

EMILIO M. LUMONTAD, JR., PETITIONER, VS. PROVINCIAL GOVERNOR, PROVINCIAL BOARD, MUNICIPAL VICE-MAYOR SAMSON CERNA, MUNICIPAL COUNCILORS LOURDES LACSON-GORRES, CIRILLO QUISIDO, F...

G.R. No. L-17568. May 30, 1963

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal, on a question purely of law, from a decision of the Court of First Instance of Cebu.

Petitioner Emilio M. Lumontad, Jr., is the municipal mayor of Pinamungajan, province of Cebu. On June 27, 1960, the vice- mayor and seven (7) councilors of Pinamungajan filed with the Provincial Governor and the Provincial Board of Cebu a complaint charging Lumontad with having caused the highway special fund apportioned to said municipality, under Republic Act No. 917, in the amount of. P7,276.42, to be disbursed in connection with a supposed program of work, dated March 25, 1960, without consulting the Municipal Council of Pinamungajan, in violation of Section 12 of said Act, which provides that the municipal council concerned shall formulated the aforementioned program of work,* * *;" with having authorized the expenditure and disbursement of said fund for purposes not mentioned in said unauthorized program of work; and with having used part of said fund "in demolishing and rebuilding a public edifice and" in now using "the same as his own residential house, without authority of law," thereby committing "the criminal act of technical malversation of public funds with grave abuse of authority," and praying, accordingly, that "the matter be looked into;" that Lumontad "be dealt with administratively and/or judicially;" that he be suspended immediately; and that he be ordered to vacate the government house where he now resides without authority."

On July 1, 1960, the Provincial Governor issued an order quoting the main allegations of said complaint and requiring Lumontad to show cause in writing, within three (3) days-which was later extended for five (5) days-"why no administrative charges for oppression, neglect of duty, corruption, grave abuse of authority and misconduct in or maladministration of office, based on the aforequoted allegations, should be filed against him "with the Provincial Board of Cebu" and why he "should not be suspended from office pending final * * * action * * * on the said charges, pursuant to section 2188 et seq. of the Revised Administrative Code."

Soon thereafter or on July 18, 1960, Lumontad instituted in the Court of First Instance of Cebu, the present action, for prohibition with preliminary injunction, against the Provincial Governor and the Provincial Board of Cebu, as well as against the vice-mayor and the seven (7) councilors of Pinamungajan who filed the aforesaid administrative complaint. Lumontad alleged in his petition that respondents belong to a political faction opposite to that of which he is a member; that the aforementioned complaint is " inspired by petty political squabbles and jealousies against the herein petitioner;" that " even granting without admitting as true the alleged facts stated" in said order of the Provincial Governor of Cebu "do not constitute a violation of said provisions of the Revised Administrative Code, as amended, as to call for the exercise of the disciplinary authority of the respondents

Provincial Governor and Provincial Board"; that these provincial officials have no jurisdiction to investigate the charges set forth in said complaint "because the provisions of Section 12 of Republic Act No. 917, supposedly violated by petitioner, provides for the proper remedy and procedure in the event of misapplication of the national funds mentioned therein" and provide no penal sanction for violations thereof; and that petitioner is not entrusted with the custody of the aforementioned highway special fund, and, hence, cannot be guilty of malversation thereof, even though technically.

Lumontad prayed, therefore, that, upon the filing of a bond in an amount to be fixed by the Court, a writ of preliminary injunction issue "restraining the Provincial Governor from proceeding with the threatened filing of an administrative complaint" against said petitioner, and "the Provincial Board from proceeding with the investigation of such complaint, if one is already filed," and that, after due notice and hearing, "a decision be rendered making permanent the writ of preliminary injunction thus "issued, with costs against respondents" vice-mayor and municipal councilors.

Respondents seasonably filed their answer, admitting some allegations of the petition, denying other allegations thereof, and alleging, by way of defense, that the facts set forth in the administrative complaint adverted to above come within the purview of section 2188 of the Revised Administrative Code and are proper subject for the exercise of the supervisory and disciplinary authority of respondents Provincial Governor and Provincial Board of Cebu.

After appropriate proceedings thereafter, the Court of First Instance of Cebu rendered a decision sustaining respondent's contention and dismissing the petition, without costs. Hence, this appeal by the petitioner, who reiterates his theory in the lower court, namely, that irregularities committed in the disposal of the highway special fund are within the exclusive administrative authority of the Secretary of Public Works and Communications and that, accordingly, the Provincial Governor and the Provincial Board have no jurisdiction to entertain the administrative complaint in question. This pretense is based upon section 12 of Republic Act No. 917 reading:

"* * * Subject to such rules and regulations as the Secretary of Public Works and Communications may prescribe, the municipal council shall designate the municipal roads on which the share of the municipalities from the Highway Special Fund apportioned under section nine, paragraph (a) of this Act shall be expended. The municipal council concerned shall formulate a program of work, inventory of municipal roads on which the money is to be expended, and such work progress reports to show that the money is being well spent and used for no other purpose than the maintenance of existing and unabandoned roads or in the case of island and interior municipalities where there are no existing roads, on existing trails the location of which has been previously approved by him. The Secretary shall have the authority to withhold any aid for municipal roads if he finds the same being misused or wasted."

We find no merit in petitioner's contention. This section prescribes the conditions under which the highway special fund apportioned to each municipality shall be expended. It goes no further. It does not purport to regulate the procedure and conditions under which those who shall cause the fund to be expended in violation thereof may be dealt with. It does establish a means by which to curb the use of said fund in a manner that would defeat its purpose-even though the formalities therein set forth may have been complied with-by providing that "the Secretary (of Public Works and Communications), shall have the authority to withhold any aid for municipal roads, if he find the same being misused or wasted." Nothing therein contained is, however, inconsistent with the supervisory authority of the provincial governor over municipal officers, under Section 2188 of the Revised Administrative Code, pursuant to which:

"* * * The provincial governor shall receive and investigate complaints made under oath against municipal

officers for neglect of duty, oppression, corruption or other form of maladministration of office, and conviction by final judgment of any crime involving moral turpitude. For minor delinquency, he may reprimand the offender; and if a more severe punishment seems to be desirable, he shall submit written charges touching the matter to the provincial board, furnishing a copy of such charges to the accused either personally or by registered mail, and he may in such case suspend the officer (not being the municipal treasurer) pending action by the board, if in his opinion the charge be one affecting the official integrity of the officer in question. Where suspension is thus effected the written charges against the officer shall be filed with the board within five days."

Without passing upon the merits of the charges contained in the complaint filed by the vice mayor and seven (7) councilors of Pinamungajan, the lower court held that said charges are within the purview of the terms "neglect of duty, oppression, corruption or other forms of mal-administration of office," found in said section 2188. Indeed, under section 12 of Republic Act No. 917, the municipal council, not the municipal mayor, "shall designate the municipal roads on which the share of the municipality from the highway special fund * * * shall be expended" and "shall formulate a program of work, inventory of municipal roads on which the money is to be expended, and such work progress reports to show that the money is well spent and used for no other purpose than the maintenance of existing and unabandoned roads * * *. A mayor is "the chief executive officer of the municipal government" and, as such, it is his explicit duty, under section 2194 of the Revised Administrative Code, "to see that the laws * * * are faithfully executed" in the municipality. Hence, it was petitioner's duty, as municipal mayor of Pinamungajan to see to it that the municipal council thereof exercised, or had an opportunity to exercise its authority, under section 12 of Republic Act No. 9.17, to designate the municipal roads on which the share of the municipality from the highway special fund would be expended and to formulate the program of work therefor. Instead, petitioner herein, according to the administrative complaint against him, deprived the council of said opportunity, and caused the fund to be expended as he deemed to fit. If the allegations of said complaint were true, petitioner might be guilty of "neglect of duty" or " maladministration of office," falling under said Section 2188 of the Revised Administrative Code.

Moreover, said complaint likewise charges him with having caused public funds to be expended for the demolition and reconstruction of a public building and with having used the same as his residential house without legal authority therefor, as well as with having authorized the expenditure of public funds for "camineros" who are working not as such, but in his office. These allegations, if true, might, also, constitute "corruption or other form of maladministration of office" under said section 2188.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against petitioner-appellant. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Reyes J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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