

**JOSE MONDANO, PETITIONER, VS. FERNANDO SILVOSA,
PROVINCIAL GOVERNOR OF SURIGAO, JOSE ARREZA AND OLIMPIO
EPIS, MEMBERS OF THE PROVINCIAL BOARD, RESPONDENTS.**

G.R. No. L-7708. May 30, 1955

Ponente: PADILLA, J.

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PADILLA, J.:

The petitioner is the duly elected and qualified mayor of the municipality of Mainit, province of Surigao. On 27 February 1954 Consolacion Vda. de Mosende filed a sworn complaint with the Presidential Complaints and Action Committee accusing him of (1) rape committed on her daughter Caridad Mosende; and (2) concubinage for cohabiting with her daughter in a place other than the conjugal dwelling. On 6 March the Assistant Executive Secretary indorsed the complaint to the respondent provincial governor for immediate investigation, appropriate action and report. On 10 April the petitioner appeared before the provincial governor in obedience to his summons and was served with a copy of the complaint filed by the provincial governor with the provincial board. On the same day, the provincial governor issued Administrative Order No. 8 suspending the petitioner from office. Thereafter, the Provincial Board proceeded to hear the charges preferred against the petitioner over his objection.

The petitioner prays for a writ of prohibition with preliminary injunction to enjoin the respondents from further proceeding with the hearing of the administrative case against him and for a declaration that the order of suspension issued by the respondent provincial governor is illegal and without legal effect.

On 4 May 1954 the writ of preliminary injunction prayed for was issued after the filing and approval of a bond for P500.

The answer of the respondents admits the facts alleged in the petition except those that are inferences and conclusions of law and invokes, the provisions of section 79 (c) of the Revised Administrative Code which clothes the department head with "direct control, direction, and supervision over all bureaus and offices under his jurisdiction * * *" and to that end "may order the investigation of any act or conduct of any person in the service of any bureau or office under his Department and in connection therewith may appoint a committee or designate an official or person who shall conduct such investigations; * * *" and the rule in the case of Villena vs. Secretary of Interior, 67 Phil. 451, which upheld "the power of the Secretary of Interior to conduct at its own initiative investigation of charges against local elective municipal officials and to suspend them preventively," on the board proposition "that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, section 11, Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Departments, the heads of the various executive departments are assistants and agents of the Chief Executive."

The executive departments of the Government of the Philippines created and organized before the approval of the Constitution continued to exist as "authorized by law until the Congress shall provide otherwise." [1] Section 10, paragraph 1, Article VII, of the Constitution provides: "The President shall have control of all the executive

departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed." Under this constitutional provision the President has been invested with the power of control of all the executive departments, bureaus, or offices, but not of all local governments over which he has been granted only the power of general supervision as may be provided by law. The Department head as agent of the President has direct control and supervision over all bureaus and offices under his jurisdiction as provided for in section 79(c) of the Revised Administrative Code, but he does not have the same control of local governments as that exercised by him over bureaus and offices under his jurisdiction. Likewise, his authority to order the investigation of any act or conduct of any person in the service of any bureau or office under his department is confined to bureaus or offices under his jurisdiction and does not extend to local governments over which, as already stated, the President exercises only general supervision as may be provided by law. If the provisions of section 79 (c) of the Revised Administrative Code are to be construed as conferring upon the corresponding department head direct control, direction, and supervision over all local governments and that for that reason he may order the investigation of an official of a local government for malfeasance in office, such interpretation would be contrary to the provisions of paragraph 1, section 10, Article VII, of the Constitution. If "general supervision over all local governments" is to be construed as the same power granted to the Department Head in section 79 (c) of the Revised Administrative Code, then there would no longer be a distinction or difference between the power of control and that of supervision. In administrative law supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. Such is the import of the provisions of section 79 (c) of the Revised Administrative Code and 37 of Act No. 4007. The Congress has expressly and specifically lodged the provincial supervision over municipal officials in the provincial governor who is authorized to "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." [2] And if the charges are serious, "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." [3] Section 86 of the Revised Administrative Code adds nothing to the power of supervision to be exercised by the Department Head over the administration of * * * municipalities * * *. If it be construed that it does and such additional power is the same authority as that vested in the Department Head by section 79(c) of the Revised Administrative Code, then such additional power must be deemed to have been abrogated by section 10(1), Article VII, of the Constitution.

In *Lacson vs. Roque*, 49 Off. Gaz. 93, this Court held that the power of the President to remove officials from office as provided for in section 64(b) of the Revised Administrative Code must be done "conformably to law;" and only for disloyalty to the Republic of the Philippines he "may at any time remove a person from any position of trust or authority under the Government of the (Philippine Islands) Philippines." Again, this power of removal must be exercised conformably to law.

In the indorsement to the provincial governor the Assistant Executive Secretary requested immediate investigation, appropriate action and report on the complaint indorsed to him, and called his attention to section 2193 of the Revised Administrative Code which provides for the institution of judicial proceedings by the provincial fiscal upon direction of the provincial governor. If the indorsement of the Assistant Executive Secretary be taken as a designation of the provincial governor to investigate the petitioner, then he would only be acting as

agent of the Executive, but the investigation to be conducted by him would not be that which is provided for in sections 2188, 2189 and 2190 of the Revised Administrative Code. The charges preferred against the respondent are not malfeasances or any of those enumerated or specified in section 2188 of the Revised Administrative Code, because rape and concubinage have nothing to do with the performance of his duties as mayor nor do they constitute or involve "neglect of duty, oppression, corruption or any other form of maladministration of office." True, they may involve moral turpitude, but before the provincial governor and board may act and proceed in accordance with the provisions of the Revised Administrative Code referred to a conviction by final judgment must precede the filing by the provincial governor of charges and trial by the provincial board. Even the provincial fiscal cannot file an information for rape without a sworn complaint of the offended party who is 28 years of age and the crime of concubinage cannot be prosecuted but upon a sworn complaint of the offended spouse.[4] The charges preferred against the petitioner, municipal mayor of Mainit, province of Surigao, not being those or any of those specified in section 2188 of the Revised Administrative Code, the investigation of such charges by the provincial board is unauthorized and illegal. The suspension of the petitioner as mayor of the municipality of Mainit is, consequently, unlawful and without authority of law.

The writ of prohibition prayed for is granted, without pronouncement as to costs.

Pablo, Acting C.J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

[1] Par. 1, sec. 11, Art. VII.

[2] Section 2188, Revised Administrative Code.

[3] Ibid.

[4] Article 344. Revised Penal Code.

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