

BIENVENIDO A. CASTILLO, PETITIONER, VS. HON. JOSE M. VILLARAMA, ETC., ET AL., RESPONDENTS.*G.R. No. 24649. September 18, 1965*

Ponente: MAKALINTAL, J.

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Upon administrative complaint for oppression and maladministration filed by Provincial Governor Jose M. Villarama of Bulacan, with a simultaneous order of suspension from office, Municipal Mayor Bienvenido A. Castillo of Pulilan was investigated by the Provincial Board, acquitted of the charge and ordered reinstated. The Governor having refused to recognize the validity of this decision of the Board and its order of reinstatement, and having instructed the Vice-Mayor, Arsenio Sulit, not to relinquish the office of Mayor which he assumed upon Castillo's suspension, the latter initiated the instant proceeding for prohibition under Rule 65 to prevent enforcement of the Governor's instruction to the Vice-Mayor so that petitioner's reinstatement and reassumption of office may be carried out. Pursuant to the prayer for preliminary injunction in the petition and after due notice and hearing of the incident we issued the corresponding interlocutory writ on June 22, 1965. The case was heard and argued on the merits on September 6, 1965.

Under the law, Section 2189 of the Revised Administrative Code, when administrative charges are preferred by a Provincial Governor against a municipal official "the Provincial Board shall, at its next meeting, regular or special, set a day, hour and place for the trial of the same and notify the respondent thereof . . . (and) the hearing shall occur as soon as may be practicable, and in case suspension has been effected, not later than ten days from the date the accused is furnished or has sent to him a copy of the charges . . ."

The charge against petitioner was filed with the Provincial Board on May 19, 1965. In its next regular weekly meeting on Wednesday, May 26, the Governor was absent and the Vice-Governor presided, with all three members of the Board in attendance. By unanimous vote the administrative case was set for hearing at 10:00 in the morning of the next regular meeting day, June 2, 1965, in the provincial government session hall. It seems that respondent Governor even then refused to recognize the validity of this action of the Board, as shown in the letter he sent to the Vice Governor and the three members on May 31, 1965, implying that he had given the Vice-Governor only limited authority to preside Board meetings in his absence and that such authority did not extend to matters not in the agenda prepared beforehand.

It appears, however, that in the agenda for the regular meeting on June 2 one of the items was precisely the setting of the date for the hearing of the case. Both the Governor and Vice-Governor absented themselves from that meeting, but the three Board members, who together with the Provincial Secretary, were present, proceeded nevertheless, elected the senior Board Member as presiding officer and unanimously agreed to reset the investigation of petitioner for the next regular meeting on June 9, 1965, to continue daily thereafter until completed.

On June 9, 1965 petitioner appeared together with his counsel and witnesses, but the session hall, where the

hearing was to be conducted, was found padlocked. The Governor and Vice-Governor, who according to the verified allegations in the petition were in their offices in the provincial capitol at the time, did not show up at the meeting. The three Board Members decided to hold it in the office of one of them, but later on, informed that the session hall had been opened in the meantime, they repaired thereto and proceeded with the business at hand. The administrative case was called, and after ascertaining that the complaining witness one Carlos Espino was absent despite his having been notified, the Board received petitioner's evidence. On the same day, after the hearing was finished, the Board deliberated and rendered its decision of acquittal, with an order for petitioner's immediate reinstatement.

Informed of the decision, respondent Governor chose to ignore it by instructing the Vice-Mayor in writing "not to relinquish your position to anybody until the suspension of Mayor Bienvenido Castillo be legally lifted by the undersigned."

The instant petition for prohibition was filed on June 15, 1965. On June 28 a supplemental petition followed, alleging that regardless of the validity or invalidity of the proceedings of the Provincial Board exonerating petitioner his preventive suspension had already expired because of the lapse of the thirty-day limit fixed by law, but that when he went to the municipal building of Pulilan to reassume office on June 21, 1965, respondent Vice-Mayor declined to vacate it; and stating further, However, that by virtue of the writ of preliminary injunction issued by this Court on June 22 respondent Vice-Mayor did relinquish the office willingly to petitioner the next day, June 23.

The principal issue here is whether or not respondent Provincial Governor may validly refuse to recognize the decision of the Provincial Board, rendered unanimously by its three members after an investigation conducted by them at a regular meeting where the Governor was not present.

The matter of preventive suspension of an elective municipal official, of his investigation and subsequent dismissal or reinstatement following administrative charges against him, is undoubtedly one which involves public interest and hence requires expeditious resolution. It is for this reason that the law provides that such charges shall be heard by the Provincial Board within ten days from notice; that the preventive suspension shall not be for more than thirty days; that at the expiration of said period the suspended official shall be reinstated in office without prejudice to the continuation of the proceeding against him, unless the delay in the decision of the case is due to the fault, neglect or request of the accused (Sec. 2189, Revised Administrative Code); and that the trial shall be given preference over the current and routine business of the Board (Sec. 2190, *id.*). If the decision of the Board is one of exoneration and the official concerned is still under suspension his reinstatement follows immediately as a matter of course (Sec. 2190, *id.*).

Respondent maintain that the meetings of the Provincial Board on June 2 and 9 1965 were not held in accordance with law because they were not presided by the Provincial Governor; that indeed the Board cannot function legally at all in the absence of the Governor and the Vice-Governor. Reliance is placed, in support of the first proposition, on Section 5 of the Local Autonomy Act (Republic Act No. 2264, and in support of the second, on an opinion of the Attorney-General dated March 4, 1926. According to that opinion, it is pointed out, "the two members (at that time) of the provincial board, in their respective capacities as members of the board alone, cannot perform any valid and lawful corporate function, without acting in conjunction with the Provincial Governor who is made by the corporate charter not only a member and an integral part of the board but also the presiding officer of the same . . . because the power to legislate for the province is vested in the governor, as chairman, and two members of the provincial board." (Commentaries on the Revised Administrative Code by Martin Vol. VI).

The opinion cited, correct or not, has no application in the present case in view precisely of the law relied upon by respondents, namely, Section 5 of Republic Act No. 2264 which provides:

"SEC. 5. Composition of the Provincial Board. - The provincial board in first, second and third class provinces shall be composed of the provincial governor, who shall be the presiding officer of the board, the vice-governor, and three other members who shall be elected at large by the qualified electors of the province . . . The presence of three members shall constitute a quorum for the transaction of business by the board. In case of a tie on any matter deliberated upon by the board, the side in favor of which the governor has voted, shall prevail. In the absence of the governor, the vote of majority of the members present shall constitute a binding act of the board."

It may be noted that although the foregoing provision makes the Provincial Governor the presiding officer of the Board, it does not make his presence indispensable for the valid transaction of business, for it not only considers the presence of three members (out of the entire membership of five) sufficient to constitute a quorum for that purpose, but also anticipates a case when the Governor is absent, in which case "the vote of a majority of the members present shall constitute a binding act of the Board." The designation of the Governor as presiding officer is obviously meant to apply to meetings where he is present, as the logic of the situation dictates, he being the Executive and highest officer in attendance.

The power of investigating and deciding an administrative case filed against a municipal official is not executive in nature. It is lodged in the Provincial Board as a body, which is enjoined by law to fix the day, hour and place for the trial of the case and, as thus fixed, "to hear and investigate the truth or falsity of the charges . . ." The performance of this duty cannot be frustrated by the absence, fortuitous or deliberate, of the Provincial Governor. In the very nature of things he may consider it politically expedient to absent himself especially if he happens to belong to a political party different from that of the official against whom he himself has filed the administrative charges. The adverse consequences of such recalcitrance, not only to the official directly affected but to public interest as well, can easily be imagined.

We have passed upon a similar question in the case of *Javellana et al. vs. Tayo*, G. R. L-18919, where we upheld the validity of the official acts of a municipal council done at a regular session attended by a majority of councilors who constituted a quorum, although the Mayor and the Vice-Mayor were absent. The reasons stated in our decision there are applicable in this case.

It need only be added that in any event the thirty-day limit fixed by law for the preventive suspension of a municipal official charged administratively has already expired in the present instance, and hence petitioner's reinstatement is in order.

The writ prayed for is granted and the preliminary injunction heretofore issued is made permanent. Costs against respondents.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Dizon, Bengzon, J. P., and Zaldivar, JJ., concur.

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