

**ANDRES FRANCIA, AS AUDITOR FOR THE CITY OF MANILA,
PETITIONER, VS. POTENCIANO PECSON, JUDGE OF THE COURT OF
FIRST INSTANCE OF MANILA, AND ABELARDO SUBIDO, CHIEF,
DIVISION OF INV...**

G.R. No. L-3779. July 25, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

In the early part of February, 1950, an attempt was made to defraud the City of Manila of P5,300.75 through falsification of official documents. A fictitious voucher covering withdrawal of a supposed cash bond deposit in the said amount was presented to the assistant city treasurer, who issued the corresponding check against the Philippine National Bank, payable to one Jose D. Garcia. City Auditor Andres Francia countersigned the check after the papers had passed through and had been initialed by his subordinates. It turned out that there was no such cash bond deposit and that the signatures of Chief Deputy Sheriff J. Garcia and Sheriff Macario M. Ofilada on said voucher were forged. Fortunately, the forgeries were discovered and the check was cancelled before it could be delivered to the payee.

On March 17, 1950, Abelardo Subido, as Chief of the Division of Investigation of the Office of the Mayor, wrote to City Auditor Andres Francia as follows:

"Mr. Andres Francia

"City Auditor

"City Hall, Manila

"Sir:

"This has reference to the fraudulent issuance of PNB check No. 1047282, dated February 7, 1950, in favor of Jose D. Garcia, in the amount of P5,300.75 as a refund of indemnity bond in the alleged civil case No. 10546 filed with the Manila Court of First Instance.

"It appears that the voucher allegedly prepared in the Office of the Sheriff, City of Manila, was a forgery and the same was able to pass approval in the Office of the City Treasurer as well as in the Office of the City Auditor. I have compared your signature appearing in the above-mentioned check with your signature on file in this office and I have found the same to be your genuine signature.

"Under the facts of the case, explanation is requested why no criminal action in connection with the case should be taken against you along with Mr. Jose L. Reyes, Assistant City Auditor, Mr. Aquilino Calixto, Assistant City Treasurer, Mr. Alfonso Concepcion, Administrative Officer of the Office of the City Treasurer, Mr. Lazaro Cruz, clerk in the Office of the City Treasurer, and John Doe, the unidentified person who presented the voucher in question for payment. "It is desired that your explanation be given within forty-eight (48) hours from your receipt hereof.

"By authority of the Mayor:

"Very respectfully,

(Sgd.) "ABELARDO SUBIDO"
Chief, Division of Investigation"

That peremptory demand for explanation was apparently ignored by the city auditor; for on March 20, 1950, Subido again wrote to Francia as follows:

"Mr. Andres Francia
"City Auditor
"City Hall, Manila

"Sir:

"In addition to my capacity as Chief of the Division of Investigation, Office of the Mayor, I have been appointed by the Secretary of Justice as Special Counsel for the City of Manila under the provisions of section 1686, Revised Administrative Code. Under the said appointment, I am authorized to institute criminal action against any City Government officer or employee should circumstances warrant such action.

"In view of the foregoing, it is requested that you comply with my letter dated March 17, 1950, and should you fail to submit your reply in writing within twenty-four hours from your receipt hereof I shall take it to mean that you have waived your right to explain your part in the fraudulent issuance of PNB Check No. 1047282 in favor of Jose D. Garcia, and I shall proceed with the necessary action in the premises which might include the filing of a criminal action against you.

"By authority of the Mayor:

"Very respectfully,

(Sgd.) "ABELARDO SUBIDO"
"Chief, Division of Investigation
and Special Counsel"

In the meantime, on March 29, the Auditor General instituted an administrative investigation of the city auditor by requiring the latter to show cause why no administrative action should be taken against him for gross negligence in the performance of duty. City Auditor Francia submitted his explanation to the Auditor General on April 1, claiming in effect that he acted with due diligence and in good faith in countersigning the check.

City Auditor Francia refused to recognize the authority of Subido to investigate him and ignored Subido's two letters above quoted.

Having thus failed to obtain the explanation demanded by him from Francia, Subido issued the following:

"SUBPOENA DUCES TECUM

"Mr. Andres Francia
"City Auditor
"City Hall, Manila

"To bring three vouchers for refund of indemnity bond submitted on or before February 19, 1950, wherein the initials of Jaime Bonto and Juan Callanta appear.

"Under and by virtue of the authority vested in me by section 1686 of the Revised Administrative Code, you are hereby commanded and required to appear at the Office of the Special Counsel and Chief, Division of Investigation, Office of the Mayor, City of Manila, Philippines, on the 1st day of April, 1950, at the hour of 9 a. m. of said day, then and there to give your evidence in a certain administrative and/or criminal investigation

to be held at that time and place, conducted by the undersigned Special Counsel.

"Hereof fail not at your peril.

"Witness my hand this 31st day of March, 1950.

(Sgd.) "ABELARDO SUBIDO
"Special Counsel and
Chief, Division of Investigation
Office of the Mayor"

Francia replied that the vouchers called for in the subpoena duces tecum were still in the hands of the city treasurer and that therefore he could not produce them. Thereupon Subido wrote to Francia the following intemperate and threatening letter:

"April 1, 1950
"Mr. Andres Francia
"City Auditor
"City Hall, Manila

"Sir:

"This refers to your letter of even date wherein you state that the vouchers required in my subpoena duces tecum are still in the hands of the City Treasurer and, therefore, cannot be brought by you. This statement is a dirty lie and I interpret it as a futile excuse on your part to disobey my subpoena.

"For your information, I had a previous talk with Atty. Graciano Candelaria of that Office and I requested him to locate accomplished vouchers for comparison of the initials of the clerks in your Office which initials were forged in the questioned documents in connection with the fraudulent issuance of the P5,300 check in favor of Jose D. Garcia. Atty. Candelaria informed me that the said sample vouchers were ready for inspection and he advised me to prepare the necessary letter of request. I told him that it was not necessary inasmuch as I have already issued a subpoena to you to bring the said documents so that I may interrogate you in connection therewith.

"In view of the foregoing considerations, I am giving you a second chance to appear in my office at 9 o'clock in the morning this coming Monday, April 3, 1950. The corresponding subpoena for this purpose is hereto attached. In the event that you choose to disobey this subpoena again, I shall be compelled to use my police power and have you picked up and brought to the Division of Investigation for the desired interrogation. (Italics ours.)

"By authority of the Mayor:

"Very respectfully,

(Sgd.) "ABELARDO SUBIDO
"Chief, Division of Investigation
and Special Counsel"

Thereafter City Auditor Francia applied in the court of first instance for a writ of prohibition and preliminary injunction against Subido to enjoin the latter "from proceeding with the administrative investigation of petitioner, which is clearly beyond his jurisdiction and authority, and for such other remedy as he may be entitled to in the premises," alleging that Subido, as chief of the division of investigation, office of the mayor, or as special counsel, or as both, had no authority under section 11 (k) of the Revised Charter of the City of Manila, or under any other provision of law, to conduct an administrative investigation of petitioner, as auditor of the City of Manila. Judge

Potenciano Pecson denied the petition for preliminary injunction, thereby giving the green light to Subido to proceed with the investigation of the petitioner. Thereupon the petitioner filed the present petition for certiorari and mandamus with preliminary injunction in this court. The Auditor General, with leave of this court, intervened alleging that he "is the superior officer of the petitioner and, as such, is already conducting the administrative investigation of petitioner for the same act subject of respondent Abelardo Subido's investigation; that aside from the duplication of investigation that would result if respondent Abelardo Subido were to be permitted to conduct his own, the Constitution and the laws vest in intervenor exclusive direction and control over the personnel of the General Auditing Office, among whom is petitioner City Auditor for Manila." On April 19, 1950, this court issued a writ of preliminary injunction "restraining respondent Abelardo Subido from enforcing subpoena issued against the petitioner in connection with the administrative investigation said respondent is conducting."

It is deplorable that the valuable time of the parties and of the courts, belonging to the Government, had to be spent in litigation of this nature, which could have been avoided with a little self-restraint and sobriety, let alone courtesy, on the part of respondent Subido. There was no need or justification for the latter to humiliate the city auditor by demanding from him an explanation within 48 hours why criminal action should not be taken against him, considering that the city auditor is a responsible official of a higher category, who in the performance of his duties is responsible directly to the Auditor General and not to the city mayor. If the said respondent had the power to file a criminal action against the city auditor and had proofs against him,[1] he should have filed it without subjecting the city auditor to unnecessary humiliation. The city fiscal himself, who under the law had the sole power to prosecute, could not have written such peremptory demands for explanation as Subido wrote to the city auditor.

But did the respondent Subido have legal authority to conduct a criminal or administrative investigation of the city auditor or of any officer or employee of the city? Is he empowered by law to issue subpoenas and to administer oaths? To answer these questions it is necessary first to determine Subido's official and legal status.

Republic Act No. 409, known as the Revised Charter of the City of Manila, provides in its Article II, sections 9-12, for the offices of the mayor, the vice-mayor and a secretary to the mayor. There is no provision for the office or division of investigation. Section 10 provides that the vice-mayor shall perform the duties of the mayor in the absence or other temporary incapacity of the latter and "shall perform such other duties as may be assigned to him by the mayor or prescribed by law or ordinance." Section 12 provides among other things that the secretary to the mayor "shall also perform such duties as are required of the heads of departments of the city government by section twenty-one, and for the purposes of said section, the secretary will be considered the head of a department." Section 25 provides: "The Auditor General shall receive and audit all accounts of the city, in accordance with the provisions of law relating to government accounts and accounting. The City Auditor shall be paid from the funds of the city at the rate of eight thousand pesos per annum." Section 38, creating the law department, provides among other things: "The law department shall consist of the city fiscal as head of the department with the rank of a district judge, an assistant city fiscal as assistant head, and thirty-six assistant fiscals, who shall discharge their duties under the general supervision of the Secretary of Justice. The fiscal of the city shall be the chief legal adviser of the city and all offices and departments thereof; * * * shall, whenever it is brought to his knowledge that any city officer or employee is guilty of neglect or misconduct in office, * * * investigate the same and report to the Mayor; * * * and shall prosecute and defend all civil actions related to or connected with any city office or interest. He shall also have charge of the prosecution of all crimes, misdemeanors, and violations of the city ordinances, in the court of first instance and the municipal courts of the city, and shall discharge all the duties in respect to the criminal prosecution enjoined by law upon provincial fiscals.

"The fiscal of the city shall cause to be investigated all charges of crimes, misdemeanors, and violations of ordinances and have the necessary informations or complaints prepared or made against the persons accused. He or any of his assistants may conduct such investigations by taking oral evidence of reputed witnesses, and for this purpose may issue subpoena, summon witnesses', to appear and testify under oath before him, and the attendance or evidence of an absent or recalcitrant witness may be enforced by application to the municipal court or the court of first instance. No witness summoned to testify under this section shall be under obligation to give any testimony tending to incriminate himself."

There is no provision in the Revised Charter of the City of Manila—and our attention has not been called to nor have we found any other statute—creating or authorizing the creation of a division of investigation in the office of the mayor. Our attention has not been called to any ordinance passed by the Municipal Board of the City of Manila, and we have found none, creating the position of chief, division of investigation, and prescribing his powers and duties. All that we have found is Ordinance No. 3209, entitled "An Ordinance appropriating funds for the necessary expenses of the government of the City of Manila for the fiscal year from July 1, 1948, to June 30, 1949, and for other purposes." This ordinance provides among other things, under the heading Office of the Mayor and subheading Investigation Division, Item 33: "One chief of division . . . P5,400.00."

We are not called upon here to determine the validity of said municipal ordinance in so far as it appropriates P5,400 to pay the salary of one chief of the division of investigation. What we are after is to determine the powers and duties vested in that office. The appropriation ordinance is silent as to that. Respondent Subido's appointment to that office is not in evidence before us. We can only assume that he was appointed by the mayor to the composition of chief, division of investigation, with compensation at the rate of P5,400 per annum, without specifying his powers and duties.

Assuming that the creation in an appropriation ordinance of a division of investigation in the office of the mayor is valid—a question which we do not decide now,—the mayor may delegate to the chief of that division such ministerial duties incumbent upon the mayor as he may wish to delegate. [2] But we are certain that the mayor cannot confer upon the respondent Subido as chief of said division any power which the Charter of the City of Manila expressly vests in some other specified officer. For instance, the mayor cannot divest the city fiscal of any portion of the powers and duties expressly vested by law in said officer and confer it on one of his subordinates. The point is that the respondent Subido cannot exercise the powers and prerogatives' expressly vested by law in the city fiscal.

We have seen that section 38 of the Revised Charter of the City of Manila expressly vests in the city fiscal the power and the duty to investigate "any city officer or employee" who may be guilty of neglect or misconduct in office. (And we note in this connection that the city auditor is not an officer or employee of the city but of the General Auditing Office, although, like the city fiscal's, his salary is paid from the funds of the city.) The same section also vests expressly in the city fiscal and his assistants the power to conduct "investigation by taking oral evidence of reputed witnesses," and to "issue subpoena, summon witnesses, to appear and testify under oath before him." These are precisely the same powers which the respondent Subido attempted to exercise in this case. We are of the opinion and so hold that whatever the powers the mayor may have attempted to delegate to the respondent Subido, the latter cannot exercise those powers which the law expressly vests in the city fiscal. The mayor himself cannot exercise the powers of the city fiscal. It stands to reason that the mayor cannot delegate a power he does' not possess.

The respondent Subido is not even authorized by law to administer oaths. Section 21 of the Revised Administrative Code specifies the officers who have general authority to administer oaths, to wit: "Notaries public; judges, justices of the peace, and auxiliary justices of the peace; clerks of courts; the secretaries of the

(National Assembly) Senate and House of Representatives; bureau directors; registers of deeds; provincial governors and lieutenant governor; mayors; any other officer in the Philippine service whose appointment is vested in the President of the Philippines. * * *

Respondent Subido invokes as authority in his favor his appointment by the Secretary of Justice, dated November 2, 1949, which reads as follows:

"Atty. Abelardo Subido
"Chief, Division of Investigation
"Office of the Mayor
"City of Manila

"Sir:

"In the interest of the public service and pursuant to the provisions of section 1686 of the Revised Administrative Code, you are hereby appointed Special Counsel to assist the City Fiscal of Manila only in those cases of City Government officials or employees you have investigated and in which cases criminal action may lie, without additional compensation.

"Respectfully,

(s) "Ricardo Nepomuceno
(t) "RICARDO NEPOMUCENO
"Secretary of Justice"

Assuming that said appointment is authorized by law, [3] it will be noted that the authority therein conferred is limited to assisting the city fiscal of Manila "only in those cases of city government officials or employees you have investigated and in which criminal action may lie." That authority is irrelevant here because, as we have seen, the city auditor is not a city government official or employee, but an officer of the General Auditing Office, under the direct supervision and control of the Auditor General. Moreover, that appointment assumes that Subido, as chief of the investigation division of the office of the mayor, was authorized to investigate any city officer or employee who may be guilty of neglect or misconduct in office—an assumption which is not correct because, as we have seen, such authority is expressly conferred by law upon the city fiscal and could not be vested by the mayor in any subordinate of his.

Respondent Subido also invokes section 580 of the Revised Administrative Code, which reads as follows:

"SEC. 580. Powers incidental to taking of testimony.—When authority to take testimony or evidence is conferred upon an administrative officer or upon any nonjudicial person, committee, or other body, such authority shall be understood to comprehend the right to administer oaths and summon witnesses and shall include authority to require the production of documents under a subpoena duces tecum or otherwise, subject in all respects to the same restriction and qualifications as apply in judicial proceedings of a similar character.

"Saving the provisions of section one hundred and two of this Act, any one who, without lawful excuse, fails to appear upon summons issued under the authority of the preceding paragraph or who, appearing before any individual or body exercising the power therein defined, refuses to make oath, give testimony, or produce documents for inspection, when thereunto lawfully required, shall be subject to discipline as in case of contempt of court and upon application of the individual or body exercising the power in question shall be dealt with by the judge of first instance having jurisdiction of the case in the manner provided by law."

But, in order that he may invoke that section, Subido must show that he has "authority to take testimony or evidence." There is no law giving him such authority. We have seen that he is not even one of those authorized by law to administer oaths. We do not think the mayor can delegate or confer the powers to administer oaths, to take

testimony, and to issue subpoenas. [4] All that respondent Subido may lawfully do as investigator for the mayor is to gather proofs and present them to the city fiscal, who may subpoena witnesses if he finds it necessary to do so.

The temerity and excesses of the respondent Subido are emphasized by his issuance of subpoenas to the petitioner Francia in his own name and authority and by his threat "to use my police power" to have the petitioner Francia arrested, without applying to the court for the issuance of a warrant of arrest.

We conclude from all the foregoing that the orders and processes issued by the respondent Subido are without authority in law and that therefore the petitioner is not bound to obey them. Ours is a government of laws and not of men. We cannot, however, issue the writ of mandamus to compel the respondent judge to grant the writ of preliminary injunction applied for by the petitioner because such act is judicial and not ministerial; but we think the writ of certiorari lies to annul the order of the respondent judge of April 10, 1950, in so far as it recognizes the authority of 'the respondent Subido to compel the petitioner to obey the subpoena issued by the said respondent Subido without authority in law. The issuance of such an order, in our opinion, constituted an abuse of discretion amounting to an excess of jurisdiction.

The order complained of is set aside and the writ of preliminary injunction heretofore issued by this court is made permanent, with costs.

Paras, Pablo, Bengzon, Tuason, Montemayor, and Reyes, JJ., concur.

Order set aside and preliminary injunction made permanent.

[1] He alleges in his answer: "Respondents has already interrogated twenty persons in connection with this anomaly—twelve from the Office of the City Treasurer, five from the Office of the City Auditor, and three from the Office of the Sheriff of Manila."

[2] Section 4 of the Revised Administrative Code provides as follows:

"SEC. 4. Authority of officer to act through deputy.—A ministerial act which may be lawfully done by any officer may be performed by him through any deputy or agent lawfully created or appointed."

[3] Section 1686 authorizes the Secretary of Justice to appoint "any lawyer, being either a subordinate from his office or a competent person not in the public service, temporarily to assist a fiscal.

[4] Non-judicial officers who are authorized to administer oaths and issue subpoenas are expressly so empowered by law. See sec. 91, C. A. No. 141 (Director of Lands); sec. 1, C. A. No. 172 (Public Defenders); C.A. 294 (Board of Mechanical Engineering Examiners) ; sec. 116, Rep. Act No. 180 (Board of Election Inspectors); sec. 4, Rep. Act No. 367 (Commissioner, Bureau of Industrial Safety); and sec. 3, Rep. Act No. 417 (Board of Dental Examiners).

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