

**ABELARDO JAVELLANA, TOMAS JONCO, RUDICO HABANA,
EXEQUIEL GOLEZ, ALFREDO ANG, AND FILIPINAS SOLEDAD, IN
THEIR CAPACITIES AS COUNCILORS OF THE MUNICIPALITY OF
BUENAVISTA, PROVINCE...**

G.R. No. 18919. December 29, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

This is a direct appeal taken by respondent Susano Tayo (Mayor of the Municipality of Buenavista, Iloilo) from the decision of the Court of First Instance of Iloilo (in Civil Case No. 5558, for mandamus) declaring legal and valid the regular sessions held by petitioners Abelardo Javellana, Tomas Jonco, Rudico Habana, Exequiel Golez, Alfredo Ang, and Filipinas Soledad, constituting a majority of the elected councilors of said municipality, and ordering respondent to give due course to the resolutions and ordinances passed thereat, and to sign the payrolls corresponding to the session days of June 1, June 15, July 6, July 20, August 3, August 17, September 7, and September 21, 1960 for payment of the per diems of petitioners as councilors; to pay said Councilor Golez the sum of P100.00 as moral damages; and to pay P100.00 as attorney's fees, plus costs.

The case was submitted on the following Stipulation of Facts:

I

"That the petitioners are duly elected and Qualified as members of the Municipal Council of the Municipality of Buenavista, Province of Iloilo, Philippines; and that the respondent, at the time the acts hereinbelow complained of took place, was and still is the duly-elected and qualified Mayor of the Municipality of Buenavista, Province of Iloilo, Philippines, where he resides and may be served with summons.

II

"On February 8, 1960, the Municipal Council of the Municipality of Buenavista, Iloilo, unanimously approved Resolution No. 5, Series of 1960, dated February 8, 1960, a copy of which is hereto attached to form an integral part hereon as Annex 'A' which set the regular sessions of the Municipal Council of Buenavista on every first and third Wednesday of every month, and which resolution was duly approved by the respondent, in his capacity as Mayor of the Municipality of Buenavista.

III

"That on June 1, 1960, at the time and place set for the regular session of the Municipal Council, the Mayor, Vice-Mayor, No. 1 and No. 2 Councilors and the Secretary were absent.

IV

"That the six councilors, who are the petitioners in this case, were present and they proceeded to elect among themselves a temporary presiding officer and Acting Secretary to take notes of the proceedings. Having thus

elected a temporary presiding officer and secretary of the Council, they proceeded to do business.

V

"That on June 15, 1960, at the time and place designated in Resolution No. 5, series of 1960, dated February 8, 1960 above referred to, the petitioners acting as duly elected and qualified councilors were present and again, in view of the absence of the Mayor, Vice-Mayor, said two councilors and the Secretary, proceeded to elect a temporary presiding officer and temporary secretary from among them, and did business as a Municipal Council of Buenavista.

VI

"That again on July 6, and July 20, 1960, on August 3, and August 17, September 7, and on September 21, 1960, the petitioners met at the place and time designated in Resolution No. 5, series of 1960, and proceeded to elect a temporary Secretary among themselves, and did business as the Municipal Council of Buenavista, in view again of the absence of the Mayor, Vice-Mayor, 2 councilors, and the Secretary.

VII

"That when the minutes of the proceedings of June 1, June 15, July 6, July 20, August 17, September 7, and September 21, 1960 of the Municipal Council were presented to the respondent for action, the respondent Mayor refused to act upon said minutes, or particularly to approve or disapprove the resolution as approved by the Municipal Council, the Mayor declaring the session above referred to as null and void and not in accordance with law.

VIII

"That the petitioners made repeated demands for payment of their per diems for the sessions of June 1, June 15, July 6, July 20, August 3, August 17, September 7 and September 21, 1960, by presenting the payrolls; Provincial Forms No. 38 (A) to the respondent Mayor for the latter's signature, but that the respondent refused to affix his signature to the payrolls thus presented, covering the per diems of the petitioners, alleging that the proceedings were illegal due to his absence.

IX

"That the petitioners, acting through Atty. Bartolome T. Tiña, addressed a letter dated August 8, 1960 to the Honorable Provincial Fiscal of the Province of Iloilo, asking of the latter's opinion on the validity of the acts of the herein petitioners, acting as the Municipal Council in the absence of the Mayor, Vice-Mayor, said two councilors and the secretary, a copy of which letter is herewith attached as Annex 'B' and made an integral part of this petition.

X

"That on August 9, 1960, the Honorable Provincial Fiscal of the Province of Iloilo, in his indorsement, rendered an opinion upholding the validity of the controverted sessions of the Municipal Council, a copy of which communication is, likewise, attached herein as Annex 'C' and made an integral part of this petition.

XI

"That despite the opinion of the Provincial Fiscal, the respondent Mayor refused and still refuses to act upon the resolutions presented to him and to sign the payrolls covering the per diems of the herein petitioners.

XII

"That the respondent Mayor brought the matter to the attention of the Provincial Board of the Province of Iloilo, by means of a letter questioning the legality of the minutes of the regular session of the Municipal

Council without his presence, and that the Provincial Board resolved on September 23, 1960 to return the minutes of the regular session of the Municipal Council of Buenavista, Iloilo, informing the Mayor that per the opinion of the Legal Assistant, said minutes is legal.

XIII

"That despite the resolution of the Provincial Board, the Mayor refused and still refuses to recognize the validity of the acts of the Municipal Council and the legality of its regular session held in his absence."

On the basis of the foregoing stipulation of facts (plus the testimony of Councilor Exequiel Golez), the trial court (on July 26, 1961) rendered the decision above adverted to, partly stating:

"This Court, after perusal of all the records of this case, has reached the conclusion that the sessions held by the petitioners during the absence of the respondent Mayor were perfectly valid and legal. The attendance of the Mayor is not essential to the validity of the session as long as there is quorum constituted in accordance with law. To declare that the proceedings of the petitioners were null and void, is to encourage recalcitrant public officials who would frustrate valid sessions for political end or, consideration. Public interest will immensely suffer, if a mayor who belongs to one political group refuses to call or attend a session, because the Council is controlled by another political group. In a democracy, the minority should respect the majority and it is but natural that they could validly hold a valid session, in order to devise means for public interest.

"The respondent here as Municipal Mayor should have given good example, by calling and attending regular sessions on the dates fixed by the Council. In the discharge of his official duty, he should consider the Session Hall of the Municipal Council as the sanctuary and depository of public interest and public welfare. Any member of the Council should enter the Session Hall, not as a representative of any political party or group, but as a representative of the people of the municipality, whose interest and welfare should be safeguarded by the Council. In entering this Hall, he must lay aside his political affiliation, interest, and consideration, because it is the sworn duty of every councilor to perform his duty with justice and impartiality. Not to attend a meeting, constitutes an abandonment of the people's welfare. One may be in the minority group but he can discharge his duty with honor and prestige as a fiscalizer, to fiscalize the doings and actuations of the majority. He may be overwhelmed in his plan or project by superior numerical majority, but if he could adduce good reasons and arguments in favor of the welfare of the people, his task as a fiscalizer is thereby attained. There is no fear of attending any session because if your project is not carried out, you may have the remedy, either by administrative or judicial relief, by questioning any ordinance or resolution passed by the majority, which may be null and void because they are excessive and unreasonable. So, there is no reason why the respondent in this case had refused to attend the sessions of the Council.

"Petitioners here claim moral damages pursuant to the provisions of Article 2219, in connection with Article 21 and Article 27 of the new Civil Code. Said Article 27 provides as follows:

'Any person suffering material or moral loss because, a public servant or employee neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken.'

"But in support of the allegations in the petition, only petitioner Exequiel Golez was presented as a witness who proved moral damages he suffered as a consequence of the refusal of the respondent Susano Tayo to perform his official duty. As such, of all the petitioners, only Exequiel Golez is entitled to received moral damages in the sum of P100.00.

"IN VIEW OF THE FOREGOING, the petition for a writ of mandamus is hereby granted, and the respondent is hereby ordered to give due course to the resolutions and ordinances passed by the petitioners in the regular sessions during the absence of the respondent, to give due course and sign the payrolls covering the periods of June 1, June 15, July 6, July 20, August 3, August 17, September 7, and September 21, 1960, for the payment of

per diems of the petitioners as Municipal Councilors; to pay to said Exequiel Golez, the sum of P100.00 as moral damages, to pay the sum of P100.00 as attorney's fees, and to pay the costs of the proceeding.

"SO ORDERED."

Respondent-appellant claims, in this appeal, that the trial court erred in holding that the sessions held by petitioners-appellees during his absence and during the absence of his Vice-Mayor and the No. 1 and No. 2 Councilors of the Municipal Council of Buenavista, Iloilo, were valid and legal.

The claim is untenable. In the first place, there is no question that the sessions at issue were held on the days set for regular sessions of the council, as authorized and approved in a previous resolution. Secondly, it is not disputed that a majority of the members of the council (six out of ten) were present in those sessions. Consequently, pursuant to Section 2221 of the Revised Administrative Code which provides:

"SEC. 2221. Quorum of council—Enforcing Attendance of absent members.—The majority of the council elected shall constitute a quorum to do business; * * *."

there was a quorum to do business in all the sessions in question. The term "quorum" has been defined as "that number of members of the body which, when legally assembled in their proper places, will enable the body to transact its proper business, or, in other words, that number that makes a lawful body and gives it power to pass a law or ordinance or do any other valid corporate act. (4 McQuillin, *Municipal Corporation* [3rd Ed.] 478; see also *State vs. Wilkesville Tp.*, 20 Ohio St. 288.)

Appellant, however, asserts that while under Section 2221 of the Revised Administrative Code, the majority of the members of the council constitutes a quorum to do business, the council "shall be presided by the Mayor and no one else", inasmuch as it is one of the duties imposed upon him under Section 2194 (d) of the Revised Administrative Code.[1] The argument would be correct if the mayor (herein appellant) were present at the sessions in question and was prevented from (presiding therein, but not where, as in the instant case, he absented himself therefrom.

Appellant likewise invokes Section 7 third paragraph of Republic Act No. 2264[2] in support of his view that the sessions in question were null and void, as they were not presided by him or by his Vice-Mayor, or by the councilor who obtained the largest number of votes.

It is true that this section mentions only the vice-mayor, or in his place, the councilor who obtained the largest number of votes who could perform the duties of the mayor, in the event of the latter's temporary incapacity to do so, except the power to appoint, suspend, or dismiss employees. Ordinarily, this enumeration would be interpreted as exclusive, following the general principle of *inclusio unius, est exclusio alterius*, but there are cogent reasons to disregard this rule in this case, since to adopt it would cause inconvenience, hardship, and injury to the public interest, as it would place in the hands of the mayor, vice-mayor, and the councilor receiving the highest number of votes an instrument to defeat the law investing the legislative power in the municipal council, by simply boycotting, as they continuously did for 4 months, the regular sessions of the council. It is to be noted that the same section 7 of Republic Act No. 2264 invoked by appellant provides, in case of permanent incapacity of the mayor, vice mayor, and the councilor obtaining the largest number of votes, to assume and perform the duties of the mayor, the councilor receiving the next largest number of votes, and so on, can assume and perform such duties. We see no strong reason why the same procedure should not be followed in case of temporary incapacity, there being no express prohibition against its observance. The legal provision being therefore susceptible of two interpretations, we adopt the one in consonance with the presumed intention of the legislature to give its enactments the most reasonable and beneficial construction, the one that will render them operative and effective

and harmonious with other provisions of law. This is imperative because, as already pointed out heretofore, under the law "the majority of the council elected shall constitute a quorum to do business," and this would be defeated if we adopt the literal interpretation of appellant that only the mayor, vice-mayor, or the councilor receiving the largest number of votes could preside the council's meeting, to be legal, irrespective of the presence of a quorum or the majority of the councilors elected. Such an interpretation would, indeed, be fraught with dangerous consequences. For it would, in effect, deprive the municipal council of its function, namely, the enactment of ordinances designed for the general welfare of its inhabitants. As the trial court aptly observed, "To declare that the proceedings of the petitioners (herein appellees) were null and void, is to encourage recalcitrant public officials who would frustrate valid sessions for political end or consideration. Public interest will immensely suffer, if a mayor who belongs to one political group refused to call or attend a session, because the council is controlled by another political group."

Lastly, appellant contests the award of moral damages to appellee councilor Exequiel Golez. We find said award proper under Article 27 of the new Civil Code,[3] considering that according to the trial court, he (Golez) was able to prove that he suffered the same, as a consequence of appellant's refusal to perform his official duty, notwithstanding the action taken by the Provincial Fiscal and the Provincial Board upholding the validity of the sessions in question.

Wherefore, the decision appealed from is hereby affirmed, with costs against the respondent-appellant. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, and Makalintal, JJ., concur.

[1] "SEC. 2194. Mayor as chief executive of municipality. * * * He shall have the following duties:

"(d) he shall preside at the meetings of the municipal council and shall recommend to said body from time to time such measures connected with the public health, cleanliness, or ornament of the municipality or the improvement of its finances as he shall deem expedient."

[2] "SEC. 7. The city, municipal, and municipal district vice-mayor and succession to the office of mayor.— * * * In the event of temporary incapacity of the mayor to perform the duties of his office on account of absence on leave, sickness, or any temporary incapacity, the vice-mayor shall perform the duties and exercise the powers of the mayor except the power to appoint, suspend or dismiss employees. In the event the vice-mayor is temporarily incapacitated to perform the duties of the office of mayor, the councilor who obtained the largest number of votes among the incumbent councilors in the local elections immediately preceding shall perform the duties and exercise the powers of the mayor except the power to appoint, suspend or dismiss employees. * * *."

[3] "ART. 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken."

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