

GOVERNOR BENJAMIN I. ESPIRITU, PETITIONER, VS. NELSON B. MELGAR AND HON. JUDGE MARCIANO T. VIOLA, RESPONDENTS.

G.R. No. 100874. February 13, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

The issue in this special civil action of certiorari and prohibition is the jurisdiction of respondent Judge of the Regional Trial Court of Oriental Mindoro to stop the provincial governor from placing a municipal mayor under preventive suspension pending the investigation of administrative charges against the latter.

On April 11, 1991, one Ramir Garing of Naujan, Oriental Mindoro, filed a sworn letter-complaint with Secretary Luis Santos of the Department of Interior and Local Government charging Mayor Nelson Melgar of Naujan, Oriental Mindoro, with grave misconduct, oppression abuse of authority, culpable violation of the Constitution and conduct prejudicial to the best interest of the public service. The charge against Mayor Melgar reads:

"On or about 4:30 in the afternoon of March 26, 1991, in the Municipality of Naujan, Oriental Mindoro, the aforementioned person, Nelson Melgar, being the Municipal Mayor of Naujan, Oriental Mindoro, with abuse of official function, did then and there wilfully, unlawfully and feloniously attack, assault and use personal violence upon the person of Ramir Garing, by then and there boxing and kicking thereby inflicting upon the latter physical injuries on different parts of his body and not being contented ordered his arrest and detention in the municipal jail of Naujan, Oriental Mindoro without filing any charges until he was released the following day March 27, 1991 at about 8:30 in the morning." (p. 30, Rollo.)

An identical letter-complaint was filed by Garing with the Provincial Governor of Oriental Mindoro (herein petitioner Governor Benjamin I. Espiritu) accusing Mayor Melgar of the same violations of law and requesting that the mayor be placed under preventive suspension pending investigation of the charges.

A third complaint filed by Garing with the Presidential Action Center, Office of the President of the Philippines, was forwarded to Governor Espiritu with a request for prompt action (Annex "C", p. 36, Rollo).

On April 22, 1991, the Sangguniang Panlalawigan of Oriental Mindoro required Mayor Melgar to answer the complaint, which was docketed as Adm. Case No. 91-01 (Annex "D", p. 37, Rollo).

On May 22, 1991, Mayor Melgar submitted his answer in which he recounted the events of March 26, 1991 that led to the filing of Garing's complaint against him:

"At around 6:30 in the evening of 26 March 1991, while I was in the middle of my speech at the Naujan Public Gymnasium, this Municipality, where the Jose L. Basa Memorial School graduation ceremonies were then being held, a prolonged but nonetheless loud and intermittent clapping suddenly erupted from one of the numerous people then in attendance. I paused. The handclapping stopped. I resumed my speech. The fellow started all over again.

"The audience was visibly disturbed and I found myself unable to proceed not because I could not collect my

thoughts but because I felt the solemnity of the occasion had irreversibly been shattered by a rudeness so totally unexpected.

"I ended my speech and instructed a policeman to investigate the culprit who turned out to be Ramir Garing. He was drunk. I did not hurt him as can be gathered from his medical certificate (Annex 'B' to the complaint) which palpably contradicts his affidavit (Annex 'A' to the complaint).

"I was informed that said Ramir Garing was momentarily placed in custody for his own protection because he was drunk. An open knife (balisong) was taken from him. I was likewise informed that after he had sobered up, he was told to go home, but he refused to go and only did so the following morning.

"Certainly under the circumstances, charges could have been filed against Ramir Garing under the provisions of Article 153 of the Revised Penal Code and also for possession and concealment of a deadly weapon. Still, as a local Chief Executive, who to most people represent (sic) a sovereign government, and who, at the cost of foregoing personal vindication must avoid any appearance of vindictiveness. I instructed my policemen not to file charges against him.

"Attached hereto for your further reference are the joint affidavit of teachers of the J. L. Basa Memorial School as Annex 'A', the joint affidavit of the Municipal Jailer and the Police Investigator as Annex 'B', the affidavit of Fireman 1st Class Roy Lomio as Annex 'C', and a xerox copy of the pages in the Police Blotter where the incident in question was entered." (pp. 40-41, Rollo.)

After evaluating the complaint and its supporting documents, as well as the Mayor's answer and the affidavits of his witnesses, the Sangguniang Panlalawigan of Oriental Mindoro passed Resolution No. 55 on May 9, 1991, recommending to the Provincial Governor that respondent Mayor be preventively suspended for forty five (45) days pending the investigation of the administrative complaint (Annex "H", p. 49, Rollo).

On May 23, 1991, Mayor Melgar filed a motion to dismiss the administrative complaint (Annex "I", pp. 51--55, Rollo). It was opposed by Garing.

On June 6, 1991, the Sangguniang Panlalawigan denied the motion to dismiss (Res. No. 72, p. 62 Rollo; Annex "L" to the Petition).

Meanwhile, pursuant to the recommendation of the Sangguniang Panlalawigan in its Resolution No. 55. Governor Espiritu placed Mayor Melgar under preventive suspension on May 28, 1991 on the ground that:

"x x x there is reasonable ground to believe that respondent Mayor Nelson B. Melgar of Naujan, Oriental Mindoro, has committed the acts as stated in the complaint and affidavit of Ramir Garing and corroborated by the affidavits (Exhibits A, C & D) of his witnesses, namely: Lydia V. Garing, Nelson Tabor and Javier Dagdagan, all of Poblacion II, Naujan, Oriental Mindoro." (p. 63, Rollo.)

On June 3, 1991, Mayor Melgar received the Order of Suspension (Annex "M", p. 63, Rollo). He forthwith filed a "Petition for Certiorari with Preliminary Injunction with prayer for Restraining Order" in the Regional Trial Court of Oriental Mindoro (Spl. Civil Action No. R-5003) alleging that "the order of suspension was an arrogant, despotic and arbitrary abuse of power" by the Governor (pp. 68-69, Rollo).

On June 24, 1991, RTC Judge Virola issued a writ of preliminary injunction enjoining Governor Espiritu from implementing the Order of suspension against Mayor Melgar for:

"The Court is more inclined to believe the answer under oath of the respondent and the sworn statements of his witnesses attached to the Answer in the administrative case than the complaint under oath in the administrative case which are the evidence to be considered in determining whether or not the order of preventive suspension was issued in accordance with law. There is no reason to doubt the sworn statements of the numerous public

school teachers and members of the PNP. Besides, the medical certificate issued in connection with the treatment of the complainant in the administrative case tends to corroborate the theory of the respondent and contradict that of the complainant in the administrative case. The abrasions on the right arm of the complainant in the administrative case tend to show that said complainant was held tightly by the hands by the members of the PNP because he was then drunk, in possession of a balisong knife and causing serious disturbance and not because he was boxed and kicked by herein petitioner." (pp. 75-76, Rollo.)

Governor Espiritu filed a motion to dismiss and/or for reconsideration which Judge Virola denied on July 16, 1991. Hence, this petition for certiorari and prohibition.

Without giving due course to the petition, we required the private respondent to comment and we issued a Temporary Restraining Order commanding respondent Judge to cease and desist from further proceeding in Special Civil Action No. R-5003 (pp. 106-107, Rollo). On August 22, 1991, Mayor Melgar filed an "Urgent Motion to Lift Temporary Restraining Order" which the petitioner opposed and the Court denied (p. 177, Rollo). In due time he filed his Comment on the petition (pp. 127-155, Rollo).

Petitioner submits that respondent Judge Virola acted without jurisdiction or with grave abuse of discretion in issuing: (1) the writ of preliminary injunction restraining Governor Espiritu from implementing the order of preventive suspension, and (2) in denying petitioner's motion to dismiss Special Civil Action No. R-5003, for:

- a) Petitioner, as Provincial Governor, is empowered by Section 63 of the Local Government Code to place an elective municipal official under preventive suspension pending decision of an administrative case against the elective municipal official;
- b) Petitioner did not commit a grave abuse of discretion in placing respondent mayor under preventive suspension; if at all, his error was an error of judgment which is not correctible by certiorari;
- c) By express provision of Section 61 of the Local Government Code, the Sangguniang Panlalawigan has jurisdiction over complaints against any elective municipal official; on the other hand, Section 19(c) of the Judiciary Reorganization Act of 1980 withdraws from regional trial courts jurisdiction over cases within the exclusive jurisdiction of any person, tribunal or body exercising judicial or quasi-judicial functions. Thus, by practically deciding the administrative case on the merits, the respondent court acted without jurisdiction; and
- d) Respondent Mayor had a remedy of appeal under Section 66 of the Local Government Code.

Section 63, Chapter IV of the Local Government Code, provides:

SEC. 63. Preventive Suspension. - (1) Preventive suspension may be imposed by the Minister of Local Government if the respondent is a provincial or city official by the provincial governor if the respondent is an elective municipal official, or by the city or municipal mayor if the respondent is an elective barangay official.

"(2) Preventive suspension may be imposed at anytime after the issues are joined, when there is reasonable ground to believe that the respondent has committed the act or acts complained of, when the evidence of culpability is strong, when the gravity of the offense so warrants, or when the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence. In all cases, preventive suspension shall not extend beyond sixty days after the start of said suspension.

"(3) At the expiration of sixty days, the suspended official shall be deemed reinstated in office without prejudice to the continuation of the proceedings against him until its termination. However, if the delay in the proceedings of the case is due to his fault, neglect or request, the time of the delay shall not be counted in computing the time of the suspension."

Clearly, the provincial governor of Oriental Mindoro is authorized by law to preventively suspend the municipal

mayor of Naujan at anytime after the issues had been joined and any of the following grounds were shown to exist:

1. when there is reasonable ground to believe that the respondent has committed the act or acts complained of;
2. When the evidence of culpability is strong;
3. When the gravity of the offense so warrants; or
4. When the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence.

There is nothing improper in suspending an officer before the charges against him are heard and before he is given an opportunity to prove his innocence (*Nera vs. Garcia and Elicaño*, 106 Phil. 1031). Preventive suspension is allowed so that the respondent may not hamper the normal course of the investigation through the use of his influence and authority over possible witnesses (*Lacson vs. Roque*, 92 Phil. 456).

Since respondent mayor believed that his preventive suspension was unjustified and politically motivated, he should have sought relief first from the Secretary of Interior and Local Government, not from the courts. Mayor Melgar's direct recourse to the courts without exhausting administrative remedies was premature (*Aboitiz & Co., Inc. vs. Collector of Customs*, 83 SCRA 265; *Garcia vs. Teehankee*, 27 SCRA 937; *Manuel vs. Jimenez*, 17 SCRA 55; *Bongcawil vs. Provincial Board of Lanao del Norte*, 10 SCRA 327; *The Phil. Veterans Affairs Office vs. Fariñas, et al.*, AC-G.R. SP No. 05937, July 5, 1985; *Bonafe vs. Zurbano*, 131 SCRA 9). The regional trial court had no jurisdiction over Special Civil Action No. R-5003 and gravely abused its discretion in refusing to dismiss the case.

There may exist honest differences of opinion with regard to the seriousness of the charges, or as to whether they warrant disciplinary action. However, as a general rule, the office or body that is invested with the power of removal or suspension should be the sole judge of the necessity and sufficiency of the cause (17 R.C.L. Sec. 233 cited in *Attorney General vs. Doherty*, 13 Am. Rep. 132). So, unless a flagrant abuse of the exercise of that power is shown, public policy and a becoming regard for the principle of separation of powers demand that the action of said officer or body should be left undisturbed.

However, in this particular case, since the 60-day preventive suspension of Mayor Melgar was maintained by the Temporary Restraining Order which we issued on August 6, 1991, and therefore has already been served, he is deemed reinstated in office without prejudice to the continuation of the administrative investigation of the charges against him (Sec. 63, subpar. 3, Local Government Code).

WHEREFORE, the petition for certiorari and prohibition is granted. The writ of preliminary injunction dated June 24, 1991 in Special Civil Action No. R-5003 is hereby annulled and set aside. Said Special Civil Action No. R-5003 is dismissed.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Medialdea, Regalado, Davide, Jr., Romero, and Nocon, JJ., concur.

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