

45 Phil. 344

[ G.R. No. 21042. October 25, 1923 ]

**DALMACIO COSTAS, AS PRESIDENT OF THE ASSOCIATION OF PHILIPPINE ENGINEERS, PETITIONER, VS. VICENTE ALDANESE, AS INSULAR COLLECTOR OF CUSTOMS, RESPONDENT.**

**D E C I S I O N**

**STREET, J.:**

This is an original petition for the writ of mandamus directed to this court by Dalmacio Costas, as president of the Association of Philippine Engineers, against Vicente Aldanese, as Insular Collector of Customs. Upon the filing of the complaint in this court an order was entered requiring the defendant to enter appearance and answer or demur to the petition. In obedience to this requirement the Attorney-General entered an appearance for the respondent and interposed a demurrer, and the cause is now before us for the resolution of the question presented upon petition and demurrer.

It appears from the complaint that there is a motor boat named the *Ramago* of Philippine register and pertaining to the port of Manila which is being used in these waters for the making of round trips requiring more than forty-eight hours to the voyage in the course of which it travels at night. It further appears that said boat is propelled by internal combustion engines using petroleum, with a total propulsive force of three hundred and fifty horse-power. The petitioner alleges that this motor boat is a "steamer" within the intendment of subsection (j) of section 1203 of the Administrative Code, as held by this court in *Addenbrooke vs. Natividad* (43 Phil., 1014), and that by the express provision of law it is required to carry three engineers, namely, one second engineer, one third engineer and one fourth engineer, as expressed in the provision cited. The petitioner, however, alleges that the boat referred to is being run without the proper complement of engineers in that it carries only two

engineers, to wit, a first engineer and a second engineer, only one of whom has a license and that as third engineer.

The petitioner alleges that as a citizen of the Philippine Islands, as a naval engineer himself, and as president of the Association of Philippine Engineers, he is desirous of safeguarding the rights of engineers who have license as such; and he alleges that he has protested, though ineffectually, to the Insular Collector of Customs against the insufficiency in the complement of the engineers upon the *Ramago*. The prayer to the petition is that the respondent Insular Collector be ordered to require the owner, outfitter, consignee and captain of said boat to employ thereon the requisite number of qualified engineers.

We are of the opinion that the situation is not one that requires, or would justify, judicial interference; and the writ must be denied. It is obvious, upon the facts stated in the petition, that the duty the enforcement of which is here sought is of a public nature,—one resting on the respondent Insular Collector in the exercise of the ordinary functions of his office. Again, the petitioner does not have any special or individual interest in the subject-matter of the action which would enable us to say that he is entitled to the writ as a matter of right. His interest is only that of a citizen at large, coupled with the fact that in his representative capacity as president of the Association of Engineers, it is his duty to safeguard the interests of the members of his association.

Now, the Supreme Court of the United States has repeatedly held that where the duty in question is of a public nature and the application for the writ of mandamus is presented by a stranger, or person having no special or individual interest to protect, the granting or refusing of the writ is discretionary with the court. (*In re Rice*, 155 U. S., 396; 39 L. ed., 198.)

In *Union Pacific Railroad Co. vs. Hall and Morse* (91 U. S., 343, 356), the same court said: "There is, we think, a decided preponderance of American authority in favor of the doctrine that private persons may move for a *mandamus* to enforce a public duty, not due to the Government as such, without the intervention of the government law officer." But proceeding further in the same paragraph the same court explicitly stated that in such cases the

granting of the writ is discretionary.

Upon the point of the propriety of granting the writ in the instant case, we are of the opinion that the public interest would not be thereby subserved in a degree commensurate with the inconvenience that would result. If we were to countenance this action the decision would be a precedent for judicial interference with the most minute details of the complicated service rendered by the Bureau of Customs and other similar administrative branches of the Government. If one public-spirited citizen can sue, so may others; and the decision in one case will not constitute a bar to another. We think it better to leave the responsibility for securing the fulfillment of duties like that now under consideration to the administrative and executive superiors of the respondent. The petitioner sues in the right of the public, but we see no public good to be attained by judicial interference.

A careful examination of the reports of the Supreme Court of the United States is convincing to the effect that the granting of the writ of mandamus in a situation like that now before us is unwarranted; and it will be sufficient in this connection to refer to the following additional cases on the subject, and particularly to the annotations in Rose's Notes to these cases: *Marbury vs. Madison*, 1 Cr., 137; 2 L. ed., 60; *Kendall vs. United States*, 12 Pet., 524; 9 L. ed., 1181; *Decatur vs. Paulding*, 14 Pet., 497; 10 L. ed., 559; *United States vs. Black*, 128 U. S., 40; 32 L. ed., 354.

We note the fact that there appear to be certain class of cases in which, for one reason or another, the courts are more disposed to entertain the proceeding and grant relief than in others, as in election matters and in controversies arising under the tax laws. Reasons for this attitude on the part of the courts will readily suggest themselves in particular cases. But in the present case the act to be controlled is one within the exercise of the ordinary administrative faculties of the respondent officer, and no consideration occurs to us which demonstrates the necessity or propriety of controlling the respondent in the manner desired.

In conclusion we wish to say that we do not consider our ruling in this case at all inconsistent with the doctrine stated in *Severino vs. Governor-General and Provincial Board of Occidental Negros* (16 Phil., 366); but

rather the present decision is to be considered a qualification of the Severino case upon grounds consistent with its *ratio decidendi*. It was broadly stated in that case that when the writ of mandamus is sought to enforce a public duty of a government official, it is not necessary that the petitioner for the writ should demonstrate in himself the special personal interest which would be necessary if the action were brought to enforce or protect a private right. But it will be noted that even in that case the writ was denied upon another ground, and it was not there necessary for the court to consider whether the application for the writ might properly have been denied in the exercise of the discretionary powers of the court. The question of the discretion of the court in dealing with cases of this kind was therefore not involved in that decision.

The demurrer must accordingly be sustained, and unless within five days after notification hereof the petitioner shall so amend his petition as to show a sufficient cause of action, an order absolute will be entered, dismissing the same, with costs. So ordered.

*Avanceña, Villamor, and Johns,*  
*JJ., concur.*

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*CONCURRING*

**JOHNSON, J.:**

I agree with the conclusion  
only.

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*DISSENTING*

**MALCOLM, J.:**

Dalmacio Costas, the petitioner in this case, comes into court as a citizen of the Philippine Islands, as a naval engineer, and as president of the Association of Naval and Land Engineers of the Philippine Islands, to ask us to grant his petition in mandamus. Vicente Aldanese, the Insular Collector of Customs, demurs to the complaint and asks that it be dismissed. The majority hold with the respondent, so this dissent.

The Administrative Code, in section 1203, provides, in part, that “Every vessel registered in the Philippine Islands shall have the following officers: (j) \* \* \* From two hundred and fifty-one horsepower to three hundred and fifty, one second, one third, and one fourth engineers.” The Code makes it the duty of the officers of the Bureau of Customs including, of course, the Insular Collector of Customs, to have general supervision, control and regulation of the coastwise trade, the regulation and licensing of vessels engaged in the coastwise trade, and the enforcement of the customs laws and other laws of the United States or Philippine Islands relating to commerce and navigation. (Administrative Code, sec. 1139.)

The motor boat *Ramago* admittedly does not comply with the all-inclusive and mandatory provisions of the law. And, as indicated in the decision of this court in the case of *Addenbrooke vs. Natividad* ([1921], 43 Phil, 1014), the officers of the Bureau of Customs have heretofore required all vessels engaged in the coastwise trade to conform to the law relating to the complement of the vessel’s personnel, and such orders have been confirmed by this court. As was well said in the course of the decision cited, per Street, *J.*, “the requirements of our own law with reference to the necessary complement of officers are directly intended to promote the general safety in the navigation of the seas. \* \* \* The conclusion to which we arrive is that there is no sufficient reason for excepting the *Cecilia* from the requirements of subsection (e) of section 1203 of the Administrative Code.”

But the Attorney-General says that the petitioner is not a proper party to these proceedings. This contention is agreed to by the court notwithstanding, as before said, the petitioner has standing as a private citizen, as a naval engineer, and as the chief official of the Association of Naval and Land Engineers of the Philippine Islands. The attention of the Attorney-General and

of the majority is called to section 222 of the Code of Civil Procedure providing, in part, that when the complaint in an action for mandamus alleges that an inferior tribunal or person unlawfully neglects the performance of an act which the law especially enjoins as a duty resulting from an office, trust, or station, and the court on the trial finds the allegations of the complaint to be true, if there is no plain, speedy, and adequate remedy, the court may render a judgment granting a peremptory order against the defendant to do the act required to be done to protect the rights of the plaintiff. The only doubtful phrase in the law is the latter portion and even as to that, it is respectfully submitted that the plaintiff, as a citizen and as one specially qualified in marine matters, has the right, and even the duty, to see that the Collector of Customs compels compliance with the law in order that the public interests may be advanced.

In furtherance of this idea, we would emphasize the general rule announced by this court, after due deliberation, in the leading case of *Severino vs. Governor-General and Provincial Board of Occidental Negros* ([1910], 16 Phil., 366). According to the court, an individual citizen is entitled to institute proceedings in mandamus against public officers to compel the performance of a public duty although such citizen shows no specific or peculiar interest in himself different from that shared by all citizens of the Philippine Islands. In corroboration of the principle, the court went to the trouble of citing many authorities, including the decision of the United States Supreme Court in the case of *Union Pacific Railroad Co. vs. Hall and Morse* (91 U. S., 343), where it was said: "There is, we think, a decided preponderance of American authority in favor of the doctrine that private persons may move for a *mandamus* to enforce a public duty, not due to the Government as such, without the intervention of the government law officer."

The facts being admitted by the demurrer, the law being clear and mandatory, and the petitioner being a proper party to the proceedings, mandamus should issue. It should be the purpose of the courts to encourage private individuals to take an interest in the enforcement of the law. Particularly praiseworthy is an effort to see that life and property while on the high seas are properly safeguarded.

*DISSENTING*

**ROMUALDEZ, J.:**

I believe that in cases like this, this court must make use of its discretion by granting the petition and overruling, therefore, the demurrer interposed.

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