

**JOSE U. OCHATE, MAYOR OF CLARIN, MISAMIS OCCIDENTAL,
PETITIONER, VS. DIEGO H. TY DELING, PROVINCIAL GOVERNOR OF
MISAMIS OCCIDENTAL, ET AL., RESPONDENTS.**

G.R. No. 13298, March 30, 1959

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is a petition for prohibition filed by Jose U. Ochate, Mayor of the municipality of Clarin, province of Misamis Occidental against the Provincial Governor therein, Diego H. Ty Deling or his successor, and the town Vice Mayor, Tomas Torres of the same municipality, praying that the said respondents be prohibited from proceeding in the administrative charges against petitioner and to declare unlawful and without authority of law, the order of respondent Governor suspending him from office pending investigation by the Provincial Board.

The uncontroverted facts are as follows:

Petitioner Jose U. Ochate is the incumbent municipal mayor of Clarin, Misamis Occidental, while respondents Diego H. Ty Deling and Tomas Torres are the incumbent provincial governor and vice-mayor of the said municipality, respectively.

In an administrative complaint dated December 18, 1957, petitioner was charged before the Provincial Board of:

- "I. Organizing, tolerating, and participating in illegal cockfight and other forms of gambling;
- II. Committing grave public scandals and acts unbecoming of public official;
- III. Corruption of subordinate employees."

which complaint was later amended on December 23, 1957 to include the following specifications:

"1. Misconduct in Office—

(a) That while the municipal council of Clarin, Misamis Occidental, was in session on August 31, 1956, presided by the petitioner as mayor, the latter abruptly left the said session and slapped his daughter and boxed his wife before the councilors and in the presence of numerous persons inside the municipal building, thereby disturbing and interrupting the council's meeting with the ensuing commotion and disorder in violation of Articles 144 and 153 of the Revised Penal Code.

(b) That on and before December 29, 1957, the petitioner, being a municipal mayor, organized or participated directly in illegal cockfights in unlicensed cockpits, and allowed or tolerated gambling therein.

(c) That on the same date, the petitioner and his policemen resisted with firearms and violence and prevented the policemen of the neighboring municipality from arresting those engaged in illegal cockfights, instead of assisting the latter in performing their duty.

2. Neglect of Duty—

That the petitioner, knowing that illegal cockfights and gambling were held in his presence, maliciously refrained from instituting or causing the prosecution of the violators of the law thereby committing dereliction of duty as mayor in violation of Article 208 of the Revised Penal Code.

3. Oppression—

That he ordered anyone of his policemen to accompany him to illegal cockpits and gambling, or assigned them as bodyguards of his mistress, or prevented them from enforcing the gambling laws, thereby depriving them of their liberty of action in the performance of their duties, thus inducing them to commit dereliction of duty, as in fact, two of them are now indicted with him for assault." (Memorandum for Respondents, pp. 1-2)

On the same date that the original administrative charge was filed, the respondent Governor issued Executive Order No. 7 suspending the petitioner from office and directing the latter to turn over the same to the respondent Vice-. Mayor.

The petitioner questions the legality of the administrative charges and of the order of suspension. Upon his motion and filing a bond of five Hundred pesos, this Court, by resolution dated January 20, 1958, issued a preliminary prohibitory injunction.

In the mind of the Court, the pivotal issue in the whole case is the question whether or not the facts alleged in the administrative charge, as substantiated by affidavits of certain complainants, justify the administrative proceedings against petitioner and warrant the order of suspension of the Governor.

Section 2188 of the Revised Administrative Code provides, and we quote:

"Supervisory authority of provincial governor over municipal officers.—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."

The authority of the provincial governor, under the aforequoted section of the Code, to receive and investigate Complaints against municipal officials rests on two general grounds, and these are (1) neglect of duty, oppression, corruption or other form of maladministration of office and (2) conviction by final judgment of any crime involving moral turpitude. Pending action by the provincial board, the provincial governor may suspend the officer concerned if in his opinion the charge is one affecting the official integrity of the officer charged. Following the statutory construction that "a statute prescribing the grounds for which an officer may be suspended is penal in nature and should be strictly construed", the prepositional phrase "in office qualifies the various grounds for legal suspension." (Cornejo vs. Naval, 54 Phil., 809)

While it is primarily for the provincial governor to determine whether the gravity of the offense charged would warrant the filing of administrative charges and the propriety of the suspension, he will only have occasion to exercise such power where the charge is one affecting the official integrity of the officer or is connected with the performance of his duties as a municipal official. (Mondano vs. Silvosa, et al., 97 Phil., 143; 51 Off. Gaz. No. 6, p. 2884). "In office" indicates that the grounds mentioned in the law must be such as affect the officer's performance of his duties as an officer and not such as affect only his character as a private individual. "In such cases it is necessary 'to separate the character of the man from the character of the officer' " (Mechem, Public

Offices and Officers, section 457, p. 290; State of Minnesota ex Rel. John G. Rockwell vs. State Board of Education, et al., 143 A. L. R. 503, 512-513; State ex rel. Knabb vs. Frater, 89 P. 2d. 1046; Opinion of the Justices, 33 N. E. 2d 275).

With these standards in mind, let us examine the administrative charges against the petitioner. Under the charge for "misconduct in office", respondents base the suspension on the mayor's having inflicted injuries upon his wife and daughter inside the municipal building and for which he was later convicted for slight physical injuries by the Justice of the Peace Court of Clarin; on having participated in illegal cockfighting; and in resisting arrest. As correctly maintained by the petitioner, however, such acts or omissions cannot be safely said or considered to be related to the performance of his official duties and petitioner does not have to be the mayor to commit the offenses charged. Hence, in the case of Arsenio H. Lacson vs. Marciano Roque, et al., (92 Phil., 456; 49 Off. Gaz. 93, 100101), it was ruled:

"Misconduct in office has a definite and well-understood legal meaning. By uniform legal definition, it is misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer. (Mechem, supra, section 457) 'It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer, must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office * * *' (43 Am. Jur. 39, 40). To this effect is the principle laid down in Cornejo vs. Naval, supra.

"Judged by the foregoing, standard definition of misconduct in office, the alleged libel imputed to the suspended Mayor was not such misconduct even if the term 'misconduct in office' be taken in its broadest sense. The radio broadcast in which the objectionable utterances were made had nothing or very little to do with petitioner's official functions and duties as mayor. It was not done by virtue or under color of authority. It was not any wrongful official act, or omission to perform a duty of public concern, tacitly or expressly annexed to his position. Neither can it be said that Mayor Lacson committed an abuse or took advantage of his office. One does not have to be a mayor to make those remarks or to talk on the radio. The use of the radio is a privilege open to anyone who would allow for reasons of his own. The mere circumstance that the broadcast was transmitted from the City Hall instead of the radio station did not alter the situation. It is the character of the remarks and their immediate relation to the office that are of 'paramount consideration. It is our considered opinion that the petitioner acted as a private individual and should be made to answer in his private capacity if he committed any breach of propriety or law." (Emphasis supplied.)

The records fail to indicate that, in the acts complained of, the petitioner was motivated by any official considerations; on the contrary, it appears that it was more for personal reasons that he performed the acts and omissions complained of.

Of course, abetting gambling by the mayor within his territorial jurisdiction is an infringement of his official oath to compel obedience to the laws and may therefore constitute "misconduct" or "neglect of duty" (which brings us to the charge of "neglect of duty"), but where, as in this case, the alleged violation of gambling laws occurred within another municipality (barrio Casilac, municipality of Tudela, Misamis Occidental), it is too far fetched to say that in organizing, tolerating and participating in gambling thereat, petitioner went beyond his personal and private life and committed a wrongful conduct that affected, interrupted or interfered with the performance of his official duties as mayor of Clarin.

Neither can the charge of "oppression" be substantiated by the records of the case, particularly the affidavit of one Nasciancino Jalalon and the unsworn letter and affidavit of Teodora M. Ochate. "Oppression" has been denned as "an act of cruelty, severity, unlawful exaction, domination, or excessive use of authority" (United States vs.

Deaver, 14 Fed. 495). The charges made seems to be too superficial to meet the standard fixed in the above definition. It is noticeable that no complaint or written statement was ever made or at least shown in the records by those alleged to have been oppressed by the petitioner.

The justification of administrative charges under section 2188 of the Revised Administrative Code is not based on the sufficiency of the complaint as appearing on its surface or form, but must be judged by its substance. In a way, the delay of the provincial governor (for almost a year) in filing the administrative charges against petitioner indicates the non-substantiality or non-sufficiency of the charges.

Petitioner was accused and convicted of slight physical injuries which did not involve moral turpitude; and although there are other pending criminal charges against him, e.g., for illegal cockfighting and Assault upon Agents of Authority, he does not appear to have been finally convicted thereof. The facts, standing alone, cannot therefore be the subject of administrative charges against petitioner.

In view of the foregoing, in considering that the charges filed do not constitute misconduct or maladministration of office, the writ of prohibition is granted and respondent Governor of Misamis Occidental is prohibited from proceeding further with the investigation of the charges filed against petitioner Jose U. Ochate, as well as from enforcing the order for his suspension. The writ of preliminary injunction heretofore issued is made permanent. Costs against respondent Diego H. Ty Deling. So ordered.

Paras, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

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