

DIONISIO A. SARANDI, PETITIONER VS. CORAZON ESPINO, ACTING PROVINCIAL GOVERNOR OF NUEVA VIZCAYA; THE PROVINCIAL BOARD OF NUEVA VIZCAYA; THE MUNICIPAL TREASURER OF MADDELA, NUEVA...*G.R. No. 20822. December 23, 1964*

Ponente: CONCEPCION, J.

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This is an original action for Prohibition, Mandamus and Quo Warranto with preliminary injunction.

Elected Municipal Mayor of Maddela, Nueva Vizcaya, in the general elections held in 1955, petitioner Dionisio A. Sarandi was re-elected in 1959. Petitioner alleges that in March 1962, the then Provincial Governor of Nueva Vizcaya, Jose G. Espino, urged him (petitioner) to affiliate with the Liberal Party, but he refused to do so; that prior to July 6, 1962, the Vice-Mayor of Maddela, then belonging to the Nacionalista Party, joined the Liberal Party; that purporting to act upon a verified complaint filed by Andres Agduyen against petitioner, charging him with the "oppression, abuse of authority, gross misconduct and maladministration in office," on July 6, 1962, said provincial Governor suspended petitioner from his aforementioned office; that the order of suspension was served upon petitioner on July 9, 1962; and that, on the same date, Governor Espino filed with the Provincial Board of Nueva Vizcaya an administrative complaint against petitioner reproducing the charges preferred by Agduyen, namely: a) That on November 18, 1961, petitioner gave Agduyen a fist blow "on his left face" and then "shook him," thereby causing contusions on his left face, "which took more than one (1) week to heal and incapacitated him for labor for the same period", b) that "immediately before, during and after" the aforementioned incident, petitioner said "I will still be mayor for over two years and I will have time to break your faces, especially you" -referring to Agduyen-"who voted for Atty. Calderon," thereby allegedly causing upon Agduyen "untold fear and anxiety" and putting him "In public ridicule and contempt, besmirched reputation and wounded feelings", apart from constituting "clear acts of oppression, abuse of authority, gross-misconduct and maladministration in office"; and c) that petitioner was then "drunk with intoxicating liquors and right there and then, in the municipal building of Maddela, Nueva Vizcaya, continued to drink intoxicating liquors and x x x was brandishing a bottle of liquor in the presence" of Agduyen "and others," in "violation of an ordinance in force in said municipality and in utter disregard of the honor and dignity of his official position."

It is not disputed that on July 9, 1962, the Provincial Board gave due course to this complaint of the Provincial Governor and set it for hearing on July 26, 1962, on which date petitioner moved to postpone the hearing "until further assignment" because he had "not as yet engaged the services of counsel." This motion was forthwith granted. On September 14, 1962, petitioner filed with the Provincial Board a motion to set the case for hearing, but the Board did not do so. On September 27, 1962, petitioner tried to assume his office, but the provincial auditor refused to allow payment of his (petitioner's) salary until after said administrative case had been decided in his favor. Petitioner moved, therefore, on October 11, 1962, that he be reinstated pursuant to Section 2189 of the Revised Administrative Code, which provides that "the preventive suspension of a municipal officer shall not

be for more than thirty days." The next day, he appealed to the President for reinstatement, invoking not only said Section 2189, but, also, the decision of this Court in *Garcia vs. Executive Secretary*, G. R. No. L-19748 (decided on September 23, 1962), but to no avail. Hence, on January 30, 1963, petitioner instituted the present action, against the then Acting Provincial Governor of Nueva Vizcaya, its Provincial Board and Provincial Auditor, the Municipal Treasurer of Maddela and its Acting Mayor, Vice-Mayor Jose Medina, and prayed that a writ of mandatory injunction directing petitioner's immediate reinstatement be issued, and, that, after due hearing, his preventive suspension in excess of 30 days be declared illegal and void, that the acting Provincial Governor and the Provincial Board be compelled to lift petitioner's preventive suspension and to reinstate him to his position as Municipal Mayor of Maddela; that respondents Provincial Auditor and Municipal Treasurer be ordered to desist from paying the salary of the Municipal Mayor of Maddela to respondent Medina and to reimburse to petitioner his salary as Municipal Mayor from the expiration of said period of suspension; that respondent Medina be declared guilty of unlawfully holding and exercising the functions of said office of municipal mayor from August 8, 1962, when said period of suspension expired; and that said writ of mandatory injunction be made final and permanent.

The record further shows that on August 30, 1962, Corazon Espino, wife of Provincial Governor Jose Espino, was appointed acting member of the Provincial Board; that on September 1, 1962, Mrs. Espino was appointed Acting Provincial Governor, her husband having seemingly vacated his office, for reasons not disclosed in the records before us; that Tomas P. Maddela and Luis Bernabe, who were Members of the Provincial Board, had ceased to form part thereof, the former by resignation, he having been appointed justice of the peace, and the latter upon the filing of his certificate of candidacy for a seat in Congress, in the general elections held in 1961; and that Castillo M. Tidang, the Vice-Governor of Nueva Vizcaya was on leave. This is the reason alleged in respondents' answer to explain why the administrative case against petitioner had not been heard up to the time of the filing of said pleading, on March 11, 1963. Respondents, likewise, averred that petitioner has another remedy, which is to seek a ruling from the office of the President.

On April 6, 1963, petitioner filed a supplemental petition alleging that on March 4, 1963, he was notified, in Maddela, that the administrative case against him would be heard on March 11 and 12, 1963, in Bayombong, Nueva Vizcaya; that there being no communication system between Maddela and Manila, where petitioner's counsel is, the latter could not be seasonably notified by petitioner of said hearing; that the only communication link with Manila available to petitioner was from Bayombong, Nueva Vizcaya; that to reach Bayombong from Maddela petitioner had to take a boat from the Maddela to San Agustin, Isabela, 25 Km. away, then from San Agustin to Jones, Isabela, by bus, a distance of 12 Kms. from Jones to Cordon, Isabela, 41 Kms. away, and finally, from Cordon Isabela, to Bayombong, Nueva Viscaya, a distance of 53 Kms.; that the boat used by petitioner from Maddela to San Agustin had capsized, thereby delaying his arrival at Bayombong, which he did not reach until March 12, 1963, at 12 o'clock noon; that he forthwith appeared before the Provincial Board and urged the same, in view of the foregoing circumstances and of the absence of his counsel, to postpone the investigation; that that same afternoon he wired his counsel in Manila; that thereupon said counsel wired the Provincial Board asking that the investigation be postponed to April 15, 1963; that despite said requests of petitioner and his counsel, respondent Board proceeded with the hearing of said administrative case, finished the hearing on March 12, 1963 and on the same date rendered a decision finding petitioner guilty as charged and suspending him from office as municipal mayor of Maddela from July 9, 1962 to December 31, 1963 (when his term expires), with forfeiture of the emoluments, salaries and other privileges attached to said office for the period aforementioned; that the Board conducted said investigation and rendered the aforementioned decision although it consisted only of Mrs. Espino, as Acting Provincial Governor, and the Provincial Treasurer of Nueva Vizcaya, who had reportedly been designated by the President to sit in the Board for the purpose of the investigation; that

the Board had, accordingly, no authority to conduct said investigation and render said decision for lack of quorum; and that it had, at any rate, exceeded its jurisdiction in proceeding with the investigation despite petitioner's reasonable request for postponement.

Although petitioner's term of office as mayor of Maddela expired on December 31, 1963, and hence the issue as regards his actual reinstatement has become moot, the present action is not academic with respect to his right to reinstatement, insofar as the same is a condition sinequa non to the determination of his right to recover the amount of the salary, emoluments and other privileges attached to said office, from the date on which he was entitled to be reinstated thereto.

In this connection, it should be noted that petitioner was suspended since July 9, 1962, when he received the order of suspension of the Provincial Governor of Nueva Vizcaya; that, pursuant to Section 2189 of the Revised Administrative Code,

"The preventive suspension of a municipal officer shall not be for more than thirty days. At the expiration of the thirty days, the suspended officer shall be reinstated in office without prejudice to the continuation of the proceedings against him until their completion, unless the delay in the decision of the case is due to the fault, neglect, or request of the accused, in which case the time of the delay shall not be counted in computing the time of the suspension: Provided, That the suspension of the accused may continue after the expiration of the thirty days above mentioned in case of conviction until the Office of the President shall otherwise direct or the case shall finally be decided by the Office of the President";

that on July 9, 1962, the Provincial Board gave due course to the administrative complaint filed by the Provincial Governor against the petitioner and set it for hearing on July 26, 1962; that this hearing was, on July 26, 1962, postponed until further assignment, upon petitioner's request, based upon the allegation that he had not as yet engaged the services of counsel; that, at that time, petitioner's suspension had lasted seventeen (17) days; that on September 14, 1962, petitioner asked the Provincial Board to set the case for hearing; that the statutory period of thirty (30) days continued to run, therefore, from September 14, 1962 and expired on September 27, 1962; and that since the Provincial Board had not, as yet, either decided or heard said administrative case, petitioner was entitled to reinstatement and, consequently, the salary and other emoluments and privileges attached to the office of mayor of Maddela from September 28, 1962 up to the expiration of his term, on December 31, 1963.

It is urged, that the Board's failure to hear the case was due to the depletion of its membership owing to the leave of absence taken by the Vice-Governor and the resignation of two (2) members of the Board. These circumstances do not affect, however, the operation of said Section 2189, pursuant to which, upon expiration of the thirty (30) days of petitioner's suspension, excluding the time of the delay caused by his request, his reinstatement should have taken place.

It is true that, under the proviso in said Section 2189, the suspension "may continue after the expiration" of said period "in case of conviction", and that in its decision rendered on March 12, 1963, the Provincial Board found petitioner guilty as charged. This decision and the hearing held by the Provincial Board on March 11 and 12, 1963, are, however, patently null and void, for the Board then consisted of no more than Mrs. Espino, as Acting Provincial Governor, and the Provincial Treasurer, Gavino Pe Benito, as acting member of the Board. Inasmuch as "the presence of three members shall constitute a quorum for the transaction of business of the board" (Section 5, Republic Act No. 2264), it results that the Board had no quorum, and that, accordingly, said hearing and decision are null and void for want of authority therefor.

Moreover, petitioner was not notified, until March 4, 1963, of the hearing scheduled for March 11 and 12, 1963. From Maddela, where petitioner was, he had no means of communicating with his counsel in Manila before

March 11 and 12, 1963. In order to get in touch with his lawyer in Manila, petitioner had to go, by boat, from Maddela to San Agustin, Isabela, twenty-five (25) kilometers away, and, thence, proceed by bus to Bayombong, Nueva Vizcaya, via San Agustin, Jones and Cordon, Isabela, or a distance of over 100 kilometers, aside from the trip by boat. As a consequence, petitioner was unable to reach Bayombong until March 11, 1963, at noontime, when he wired his counsel in Manila and moved for postponement of the hearing. On the same date, petitioner's counsel moved that the hearing be postponed to April 15, 1963. It is thus clear that in denying said petition for postponement, the Provincial Board had deprived the petitioner of his day in court and, consequently, denied him due process.

WHEREFORE, judgment is hereby rendered declaring that petitioner Dionisio A. Sarandi is entitled to recover the amount of salary and other emoluments and privileges attached to the office of municipal mayor of Maddela from September 28, 1962 to December 31, 1963, and directing respondents Provincial Governor, Provincial Board and Provincial Treasurer of Nueva Vizcaya and the Municipal treasurer of Maddela, to cause petitioner herein to be paid the amount of the aforementioned salary, emoluments and privileges, with costs against said respondents.

IT IS SO ORDERED.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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