

LOCAL AUTONOMY

Vol 50 Phil. Rep. 686-694.

ANDRES M. GABRIEL, plaintiff and appellant, vs. THE PROVINCIAL BOARD OF PAMPANGA ET AL., defendants and appellees.

1. MUNICIPAL CORPORATIONS; LOCAL AUTONOMY. — The local autonomy granted municipal corporations in the Philippines must be protected from higher usurpation of strictly local powers.

2. ID.; ID.; MUNICIPAL AUTHORITY.—The Municipal Law, as revised, grants to the municipal council certain legislative powers of discretionary character (Administrative Code, sec. 2243).

3. ID.; ID.; PROVINCIAL AUTHORITY.—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.

4. ID.; ID.—The action of a provincial board is final for the executive department except when appealed from, whether it is correct or incorrect. The plain remedy to correct an error committed by a provincial board is by appeal of the municipal council to the Chief of the Executive Bureau.

5. ID. ID.: ID.—The facts at bar examined and found to disclose a disapproving resolution of a provincial board grounded on a mistaken finding of fact, of resolutions of a municipal

council which gave equable application to a previous ordinance and a previous resolution adopted pursuant to delegated discretionary authority.

APPEAL from a judgment of the Court of First Instance of Pampanga. Rosauero, J.

The facts are stated in the opinion of the court.

Nepomuceno & Yamzon and J. E. Blanco for appellant.

Provincial Fiscal Catigbac and Felix B. Bautista for appellees.

MALCOLM, J.:

In 1905 the municipal council of Pampanga, adopted ordinance No. 138 relating to the installation of steam engines (Exhibit A). Taking advantage of this ordinance, on October 24, 1925, Andres M. Gabriel requested authorization from the Angeles municipal council to set up a rice mill (Exhibit C). On submission of the petition, the council by a vote of six to two approved resolution No. 137 conceding the permission requested (Exhibit G).

It appears further from the record that on April 5, 1906, the Angeles municipal council had adopted resolution No. 237, introduced with the preamble "The installation of steam engines within the *poblacion* being opposed to the general interests of the municipality, the council after careful study and deliberation unanimously," and then providing "*Resolved: That a district of the municipality is hereby declared within the zone bounded by four streets: Rosario, Lacandola, Jesus and Rizal, which form a square*" (Exhibit B). To clarify the position of the petitioner Gabriel and likewise to meet the protest of certain citizens, on the same date that approval was given to resolution No. 137, the municipal council passed resolution No. 136 in which it was declared "that the site selected by the petitioner Andres M. Gabriel for the installation of his steam engine is outside the radius or

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square designated by the municipal council of Angeles in its resolution No. 237, series 1906" (Exhibit O).

The question next passed to the provincial board of Pampanga (Exhibits Q, R, T, and U). By agreement of the parties, a decision by the provincial board was held in abeyance awaiting the opinion of the Executive Bureau (Exhibit 8). The parties stipulated that "In case that the Executive Bureau holds that the said lot is within the 'radius of the municipality,' the petitioner will not insist in his preterision, the honorable provincial board simply disapproving resolutions No. 136 and 137, series 1925, above referred to; and in case that the said office resolves otherwise, the protestants will withdraw their protests, the honorable provincial board approving said resolutions" (Exhibit 7). The exact question submitted to the Chief of the Executive Bureau in his capacity as a sort of referee was "if the site where it is proposed to erect the rice mill of Mr. Andres M. Gabriel is or is not within the 'radius of the municipality within which is prohibited the installation of steam engines' mentioned by resolution No. 237, series of 1906." The opinion of the Acting Chief of the Executive Bureau dated February 27, 1926, not only gave a literal answer to the question under consideration, which was in favor of Mr. Gabriel, but went further and proffered certain advice in favor of the opposing side. He said, in part:

"x x x An actual inspection of the premises has shown that the lot of Mr. Gabriel where his rice mill is being installed borders Jesus Street, and that it is near the center of the town and within a densely inhabited district where many houses of light and mixed materials are built. Considering these facts, it can safely be said that the 'poblacion' referred to in the preamble of resolution No. 237, now included the lot in question, and to all intents and purposes, it impliedly comes within the purview of the prohibition.

"In view of the foregoing considerations, this office fails to see sufficient and good reasons why the muni-

cipal council granted a license to Mr. Gabriel to install and operate his rice mill within the 'poblacion,' which constitutes, when in operation, a menace and a nuisance to the neighborhood.

x x x x x x x x x x x

"When this case was submitted to this office ex-parte by Attorney Henson sometime ago, the question propounded was whether or not the lot of Mr. Gabriel, where the rice mill in question is being installed, is within the area bounded by the four streets—Rosario, Lacandola, Jesus and Rizal—mentioned in resolution No. 237. Without an ocular inspection having been made on the premises, and basing the decision on the sketch of the place and the papers submitted at the time by Mr. Henson, the question was answered by the undersigned in the negative. In fact, the lot of Mr. Gabriel lies wholly outside of the territory then considered as the only 'radio municipal' or 'poblacion' of Angeles in 1906. But, as stated above, the town has grown so considerably since then that the 'radio municipal' of Angeles must be deemed to have been extended to, and should include now, such portions of the territory bordering the four streets in question as are thickly inhabited as any portion of the 'radio municipal' of 1906. x x x"

Following receipt of the communication from the Executive Bureau, the provincial board of Pampanga met and in resolution No. 414 of date April 6, 1926: "*Resolved*, That this board do and it hereby decide that the location of the lot where Mr. Andres M. Gabriel is applying to establish a rice mill is within the territory considered as 'radio municipal' or 'poblacion' of Angeles in 1906. This decision is based on the advice of the Chief of the Executive Bureau. x x x *Resolved, further*, That, in view of the above, resolutions Nos. 136 and 137, series of 1925, of the municipal council of Angeles, be and are hereby disapproved." (Exhibits V and 10). When the adverse action of the provincial board came to the knowledge of Mr. Gabriel, he communicated with the municipal council of Angeles and asked the council to

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appeal from the ruling to the Executive Bureau. At a meeting of the municipal council held on May 23, 1926, there being present nine councilors and the municipal president and absent the vice-president and one councilor, on the question being put to a vote, six members voted to appeal, one voted against, and two abstained from voting, with the result that the necessary two-thirds of the membership was lacking to sanction the appeal (Exhibits LL and 12). On June 28, 1926, the municipal president of Angeles issued executive order No. 1 directing Mr. Gabriel to desist from using his rice mill (Exhibit X). On July 16, 1926, the council adopted another resolution in which it was resolved "That the case is definitely terminated with respect to this council; and that the municipal secretary file said resolution of the provincial board" (Exhibit 11).

Having run counter to insurmountable obstacles in the Executive Department, counsel for Angeles M. Gabriel next bethought themselves to air their grievances in the courts. Accordingly, in the Court of First Instance of Pampanga, an action was begun to secure an injunction prohibiting the municipal president of Angeles from interfering with the rice mill of the plaintiff, and to secure a judicial declaration that resolution No. 414 of the provincial board of Pampanga of April 6, 1926, is null and of no effect, and that resolutions Nos. 136 and 137 of the municipal council of Angeles, series of 1925, are valid. The provincial board of Pampanga interposed an answer. A trial was had and thereafter a decision was handed down, concluding with a judgment setting aside the preliminary injunction and dismissing the case, with costs against the plaintiff.

From the judgment just mentioned, the losing party has appealed and here has assigned and argued four errors, *viz.*:

"1. The trial court erred in refusing to declare that the plaintiff's steam engine was installed outside the

zone prohibited in resolution No. 237 of the municipal council of Angeles;

"2. The trial court erred in declaring that aside from the authority of the council it was necessary that the municipal president should have issued a permit to the plaintiff before the latter could install his steam engine, though this omission could be cured in view of the testimony of the municipal president;

"3. The trial court erred in declaring that the provincial board of Pampanga had jurisdiction to annul resolutions Nos. 136 and 137 of the municipal council of Angeles, and that the only proper remedy to correct any illegality committed by the board is on appeal to the Executive Bureau;

"4. The trial court erred in not declaring that the resolution of the provincial board was adopted in violation of the agreement entered into by the parties and upon improper and illegal grounds with abuse in the execution of its functions." We propose to take under observation the third error as suggesting the prime issue and as decisive of the appeal.

The Municipal Law, as revised, grants to the municipal council certain legislative powers of discretionary character. Among these is authority "To regulate the establishment and provide for the inspection of steam boilers within the municipality" (Administrative Code, sec. 2243 n). Pursuant to this and other legal provisions, the council of Angeles clearly had a right to supervise the installation of steam engines and to delimit the zone within which they could be installed. But when municipal action was taken, it then became incumbent on the provincial board to pass on the legality of the proceedings. As provided in section 2233 of the Administrative Code, "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

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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." It was pursuant to the above-cited section that the provincial board of Pampanga presumed to act in disapproving the resolutions of the municipal council of Angeles. But the municipal council had still its remedy, which was to appeal from the action of the provincial board. Section 2233 of the Administrative Code provides: "Should the council of any municipality be dissatisfied with the decision of the provincial board, an appeal may be taken by a two-thirds vote of the council to the Chief of the Executive Bureau, who shall decide the same question which was presented to the provincial board. x x x If the decision of the provincial board is affirmed, the ordinance, resolution, or executive order involved shall be null and void. If, however, he shall reverse the decision of the provincial board, then and in that case notice of his decision shall be given to the provincial board and to the council of the municipality appealing, and upon receipt of notice by the appellant, the ordinance, resolution, or executive order shall be revived and come into force again." In this instance, however, since the plaintiff was unable to gain the support of the necessary number of the local councilors, he could not prosecute an appeal to the Executive Bureau.

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." Absolutely no other ground is recognized by the law. A strictly legal question is before the provincial board in its consideration of a 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.

If a provincial board passes these limits, it usurps the legislative functions of the municipal council or president. Such has been the consistent course of executive authority (Opinions Attorney-General Wilfley /1905/, II Op. Atty.-Gen., 557, 642; Opinion Attorney-General Villamor /1910/, V. Op Atty.-Gen., 382; Opinion Attorney-General Villa-Real, November 22, 1922; Opinion Attorney-General Jaranilla, August 9, 1926; Provincial Circular Executive Bureau, September 16, 1918).

It is, of course, clear that the action of a provincial board is final for the executive department except when appealed from, whether it is correct or incorrect. It is equally clear that the plain remedy to correct an error committed by a provincial board is by appeal of the municipal council to the Chief of the Executive Bureau. Such has been the trend of judicial authority (Chanco vs. Municipality of Romblon /1910/, 15 Phil., 101; Panlilio vs. Provincial Board of Pampanga /1916/, 34 Phil., 323; Government of the Philippines Islands vs. Galarosa /1917/, 36 Phil., 338). But the cases cited are not here decisive and are distinguishable on their facts from the case before us.

In this instance, certain decisive points govern. The ordinance of Angeles of 1905 and the resolution of Angeles of 1906 were general in nature, and have never been modified or set aside. They should, therefore, receive equable application. The two resolutions of Angeles of 1925 did so for they merely gave specific effect to the 1905 ordinance and the 1906 resolution. On the other hand, the disapproving resolution of the provincial board was not predicated on any legal consideration. Rather was it grounded on a mistaken finding of fact, diametrically opposed to the municipal view point and entirely inconsistent with the true state of affairs, which disclosed that the rice mill of Mr. Gabriel was outside of the restricted district. The provincial act was *ultra vires*.

All the equities of the case are in favor of Mr. Gabriel. He has spent between P20,000 and P30,000 for his
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Back pay

signed between December 9 and December 31, 1941, is not entitled to the benefits of the Back Pay Law. Such employee did not receive his pay starting from January 1, 1942, not 'by reason of the War' but because he had already resigned and was, therefore, no longer entitled thereto. It will be noted that Republic Act No. 304 expressly recognizes back pay only from January 1, 1942, and since these employees were no longer entitled to pay as of that date, they have no right to any of the benefits of said Act."—*Letter dated August 12, 1948, of Sec. of Justice to Dir. of Public Works, being Opinion No. 231, Series 1948.*

Classification

(a) *First Class-A: The provinces that have obtained an average total revenue of five hundred thousand pesos or more per annum for five consecutive years;*

(b) *First Class-B: The provinces that have obtained an average total revenue of four hundred thousand pesos or more per annum, but less than five hundred thousand pesos, for five consecutive years;*

(c) *First class: The provinces that have obtained an average total revenue of three hundred thousand pesos or more per annum, but less than four hundred thousand pesos, for five consecutive years;*

(d) *Second class: The provinces that have obtained an average total revenue of two hundred thousand pesos or more per annum, but less than three hundred thousand pesos for five consecutive years;*

(e) *Third class: The provinces that have obtained an average total revenue of one hundred thousand pesos or more per annum, but less than two hundred thousand pesos, for five consecutive years;*

(f) *Fourth class: The provinces that have obtained an average total revenue of fifty thousand pesos or more per annum, but less than one hundred thousand pesos, for five consecutive years;*

(g) *Fifth class: The provinces that have obtained an average total revenue of less than fifty thousand pesos per annum for five consecutive years;*

Provided, That in computing the average total revenue, all receipts in the form of aid or allotments from the (Insular) National Treasury, except the internal-revenue allotment under the provisions of section four hundred ninety-one of Act Numbered Twenty-seven hundred and eleven shall be excluded.—Sec. 1, Act No. 3798 as amended by Act No. 4216.

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rice mill. He has installed that mill beyond the prohibited zone where other equally offensive businesses are located. There is more than a suspicion that politics have intervened to the great prejudice of a legitimate business. Mr. Gabriel has no other recourse except in the courts and should there find his remedy.

It is time to deal a blow against higher usurpation of local autonomy. The situation calls for a judicial pronouncement which will at once protect local officers acting within the scope of their legal powers and which will protect a citizen from arbitrary molestation.

Based on the facts and the law, it results that the judgment appealed from shall be reversed, and that in the lower court another judgment shall issue, making permanent the preliminary injunction previously granted, and requiring the defendants to respect resolutions Nos. 136 and 137 of the municipal council of Angeles, series 1925. Without express pronouncement as to costs in either instance, it is so ordered.

Avanceña, C. J., Johnson, Street, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

Judgment reversed.

For the law is naught but words, save as the law is administered. — Chief Justice Charles Evan Hughes.

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