

THE MUNICIPALITY OF SAN LUIS, BATANGAS, PLAINTIFF AND APPELLANT, VS. HONORIO VENTURA, SECRETARY OF THE INTERIOR, AND MODESTO CASTILLO, PROVINCIAL GOVERNOR OF BATANGAS, DEFENDANT...

G. R. No. 34535. December 07, 1931

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

On November 27, 1920, the municipal council of San Luis, Batangas, enacted ordinance No. 7, series of 1920, regulating and classifying the fisheries within the waters of the said municipality. Thereafter, on December 10, 1925, it enacted ordinance No. 5, series of 1925, classifying and dividing the municipal waters into lots for purposes of fishery. With a view to exempting from public auctions the fisheries which had been declared to belong to the first class (baclad), and to let them by means of license, the council enacted ordinance No. 2 on July 26, 1926, series of the same year. Later, however, in order to explain the provisions of the ordinance No. 2, series of 1926, the council enacted ordinance No. 3, series of 1926, on the 18th of October of that same year.

These two latter ordinances were disapproved by the provincial board in October and November, 1927, respectively, by means of resolutions Nos. 1024 and 1044, series of 1927. The municipal council appealed from these resolutions of the provincial board to the Chief of the Executive Bureau, who sustained the appellant. Notwithstanding this resolution, the Secretary of the Interior, on his own initiative, rendered a decision on February 13, 1929, requiring the municipal council of San Luis to let the first class fisheries (baclad) in that municipality by public auction, instead of by administration, as the council had decided. The latter asked the Secretary of the Interior to reconsider his decision, but the petition was denied. The provincial governor of Batangas was then instructed by the Secretary of the Interior to order the municipal council of San Luis to let those fisheries through public auction, under punishment of suspension, thereby giving rise to the filing of the complaint in this case seeking to prevent the execution of the order of the Secretary of the Interior.

The defendants demurred to the complaint on the ground that it did not set forth facts sufficient to constitute a cause of action. The trial court sustained the demurrer, and deeming the complaint not to be susceptible of amendment, dismissed it without special pronouncement of costs.

From this judgment the municipal council appealed, and in this instance makes the following assignments of error:

- The trial court erred in sustaining the demurrer in spite of the fact that it did not set out clearly the grounds upon which it is based.
- The trial court erred in declaring ordinances Nos. 7, series of 1920, 2 and 3, series of 1926, of the municipal council of San Luis, Batangas, illegal and void without permitting the parties to introduce evidence as to whether or not the ordinances in question tend to give exclusive privilege of fishery.

- The trial court erred in finding and deciding that under the law the municipal council is primarily obliged to let a fishery privilege to a private party by public auction even if the grant refers, only to a small portion of the fishery; in other words, the trial court erred in not finding and deciding that under the law the letting of a fishery privilege to a private party by public auction is mandatory only when the privilege over the whole fishery is granted to a private party.
- The trial court erred in not finding and deciding that baclad is a trap for catching fish, and as such, its use comes clearly under the provisions of section 2324 of the Administrative Code which authorizes a municipal council to issue licenses to any person for catching fish with traps, nets, and other fishing tackle without public auction.
- The trial court erred in declaring that the decision of the Chief of the Executive Bureau sustaining the validity of ordinances Nos. 7, series of 1920, 2 and 3, series of 1926, enacted by the municipal council of San Luis, is not final and conclusive and binding upon the executive authorities.
- The trial court erred in declaring that the courts of justice in this case have no right to review the decision of the executive department due to the division of powers in this Government.
- The trial court erred in not sustaining the municipal autonomy in this case."

The point to decide in this case is whether or not the ordinances in question were beyond the powers conferred by law upon the municipal council of San Luis, and whether or not ordinances, granting exclusive privilege of fishery within the municipal waters of San Luis, without a preceding public auction, are valid.

The decision of this case depends upon the interpretation to be given to sections 2321, 2323, and 2324 of the Administrative Code. Section 2321 provides:

"A municipal council shall have authority, for purposes of profit, to grant the exclusive privilege of fishery or right to conduct a fish-breeding ground within any definite portion, or area, of the municipal waters. * * *"

Section 2323 prescribes that:

"When a fishery or fish-breeding ground is granted to a private party as herein above authorized, the same shall be let to the highest bidder in the manner and subject to the conditions prescribed in section two thousand three hundred and nineteen hereof."

And, finally, section 2324 also provides that:

"Where a municipal council has not granted the exclusive privilege of fishery in municipal waters, it may impose a license tax upon the privilege of taking fish in such waters with nets, traps, or other fishing tackle; but no such license shall confer an exclusive right of fishery."

Section 2321, then, authorizes the municipality to grant the exclusive privilege of fishery or the right to conduct a fish-breeding ground within any definite portion, or area, of the municipal waters. Granting the exclusive privilege of fishery means that the grantee uses his privilege to the exclusion of everybody else; so that when a person or entity has obtained an exclusive privilege of fishery or right to conduct a fish-breeding ground within any definite portion, or area, of the municipal waters, no other person or entity may fish within that definite portion or area. (U. S. vs. Hernandez, 31 Phil., 342.)

Section 2323 provides that when the council grants the exclusive privilege of fishery or the right to conduct a fish-breeding ground to any private party, it should do so through a public auction, letting it to the highest bidder, in the same manner as is being done in exploiting a ferry, a market, or a slaughterhouse belonging to the municipality.

On the other hand, section 2324 authorizes the municipality, when it has not granted the exclusive privilege of fishery in municipal waters, to impose a license tax upon the privilege of fishing in such waters, with nets, traps, or other fishing tackle, but no license of this kind shall confer an exclusive privilege of fishery.

There is no question that the municipal council of San Luis is authorized by law to grant to any private party the exclusive privilege of fishery in a definite portion, or area, of the waters of the municipality. Neither is there any question that the municipal council is empowered to regulate fishing within the municipal waters under its jurisdiction. In *United States vs. Hernandez*, *supra*, it was held:

"The right to engage in fishing is a common and general one, but it can be regulated by a municipal corporation under a provision of law or authority granted by the Legislature, being in this case a delegation of the state's authority to the municipality. By virtue of such authority a municipality may also grant to the inhabitants thereof the exclusive right to fish in the sea within its municipal boundaries."

"By the common law all persons have a common and general right of fishing in the sea, and in all other navigable or tidal waters; and no one can maintain an exclusive privilege to any part of such waters unless he has acquired it by grant or prescription, notwithstanding the title to the bed of such a stream is in the riparian owner. * * * " (19 Cyc, 992, and cases there cited.)

"In the absence of statute, the right of fishery in navigable waters within the limits of a municipal corporation belongs to the public, and the corporation as such can exercise no control over it; * * *. But power to regulate and control fisheries within its limits has generally been given to such towns by patent or grant, or by an act of the legislature. Under such grants or acts the right of fishing in waters within the limits of a particular town may be given exclusively to the inhabitants thereof, * * V (19 Cyc, 1004, and cases there cited.)

On the other hand, section 2238 of the Administrative Code empowers the municipal council to enact such ordinances and make such regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law. Therefore, the municipal council may validly divide and classify, for fishing purposes, the municipal waters under its jurisdiction. But the municipal council, cannot, without infringing the law, grant without a public auction the exclusive privilege of exploiting first-class fisheries, as has been done by enacting ordinances Nos. 2 and 3 in question; for the law expressly provides that when the privilege is granted to a person or private party, it shall be let to the highest bidder at a public auction. It is true that the municipal committee on fishing privileges has alleged, among other reasons for excluding first-class fisheries from public auction, that such a procedure might give rise to a fishing monopoly in the municipality owing to the low bids; but to our mind such arguments do not justify the non-compliance of the law, especially so when the possibilities pointed out by such committee may be guarded against by the municipal council through the adoption of proper measures. At any rate, such argument should be referred to the Legislature in order that it may amend the law, if it so desires.

The appellant contends that first-class fisheries are limited to a small portion of the municipal waters, and that therefore the provision of section 2321 of the Administrative Code, referring to all the waters of the municipality, should not be applied. This contention is untenable. We believe that no exclusive privilege of fishery in all the waters of the municipality can be granted for as we held in the *Hernandez* case, *supra*, the right to engage in fishing is common, public, and general, and does not require a grant from the municipality. But the municipality may subdivide its waters into small portions and grant the exclusive privilege of fishery in each portion, in which case the grant must be made through public auction.

The appellant also contends that to install a first-class fishery (baclad) amounts to using nets, traps and other fishing tackle. This contention is likewise untenable. The difference between the fishing tackle mentioned in

section 2324 of the Administrative Code and the fishery or baclad is that the first may be used in any part of the municipal waters and its use does not exclude the right of others who may have the same apparatus from the same portions of the municipal waters; while the fishery or baclad is an apparatus placed in a definite portion of the municipal waters more or less permanently, and it excludes others from the right of fishing within the same portion or area of water. In order to use the apparatus called nets, traps and other fishing tackle, no exclusive privilege is required, for the right of fishing in municipal waters in general is a common, public, and general right (19 Cyc, 992, 1004), while in order to use the apparatus called fishing enclosure or baclad, the exclusive right to fishery is required, since no one else but the grantee may fish in the portion of water defined in the grant. In view of this, we conclude from the foregoing premises that the fishery called baclad, requiring as it does the grant of an exclusive privilege, is governed by section 2323 of the Administrative Code; that is to say, the grant of that privilege must be made through public auction. On the other hand, fishing with nets, traps, and other fishing tackle is governed by section 2324, that is, by means of licenses, but in the sense that the latter shall not carry with it an exclusive privilege.

Another error assigned by the appellant is the lower court's holding that the court has no right to review a decision of the executive department. This assignment of error is well founded. The provision of section 2236 of the Administrative Code is conclusive to the effect that "Nothing contained in either of the three last preceding sections hereof shall be construed to deprive any judicial tribunal of power to hold void for want of statutory authority any act, ordinance, or resolution of a municipal council or executive order of a municipal president the validity of which shall be involved in any cause arising before such tribunal without respect to the decision of the executive authorities." But this error, by itself, does not warrant the revocation of the order appealed from, especially when notwithstanding this opinion expressed by the court below, at last it held that the ordinances in question were illegal.

Also, the appellant contends that the court below erred in not declaring that the decision of the Chief of the Executive Bureau is final, conclusive, and binding upon the executive authorities, and in not sustaining the municipal autonomy in its order. These errors assigned are of extremely minor importance in the decision of this case: (1) Because, as we have stated, courts have power to pass upon the point here raised without respect to the decision of the executive authorities; and (2) because, even if the court below had sustained the municipal autonomy, the latter could not prevail if in the end the ordinance in question proved illegal.

The most important point to consider, and one not wholly devoid of difficulties, is that raised by the appellant with reference to the power of the Secretary of the Interior to intervene in this case.

With respect to administrative proceedings it is well to bear in mind the provisions of sections 2233 and 2235 of the Administrative Code. Section 2233 empowers the provincial board to declare an ordinance null and void when it has been enacted beyond the powers conferred upon the council, and section 2235 provides the manner of appealing from the decision of the provincial board to the Chief of the Executive Bureau, who shall decide the same question which was presented to the provincial board and who shall either affirm or reverse its decision. Here the administrative proceeding comes to an end with regard to annulment of a municipal ordinance. The law provides for no further step in this proceeding except that after the decision of the Chief of the Executive Bureau, the interested parties may take up the case with the court to ascertain the validity or the nullity of the ordinance, which shall decide it without respect to the decision of the executive authorities. (Section 2236, Administrative Code.)

The law indeed does not provide an appeal to the Secretary of the Interior; but this does not prevent the Secretary of the Interior from performing his duty of supervising his subordinates as the law prescribes. The Chief of the Executive Bureau is, indeed, the immediate head of the municipal governments; but his administration is subject

to the supervision and control of the Secretary of the Interior, as section 820 of the Administrative Code provides in the following terms:

"SEC. 820. Functions of Executive Bureau.—Through the Executive Bureau shall be exercised, conformably with law, the administrative supervision and control of the Secretary of the Interior over provinces, municipalities, chartered cities, and other local political divisions, not being in the territory under the administrative supervision of the Bureau of non-Christian Tribes. * * *"

By virtue of this supervision, whenever the Secretary of the Interior deems the municipal council to have violated any provision of the Administrative Code, he has power to order said municipal council to obey the law, notwithstanding the ruling of the Chief of the Executive Bureau to the contrary.

The appellant insists that once the Chief of the Executive Bureau has decided the case, the Secretary of the Interior has no authority to review the decision. This contention is untenable. Section 79 (C) of the Administrative Code, as amended by Act No. 3535, provides:

"SEC. 79 (C). Power of direction and supervision.—The Department Head shall have direct control, direction, and supervision over all bureaus and offices under his jurisdiction and may, any provision of existing law to the contrary notwithstanding, repeal or modify the decisions of the Chief of said bureaus or offices when advisable in the public interest., * * *"

This provision means that the Secretary of the Interior may, notwithstanding any provision of law to the contrary, reverse or modify a decision of a bureau chief who is under his jurisdiction. Among the bureaus and offices under the jurisdiction of the Secretary of the Interior is the Executive Bureau. (Sec. 81, Administrative Code.) Wherefore we are of the opinion and so hold, that the decision of the Chief of the Executive Bureau approving the ordinances in question is not final or conclusive upon the Secretary of the Interior, and may be reversed or modified by him when the public interest so demands.

In arriving at this conclusion we have not lost sight of the case of *Municipal Council of Lemery vs. Provincial Board of Batangas*, G. R. No. 36201,[1] recently decided. It would not be amiss to invite attention to the fact that in those certiorari proceedings, the petitioner sought to annul the resolution of the respondent provincial board disapproving resolution No. 18 of the respondent municipal council. This resolution dealt with the abolition of the job of janitor for the justice of the peace court, and the creation of another in its stead, to serve as messenger for the offices of the justice of the peace, the municipal president and the municipal secretary, with a slight increase in salary, this court held that the municipal council might validly pass that resolution as being within the powers conferred upon it by law, and that the provincial board had no authority to disapprove it, according to section 2232 of the Administrative Code. (See *Gabriel vs. Provincial Board of Pampanga*, 50 Phil., 686, and *Carino vs. Jamoralne*, G. R. No. 34564.[1]) One of the defenses set up by the respondent provincial board in that case (*Municipal Council of Lemery*, supra), was that the petitioner had another plain and speedy remedy, to wit, appeal to the Secretary of the Interior, and that, therefore, the writ would not lie. It was held that the municipal councils had no right to appeal to the Secretary of the Interior from the decision of the Chief of the Executive Bureau. And it was also ruled that the power of direction and supervision conferred by law on department heads was confined to the decisions of chiefs of bureaus under their jurisdiction, affecting the public good in general.

In the case at bar the provincial board of Batangas disapproved the ordinances in question on the ground that the municipal council had no authority to grant the fishing privilege in municipal waters without the requirement of a public auction. The municipal council of San Luis appealed from this disapproval to the Chief of the Executive Bureau, and the latter upheld the appeal and revoked the resolution of the provincial board. But the Secretary of the Interior, in the exercise of his power of direction and supervision, issued an order on February 13, 1929, in consequence of which the municipal council filed the present writ of injunction. We need hardly point out that

since the ruling of the Chief of the Executive Bureau was in favor of the municipal council, the latter had no reason for appealing to the Secretary of the Interior, and that, therefore, the doctrine on this point set forth in the Municipal Council of Lemery case, supra, is not applicable to the present one.

With reference to the nature of the power of direction and supervision exercised by the Secretary of the Interior, suffice it to say that section 79 (C) of the Administrative Code defines it clearly, and we hold that compliance with the administrative laws is beyond all doubt advisable for public interest.

By virtue of the foregoing considerations, the order appealed from must be and is hereby affirmed so far as it is not in conflict with this decision, with costs against the appellant. So ordered.

Avanceña, C. J., Street, and Ostrand, JJ., concur.

[1] Page 260, ante.

[1]Page 188, ante.

VILLA-REAL, J., concurring:

I concur with the majority because the public welfare demands that the decision of the Executive Bureau be reversed, and the public given a chance to bid in, so that the municipality may have the highest possible price for the fishing franchise.

DISSENTING

MALCOLM, J., with whom concur JOHNSON, ROMUALDEZ, and IMPERIAL, J. :

In a complaint filed by the municipality of San Luis, Batangas, in the Court of First Instance of that province, it was alleged, among other things, that the decision of the defendant Secretary of the Interior was null and void for want of authority or jurisdiction on the part of the Secretary to declare that fish corrals in the municipality of San Luis be let by public auction instead of by administration, and accordingly, it was prayed that a judgment be rendered declaring, among other things, the decision and order of the Secretary of the Interior and of the provincial governor on this matter null and void. The demurrer to the complaint was sustained by the trial judge. One error assigned on appeal is to the effect that the trial court erred in declaring that the decision of the Chief of the Executive Bureau sustaining the validity of the ordinances in question is not final, conclusive, and binding upon the executive authorities.

The controlling facts as alleged in the complaint are these: The municipal council of San Luis, Batangas, in order to exempt from public auction fish corrals which had been classified as first class (baclad) and to let them by licenses, enacted two ordinances on July 26, 1926, and October 18, 1926. These ordinances were disapproved in October and November, 1927, by the provincial board of Batangas. An appeal was taken by the municipal council of San Luis to the Chief of the Executive Bureau, who sustained the appeal of the municipal council. Thereafter, the Secretary of the Interior, on his own initiative, rendered a decision on February 13, 1929, which required the municipal council of San Luis to let the first-class fish corrals (baclad) in that municipality by public auction instead of by administration as desired by the municipal council.

As of date October 29, 1931, in the case of Municipal Council of Lemery, Batangas, vs. Provincial Board of Batangas, Vicente Noble and Modesto Castillo, No. 36201, this court in a decision written by Justice Villa-Real, with whom concurred six other members of the court, considered much the same question. In that decision the author of it said:

"The third point to decide is whether the aforesaid municipal council of Lemery has any other plain, speedy, and adequate remedy along administrative channels.

"Counsel for the respondents contend that section 79 of the Administrative Code, in paragraph (c), as amended by Act No. 2803 and Act No. 3535, confer upon the heads of departments the power of direction and supervision over all the bureaus under their jurisdiction, and may reverse or modify all decisions of the chiefs of said bureaus, and that, consequently, the municipal councils may appeal to the Secretary of the Interior from the Chief of the Executive Bureau.

"In the first place, the right of appeal is not inherent but conferred by law. The Administrative Code, section 2235, only grants municipal councils the right to appeal from decisions of the provincial board to the Chief of the Executive Bureau. Furthermore, the power of direction and supervision granted by law to the heads of departments is limited to the decisions of the chiefs of bureaus under their jurisdiction affecting the public good in general."

If the above was good law one month ago, it is good law today. In other words, the Secretary of the Interior has power to repeal or modify the decisions of the chiefs of bureaus or offices under him, including the decisions of the Chief of the Executive Bureau, when "the public good in general" is affected, but has no such power when simply a municipal ordinance is questioned and when the procedure for appeal has been fulfilled. It accordingly must be conceded that, in accordance with section 2235 of the Administrative Code, "upon receipt of notice by the appellant," that is, in this instance by the municipal council of San Luis from the Chief of the Executive Bureau, "the ordinance * * * shall be revived and come into force again." That being true, and no other executive authority having any jurisdiction in the matter, any attempt at interference would be void for want of jurisdiction. The municipality could logically then rest on the defensive, for the ordinance having been held valid by the last executive officer having power in the premises, it would be unnecessary for the municipality to take the offensive.

In the decision of the Chief of the Executive Bureau above referred to, it was said:

"The solution of the case hinges on this question: may corral (baclad) fishery privileges be let by licenses, under the provisions of section 2324 of the Administrative Code? This section reads as follows:

" 'SEC. 2324. License tax upon taking of fish in municipal waters.—Where a municipal council has not granted the exclusive privilege of fishery in municipal waters, it may impose a license tax upon the privilege of taking fish in such waters with nets, traps, or other fishing tackle: but no such license shall confer any exclusive right of fishery.' (Underscoring, ours.)

"This office is of the opinion that the phrase 'exclusive right of fishery' as used in the above quoted statute refers to the right to monopolize the catching of fish in a certain district of municipal waters which, if granted to a person or corporation, would obviously be prejudicial to other persons who may want to engage in the same industry. Said phrase does not refer to the lease to various persons of the different (baclad) sites that a fishery district may contain. In other words, the right granted to a person to plant his 'baclad' in a designated site within a district of municipal water does not fall within the scope of 'exclusive right of fishery' as he does not thereby acquire the exclusive right to fish in the entire district.

"Foregoing reasons considered, and in view of the findings of this office to the effect that all the equities are in favor of the present lessees of the baclad sites in the municipality for the reason that they were in possession of the sites from time immemorial and that they have invested considerable capital for the preparation thereof and the acquisition of their equipments, this office believes that your ordinances Nos. 2 and 3, providing for the letting of corral fishery privileges in that municipality by licenses, fall within the purview of section 2324 of the Administrative Code aforesaid and are not ultra vires or illegal.

"Section 2233 of the Administrative Code empowers the provincial board to disapprove a municipal resolution or ordinance when such resolution or ordinance is 'beyond the powers conferred upon the council * * * making

the same * * *.' Inasmuch as in this case it is clearly explained that your ordinances Nos. 2 and 3 above mentioned are within your power to pass, this office is of the opinion that the provincial board cannot validly disapprove the same.

"In view of the foregoing and in deference to the avowed policy of this office in favor of local autonomy, your appeal is hereby upheld, pursuant to the provisions of section 2325 of the Administrative Code. So ordered."

The above quoted decision should be given the respect by the courts which the decisions of all properly qualified executive officials are given. The presumption must be that the decision is correct and so binding upon the executive department. But on this point it is unnecessary for us to express an opinion, for as herein-before indicated, if the Secretary of the Interior and the provincial governor exceeded their jurisdiction in interfering with the municipal council of San Luis, a holding to this effect would result in relieving the municipality from having to enjoin anyone from intruding on the performance of the legitimate duties of the municipality.

For these reasons which are planted squarely on the admitted facts, which are alleged in the complaint, on the applicable law which is plain and explicit, and on the decision of this court in the case of the Municipal Council of Lemery, Batangas, vs. Provincial Board of Batangas, Vicente Noble and Modesto Castillo, *supra*, which is controlling, we dissent and vote to set aside the order appealed from.

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