduct audit and examination of its books of accounts. At the time CA 146 was passed in 1936, there was no messengerial firms allowed to operate because the business of carrying letters/mails was a government monopoly", we think the amendment "and other similar public services" engrafted in the language of Section 13(b) *supra*, by RA No. 2677 is broader both in purpose and effect as to comprehend the "carriage of letters/mails", a business of a public nature and meets a public necessity for which the state may make provision (New Orleans Gas-light Co. v. Louisiana Light Mfg. Co. 115 US 650, 6 S. Ct. 252, 29 US (L.ed.) 576), under such conditions and regulation as may be imposed in the public interest and for the public security (California v. California Pac. R. Co., 127 US 1, 8 S. Ct. 1073, 32 US (L. ed.) 150; Ashley v. Ryan 153 US 456, 14 S. Ct. 865, 38 US (L. ed.) 773). For this purpose, petitioner cannot pry itself loose from the Commission on Audit's authority of conducting an "audit and examination of the books, records and accounts of all public services" (Sec. 1, CA 325).

We likewise find illogic the impression precipitately broached by the petitioner that PD 240 particularly Section 2 thereof varied the conditions if not repealed its franchise under RA 4636 as thus reduced its business into a mere contractor vis-a-vis a franchise holder. The provision provides:

> "Sec. 2. All express and/or messenger delivery service firms now operating under any franchise or other authority granted either by the former Congress of the Philippines or the defunct Public Service Commission or any government office, shall, within thirty (30) days from date of approval of this Decree, secure the necessary 'Authority to Operate an Express and/or Messenger Delivery Service' from the Postmaster General otherwise their present franchises and/or authority to operate such service shall be considered cancelled and of no effect after the lapse of said thirty days."

But there is nothing cryptic nor abstract in the language of the said provision as would pose an ambiguity in its application. To our minds it but serves as a linchpin as to ensure the continued operation of existing franchises as the petitioner in the case at bar provided the necessary authority must be secured from the Postmaster General within the time constraint. The letter of the Postmaster dated August 20, 1973 to the petitioner furnishes the best means of its own exposition, thus, "pending the issuance by this office of your 'Authority to Operate Private Express and/or Messenger Delivery

Service' your franchise to conduct messenger and delivery service under RA 4636 is hereby extended for a period of ninety (90) days commencing August 9, 1973", which tenor of an extension has been rolled over many a time to date. The basic fact subsists that the import and force of the franchise has been left precisely as was then contemplated to the extent that the franchise tax imposed thereby under Section 259 of the Tax Code can validly be located, as thus, "all the duties and conditions prescribed in or inferred from the grant will be performed and discharged." (State v. Real Estate Bank, 5 Ark. 595, 41 Am. Dec. 109; Coy v. Indianapolis Gas Co., 146 Ind. 655, 46 NE 17, 36 L.R.A. 535). We do not think that there was an attempt to undo with the terms and conditions, privileges and obligations upon which the existing franchise in the case at bar may be held and exercised.

So it appears and we so hold that the respondent Commissioner of Internal Revenue fared consistent with the mandate of the law in assessing the petitioner for the deficiency franchise tax inclusive of surcharge for the period of May, 1972 to December 31, 1976.

WHEREFORE, the petition is hereby dismissed with costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, January 7, 1983.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge