

THE MUNICIPAL COUNCIL OF LEMERY, BATANGAS, PETITIONER, VS. THE PROVINCIAL BOARD OF BATANGAS, VICENTE NOBLE AND MODESTO CASTILLO, RESPONDENTS.

G. R. No. 36201. October 29, 1931

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This action against the provincial board of Batangas, Vicente Noble and Modesto Castillo, was instituted by means of a petition filed by the municipal council of Lemery, Batangas, praying for the reasons given, that resolution No. 289 of the respondent provincial board be declared null and void and contrary to law, so as to leave resolution No. 18, series of 1931, of the plaintiff municipal council in full force and effect, and that the preliminary injunction issued in the course of this proceeding be made permanent, so as to require the respondents to abstain and refrain forever from performing the acts complained of, with costs against the respondents.

In answer, the respondents denied each and every one of the allegations of the petition, and by way of special defense contended that they did not exercise judicial functions, and even if they did so, they were within their rights, and that the petitioner has a plain, speedy, and adequate administrative remedy, for which reason they prayed that the petition be denied.

" The relevant facts necessary for the settlement of the points raised upon which there is no question, are the following:

On February 16, 1931, the municipal council of Lemery, Batangas, passed resolution No. 18, series of 1931, reading as follows:

"[RESOLUTION No. 18]

"The budget again came up for discussion in regard to the item of porter service for the justice of the peace court in this municipality, who, according to the budget, receives per annum, with a view to consolidating this position with that of the messenger for the office of the municipal president and of the municipal secretary, Leon Marquez, giving the latter an increase of two pesos a month in consideration of the additional work, which, together with his present salary of twenty-seven pesos a month as messenger for the office of the president and of the secretary, equals twenty-nine pesos a month. It was also proposed that Mr. Pablo Baradas, the present court porter for the justice of the peace, should resign from the position on February 28, 1931, and be relieved by Leon Marquez who is to start work on March 1, 1931, amending the proposed budget with regard to the court porter, so as to read as follows: 'Insert on page 5 of the General Budget for 1931, first line under the heading "Adjudication; Inferior Court": the following: "Wages 1 Portero (B) P24.00."' Notice of this change shall be given to the justice of the peace of this municipality for his information and action, as well as to the municipal treasurer. The motion was seconded by Mr. V. Salazar. Mr. J. Diomampo, who had held out for the continuance of the office of the porter of the justice of the peace court as budgeted and presented for the approval of this council after listening to the arguments of the president in favor of the motion, voted for the abolition of the office of court porter, consolidating the work with that of the present messenger for the office of the municipal president and of the municipal secretary with an increase of two pesos a month to the present

twenty-seven pesos a month which Leon Marquez at present receives. The president took into account chiefly the economy to the municipality in paying only one man to serve three different offices, that of the municipal president, the municipal secretary, and the justice of the peace court, in the same line of work, without lessening the efficiency of either service.

"Unanimously approved."

A correct copy of this resolution having been forwarded to the provincial board of Batangas, in accordance with section 2232 of the Administrative Code, the aforesaid board passed resolution No. 289, reading as follows:

[RESOLUTION NO. 289]

"Resolution No. 18, current series, of the Municipal Council of Lemery, abolishing the position of janitor in the office of the justice of the peace of that municipality, for reasons of economy, and designating the messenger in the offices of the municipal president and the municipal secretary to assume the duties thereof, as well as the communication of Mr. Ramon A. Cabrera, justice of the peace of Taal and Lemery, dated February 26, 1931, requesting that said resolution be disapproved and the municipal council ordered to keep the position in question intact, for the reasons therein set forth, were presented.

"After some deliberation upon the matter, due weight being given the reasons adduced by the municipal council, on the one hand, and Mr. Cabrera, on the other, on motion of the Governor, it was

"Resolved, That the resolution mentioned above is hereby disapproved, and municipal council being duty bound under section 212 of the Administrative Code to furnish the justice of the peace with all the necessary equipments and personnel including adequate janitor service. It seems reasonable, moreover, that the man occupying the position of janitor be one enjoying the full confidence of the justice of the peace, for, as pointed out by this official, he (the janitor) has free access to this office where there are important papers under his sole keeping and responsibility, and the incumbent of the position being abolished, who has been rendering faithful and satisfactory service for six years, is this kind of man, according to the justice of the peace himself. This question of confidence apparently is the main reason underlying the regulation that appointees to positions under the office of the justice of the peace should be proposed by him. Again, the position is already provided for in the 1931 municipal budget approved by the provincial treasurer.

"Ordered, That the secretary advise the Municipal Council of Lemery of this action.

"Member Kasilag abstained from taking part in the deliberations, reasoning that the matter is one which concerns only the justice of the peace and the municipal council."

When the municipal council was advised of the foregoing resolution of the provincial board of Batangas on March 30, 1931, it resolved to appeal to the Chief of the Executive Bureau, in accordance with section 2235 of the Administrative Code, transmitting to said official the corresponding appeal, with correct copies of resolution No. 18, series of 1931, of the plaintiff municipal council, and of resolution No. 289 of the respondent provincial board, attached.

On June 11, 1931, the Chief of the Executive Bureau decided against the appeal. On July 11, 1931, the municipal council of Lemery petitioned the Chief of the Executive Bureau to reconsider his decision, which was denied.

On September 7, 1931, the respondent Vicente Noble, as provincial governor of Batangas, addressed the following communication to the municipal council of Lemery:

"September 7, 1931

"THE MUNICIPAL COUNCIL

"Through the President

"Lemery, Batangas

"Gentlemen: I have the honor to invite your attention to the fact that on or about August 5th last, the Provincial Board of Batangas, following instruction from the Chief of the Executive Bureau, ordered you to include in this year's budget a sum sufficient to cover the salary of the porter or janitor of the justice of the peace court in this municipality, whose position had been abolished by resolution No. 18, present series, by your municipal council; but this resolution was disapproved by the provincial board by means of resolution No. 289, of even series, upon the grounds stated therein; that this latter resolution was appealed from to the Executive Bureau, which office by means of its communication and endorsement dated June 11 and July 27, 1931, respectively, upheld the aforementioned decision of the provincial board.

"To date, however, that municipal council has not complied with the order, notwithstanding the fact that a reasonable time has elapsed to allow of some action in the premises; you are therefore hereby given a period of twenty days from the date of this letter to comply with the order of the provincial board, in default of which, this office shall be under the painful necessity of proceeding administratively against each and every one of the members of that body.

"Please acknowledge receipt of this communication.

"Very respectfully, "

(Sgd.) VICENTE NOBLE

"Provincial Governor"

In order to prevent the threat contained in this letter from being carried out, the municipal council of Lemery instituted this action and at the same time prayed for the issuance of a preliminary injunction.

Counsel for the two parties are not in accord with respect to the nature of these proceedings; counsel for the petitioner contends it is prohibition, and counsel for the respondents contend it is certiorari. Section 217 of the Code of Civil Procedure provides:

"SEC. 217. Certiorari Proceedings.—When the ground of the complaint in an action in a Court of First Instance is that an inferior tribunal, board, or officer exercising judicial functions, has exceeded the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor any plain, speedy, and adequate remedy, and the court, on trial, finds the allegations of the complaint to be true, it shall render a judgment ordering such inferior tribunal, board, or officer, or other person having the custody of the record or proceedings, at a specified time and place, to certify to the court a transcript of the record and the proceedings (describing or referring to them with convenient certainty), that the same may be reviewed by the court; and requiring the party, in the meantime, to desist from further proceedings in the matter to be reviewed, if, in the judgment of the court, a stay ought to be granted."

Section 226 of the same Code says:

"SEC. 226. Prohibition.—When the complaint in any action pending in any Court of First Instance alleges that the proceedings of any inferior tribunal, corporation, board, or person, whether exercising functions judicial or ministerial, were without or in excess of the jurisdiction of such tribunal, corporation, board, or person, and the court, on trial, shall find that the allegations of the complaint are true, and that the plaintiff has no other plain, speedy, and adequate remedy in the ordinary course of law, it shall render a judgment in favor of the plaintiff, including an order commanding the defendant absolutely to desist or refrain from further proceedings in the action or matter specified therein."

According to section 217 of Act No. 190, quoted above, the purpose of the writ of certiorari is to review the record or the proceedings of an inferior tribunal, board, or officer exercising judicial functions, that has exceeded

the jurisdiction of such tribunal, board, or officer, and there is no appeal, nor any plain, speedy, and adequate remedy; whereas according to section 226 of said law, the purpose of the writ of prohibition is to prevent an inferior tribunal, board, or person exercising judicial or ministerial functions without or in excess of the jurisdiction of such tribunal, board, or person, from continuing to do so, and it lies whenever there is no other plain, speedy, and adequate remedy.

The following may be found on the same question in 50 Corpus Juris, page 656, section 8:

"CERTIORARI. Although similar to prohibition in that it will lie for want or excess of jurisdiction, certiorari is to be distinguished from prohibition by the fact that it is a corrective remedy used for the reexamination of some action of an inferior tribunal, and is directed to the cause or proceeding in the lower court and not to the court itself, while prohibition is a preventative remedy issuing to restrain future action, and is directed to the court itself. Statutory provisions changing the common-law features of prohibition sometimes create further distinctions."

In view of the provisions of law and court rulings quoted above, it is evident that we are here concerned with certiorari and not prohibition proceedings, inasmuch as the objective is to have the proceedings of the provincial board of Batangas reviewed in order to ascertain whether it has exceeded its jurisdiction, and not to prevent the continuance of its exercise of functions without or in excess of its jurisdiction.

This being a certiorari proceeding, we shall proceed to pass upon the questions raised by the respondents in their answer.

The respondents allege and maintain that the proceedings of the provincial board of Batangas in disapproving resolution No. 18, series of 1931, of the municipal council of Lemery, by means of its own resolution No. 289, are neither judicial nor quasi judicial, inasmuch as the petition does not allege that the board then acted in the exercise of judicial or quasi-judicial functions.

With reference to the signification of "judicial functions" Corpus Juris (vol. 34, page 1182, section 18) contains the following:

"JUDICIAL FUNCTION. An act performed by virtue of judicial powers. The exercise of a judicial function is the doing of something in the nature of the action of the court. While it is true that, where there is exercise of neither judgment nor discretion, there is not the exercise of a judicial function, it is not true that every function wherein judgment and discretion are exercised is a judicial function. Judicial function presupposes the use of mental processes in the determination of law or fact, and at times involves discretion as to how the power should be used. What is a judicial function does not depend solely upon the mental operation by which it is performed or the importance of the act. Due regard must be had to the organic law of the state and the division of powers of government."

And we find the following in volume 11, page 121, section 68, of the same work:

"WHAT ARE JUDICIAL OR QUASI JUDICIAL ACTS. It is difficult, if not impossible, precisely to define what are judicial or quasi judicial acts, and there is considerable conflict in the decisions in regard thereto, in connection with the law as to the right to a writ of certiorari. It is clear, however, that it is the nature of the act to be performed, rather than of the office, board, or body which performs it, that determines whether or not it is the discharge of a judicial or a quasi judicial function. It is not essential that the proceedings should be strictly and technically judicial, in the sense in which that word is used when applied to courts of justice, but it is sufficient if they are quasi judicial. It is enough if the officers act judicially in making their decision, whatever may be their public character. * * *"

In State ex rel. Board of Commrs. vs. Dunn (86 Minn., 301, 304), the following statements were made:

"The precise line of demarkation between what are judicial and what are administrative or ministerial functions is often difficult to determine. The exercise of judicial functions may involve the performance of legislative or administrative duties, and the performance of administrative or ministerial duties may, in a measure, involve the exercise of judicial functions. It may be said generally that the exercise of judicial functions is to determine what the law is, and what the legal rights of parties are, with respect to a matter in controversy; and whenever an officer is clothed with that authority, and undertakes to determine those questions, he acts judicially."

Section 2233 of the Administrative Code provides:

"SEC. 2233. Provincial board to pass on legality of municipal proceedings.—Upon receiving copies of resolutions and ordinances passed by municipal councils and of executive orders promulgated by municipal presidents, the provincial board shall examine the documents or transmit them to the provincial fiscal, whose duty it shall thereupon become to examine the same promptly and inform the provincial board of any defect or impropriety which he may discover therein, and make such other comment or criticism as shall appear to him proper.

"If the board should in any case find that any resolution, ordinance, or order, as aforesaid, is beyond the powers conferred upon the council or president making the same, it shall declare such resolution, ordinance, or order invalid, entering its action upon the minutes and advising the proper municipal authorities thereof. The effect of such action shall be to annul the resolution, ordinance, or order in question, subject to action by the Chief of the Executive Bureau as hereinafter provided."

This court interpreted section 2233 of the Administrative Code just quoted, in the case of *Gabriel vs. Provincial Board of Pampanga* (50 Phil., 686), cited in *Carino vs. Jamoralne* (p. 188, ante), as follows:

" 'The only ground upon which a provincial board may declare any municipal resolution, ordinance, or order invalid is when such resolution ordinance, or order is "beyond the powers conferred upon the council or president making the same" (Administrative Code, sec. 2233). Absolutely no other ground is recognized by the law. A strictly legal question is before the provincial board in its consideration of any municipal resolution, ordinance, or order. The provincial disapproval of any resolution, ordinance, or order must be premised specifically upon the fact that such resolution, ordinance, or order is outside the scope of the legal powers conferred by law.' "

In vesting provincial boards with power to annul resolutions, and ordinances, passed by municipal councils in excess of their powers, the law granted such provincial boards quasi-judicial powers, for the determination of whether an act is legal or no, is an essentially judicial function.

It follows from the foregoing that the function exercised by the provincial board of Batangas in disapproving resolution No. 18, series of 1931, of the municipal council of Lemery, through resolution No. 289, is a quasi-judicial function.

The second question to decide is whether the provincial board of Batangas, respondent herein, exceeded its powers in disapproving resolution No. 18, series of 1931, of the municipal council of Lemery.

The said board in disapproving resolution No. 18, series of 1931, of the municipal council of Lemery, relies not upon the basis that the municipal council acted in excess of its legislative powers in consolidating the three positions of porter for the office of the municipal president, of the municipal secretary, and of the justice of the peace, but upon the contention that the justice of the peace would not receive adequate porter service, in violation of section 212 of the aforementioned Administrative Code, which reads as follows:

"SEC. 212. Court room and supplies.—The municipalities and townships to which a justice of the peace pertains shall provide him with a room in the tribunal, or elsewhere in the center of population, suitable for holding court and shall supply the necessary furniture, lights, and janitor service therefor, and shall also provide him

with such of the printed laws in force in the Philippine Islands as may be required for his official use. The similar expenses of maintaining the office of a justice of the peace appointed in unorganized territory shall be borne by the province.

"Legal blanks and the dockets required by law, as well as the notarial seal to be used by the justice as ex officio notary public, shall be furnished by the Bureau of Justice."

The law here prescribes that municipalities shall provide the justice of the peace with the necessary janitor service, and not with the exclusive service of a confidential janitor.

The new dictionary of the Spanish Language issued by the Spanish Academy defines the word "porter" as follows:

"PORTER. One in charge of the entrance of any house or office, opening and shutting the doors, delivering messages, etc."

In *Fagan vs. City of New York* (84 N. Y., 348, 352), the word "janitor" was defined as follows:

"JANITOR. A person employed to take charge of rooms or buildings, to see that they are kept clean and in order, to lock and unlock them, and generally to care for them." (2 Bouvier's Law Dictionary, p. 1689.)

In the exercise of their legislative power and in compliance with their legislative duty to provide the justice of the peace court with the necessary janitor service, the municipal council of Lemery has the power to determine a priori what janitor service is necessary to the justice court, and the justice of the peace has the power to determine a posteriori the sufficiency of the janitor service supplied by the municipal council. While the janitor appointed in accordance with the resolution passed by the municipal council does not assume the duties and perform the services of janitor in the justice court, the justice of the peace is not in a position to know if such services are adequate or no. If the janitor service supplied by the municipal council is inadequate to the needs of the justice court, the justice of the peace may demand the said council to provide him with proper janitor service, and may compel the council to do so, in accordance with section 212 of the Administrative Code. (*Province of Tarlac vs. Gale*, 26 Phil., 838.)

It follows that the municipal council of Lemery acted within its legislative powers and duties in consolidating the positions of janitor for the office of the municipal president, of municipal secretary, and of justice of the peace. And the provincial board of Batangas, respondent herein, exceeded its quasi-judicial powers in disapproving resolution No. 18, series of 1931, of said municipal council of

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.

In view of the foregoing considerations, we are of opinion and so hold: (1) That the power exercised by the

provincial board in approving or disapproving a municipal resolution or ordinance is in the nature of a quasi-judicial function; (2) that in disapproving resolution No. 18, series of 1931, of the municipal council of Lemery, which consolidated the position of janitor for the office of the municipal president, of the municipal secretary, and of the justice of the peace court, this action being within the legislative powers of said municipal council, the provincial board of Batangas exceeded its quasi-judicial powers; and (3) that there is no plain, speedy and adequate administrative remedy, for the Administrative Code does not permit of an appeal from the decisions of the Chief of the Executive Bureau to the Secretary of the Interior.

By virtue whereof, the petition is hereby granted, declaring resolution No. 289 of the provincial board of Batangas null and void, which had disapproved resolution No. 18, series of 1931, of the municipal council of Lemery, Batangas, and it is held that the latter is valid and lawful; the preliminary injunction is hereby affirmed, and made permanent, with costs against the respondents. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, and Romualdez, JJ., concur.

JOHNSON, J.:

I reserve my vote.

DISSENTING

IMPERIAL, J., :

Section 212 of the Revised Administrative Code of 1917 (Act No. 2711) provides as follows:

"SEC. 212. Court room and supplies.—The municipalities and townships to which a justice of the peace pertains shall provide him with a room in the tribunal, or elsewhere in the center of population, suitable for holding court and shall supply the necessary furniture, lights, and janitor service therefor, and shall also provide him with such of the printed laws in force in the Philippine Islands as may be required for his official use. The similar expenses of maintaining the office of a justice of the peace appointed in unorganized territory shall be borne by the province.

"Legal blanks and the dockets required by law, as well as the notarial seal to be used by the justice as ex-officio notary public shall be furnished by the Bureau of Justice."

According to this provision of law the plaintiff municipality of Lemery is under duty to provide the justice of the peace of that town with adequate janitor service. It is well known, that inasmuch as the justice of the peace of a municipality has no other personnel than the janitor, the latter acts as amanuensis, custodian of office property and supplies, messenger and porter at the same time. To permit, therefore, that the janitor's position hitherto assigned to the justice court of Lemery should be consolidated with that of janitor for the municipal president and for the municipal secretary, combining three jobs in one, is practically to violate the section quoted above, for the justice of the peace would not then be supplied with the adequate and necessary service to which he is entitled by law.

I agree with the majority in holding that municipal autonomy should be sustained and safeguarded, but this principle has no application where, as in this case, there is a positive and definite law prescribing a mandatory and unavoidable duty. In my opinion the respondent provincial board's resolution should be sustained, and the action dismissed.

OSTRAND, J.:

I agree with Mr. Justice Imperial.

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