

MALACANANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 44

SUSPENDING MR. BIENVENIDO A. EBARLE FROM OFFICE AS PROVINCIAL GOVERNOR
OF ZAMBOANGA DEL SUR.

This is an administrative case against Provincial Governor Bienvenido A. Ebarle of Zamboanga del Sur who stands charged in separate complaints filed by Eleuterio Rafaela and eight others with oppression, grave abuse of authority, dishonesty and violation of the Anti-Graft Law. The charges were investigated by Assistant Solicitor General (now Judge of First Instance) Florencio Villamor, who found the respondent guilty of oppression under the complaints of Eleuterio Rafaela, and Francisco Sabuelva and Salomon Dadula, and of misconduct in office under those of Cesar Ballesteros, and Jose Guillar and Francisco Ubongen. The investigator cleared him from the complaints of Lauro Roldan, Felipe Largo and Genaro Salomon for the remaining charges.

A careful review of the record shows that the investigator's findings are supported by law and the evidence.

I. Oppression

A. Eleuterio Rafaela charges respondent with oppression and grave abuse of authority. It appears that in the morning of June 17, 1961, complainant Rafaela and Virgilio Padayao met in sitio Mainit, Gawil, Kumalarang, Zamboanga del Sur, and Padayao struck Rafaela with the butt of his gun, wounding the latter on the left shoulder.

Rafaela declared that while he and his wife were in their farm, Cesario Acheme, his farmhand, arrived and told him that a man of the respondent governor wanted to see him at the boundary. When the spouses and Acheme reached the place indicated, Rafaela was suddenly strangled and struck several times with the butt of a carbine by one nicknamed Beriong (Virgilio Padayao), who identified himself as a bodyguard of respondent. As a result he sustained bruises and had difficulty in breathing. He exhibited a scar, the size of a centavo, on the left elbow bend. Beriong was then accompanied by one nicknamed Ceto (Anatolio Castellano).

Padayao brought Rafaela to the poblacion of Pagadian in the house of the respondent. As the latter was away at the time, his wife sent for Atty. Ponciano Dueñas, a special investigator in respondent's office. Dueñas typed something inside the room and there-

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after asked Rafaela to sign the paper (Exh. 1-Rafaela) he had just typed, which Rafaela did. Padayao then told Rafaela to go home and to return when the respondent arrived, otherwise they would have him arrested. Exhibit 1-Rafaela purports to be an affidavit of Rafaela admitting that he was found in possession of an unlicensed caliber 45 pistol.

Rafaela told his wife the following morning that they were moving immediately to Jimenez, Misamis Occidental, because he feared for their lives. In late June or early July 1961 Rafaela returned to Pagadian as previously instructed and proceeded to the capitol where he was introduced to the respondent by the latter's bodyguard. Addressing Rafaela, respondent said: "Are you Rafaela who squatted on my land? Do you not know that the land where you are staying was bought by me in 1955?" Rafaela replied: "Governor, I did not squat on your land. That land, I bought from Datu Tukan Dakula, and another portion from a boy of said Datu who is a corporal in the police force." Respondent asked Rafaela if he had any evidence of ownership of the land. When Rafaela replied in the affirmative and said that the same was left in the house, respondent retorted, "See, you have no evidence of ownership of your land." Afterwards respondent's bodyguard led Rafaela out of the room and warned him that if he ever returned, he would be killed. Rafaela and his wife returned to Jimenez, Misamis Occidental.

According to respondent's evidence, on June 16, 1961, Mamogus Sabia went to the capitol and reported to Atty. Dueñas that Rafaela of Gawil had a pistol and had been harassing the Subanos of that locality. Dueñas instructed Virgilio Padayao, a provincial guard, and Brigido Sudmalin, a special agent, to verify the report, and true enough Rafaela had something bulging on his waist. When Padayao asked what it was, Rafaela made a move as if to draw something from his waist, whereupon Padayao struck him with the butt of his carbine on the left elbow. Rafaela fell to the ground, and Padayao took his pistol and asked him whether he had a license for it. At first Rafaela said he had, but later admitted having none and having bought the firearm from a Muslim.

Padayao and his companion then brought Rafaela to Pagadian to surrender him to the constabulary authorities. However, Rafaela tearfully pleaded to be permitted to see the respondent. The latter being out, Rafaela executed an affidavit before Atty. Dueñas who later permitted him to go home with the admonition to see the respondent upon the latter's arrival and not to leave the place of Gawil. A few days later Rafaela and his wife, bringing with them two letters, went to the capitol to see the respondent to whom Rafaela pleaded to go slow in the filing of the case against him.

The principal point of dispute between the two versions deals with the motive. Whereas complainant Rafaela claims that behind his maltreatment was respondent's conflicting interest in his property in Gawil, respondent avers that he had no intervention whatsoever in the matter and that upon verification of the complaint that Rafaela had been harassing

the residents of the locality, he was found in possession of an unlicensed firearm.

The issue boils down to one of credibility. Complainant, the investigator observed, was a simple barriofolk who testified in a straightforward manner, and there was absolutely nothing in his testimony that would engender disbelief, the same being corroborated on material points by other competent evidence. On the other hand, respondent's evidence is unreliable and incredible. The alleged harassment committed by Rafaela against the Subanos in Gawil was pure hearsay. Neither the person who made the report (Mamogus Sabia) nor the one in whose behalf it was made (Magindulum Balis) was placed on the witness stand to confirm the same.

Moreover, the supposed harassment by Rafaela was belied by Mayor Tukan Dakula of Kumalarang, respondent's own witness, who declared that he had never received any report about Rafaela's disturbing his neighbors and that except for the boundary dispute between Rafaela and Magindulum Subano, which he was requested to settle, he was positive that Rafaela never bothered his neighbors. There is no trustworthy evidence on record to show that the pistol supposedly taken from Rafaela in Gawil was surrendered or delivered to Atty. Dueñas or that said firearm really existed.

I agree with the investigator that respondent's claim that Rafaela had been harassing the Subanos in Gawil and that he was apprehended because he had an unlicensed firearm is not true and that Rafaela's manhandling by Padayao and having him sign an affidavit prepared by Atty. Dueñas were part of a scheme to cower Rafaela and subdue his will so that he would abandon the land in Gawil claimed by the respondent.

While there is no evidence that respondent directed the commission of the acts by his two subordinates, it is too far-fetched to believe that he was not a party to, much less wholly unaware of, the scheme to get Rafaela out of the way. He, more than anyone else, had a motive to desire Rafaela's elimination.

I therefore find the respondent guilty of oppression, an offense which need not be committed in the course of performance of duty (Bautista vs. Negado, G.R. No. L-14319, May 26, 1960).

B. Respondent is also charged with oppression by Francisco Sabuelva and Salomon Dadula. In the afternoon of March 2, 1961, Sabuelva was operating a power-shovel of the Bureau of Public Highways at the Balintawak section in Pagadian. The shovel was removing soil from the right side of the road and depositing it on the left side. A station wagon of the Bureau of Health arrived and respondent alighted, followed by Provincial Warden Mendez and a security guard. They walked towards the power-shovel cage where Sabuelva was operating the machine. Respondent then picked up a stone and threw it at Sabuelva but missed. He shouted at Sabuelva, "Come down. You of the Bureau of Public Highways are humbug (proud)." Sabuelva obeyed, but hardly had he touched the ground when

respondent rained fist blows at him and Mendez pushed him. Sabuelva fell to the ground and sustained injuries in the face and ear.

Thereafter, respondent and his companions proceeded to the place where Salomon Dadula, Sabuelva's assistant, stood. Dadula was also boxed by respondent and he fell on his seat, sustaining injuries in the left arm. Respondent and his men then boarded the station wagon and left.

The following morning after the incident, Sabuelva and Dadula had their injuries treated at the clinic of Dr. Jose Hofilena. That same morning Mrs. Justina Tallafer, Sabuelva's sister, met in church Warden Mendez who told her of respondent's desire to see her. Mrs. Tallafer rode with him in the latter's jeep to the residence of respondent who expressed his regrets over the incident, stating that he did it at the impulse of the moment and that he did not recognize him to be her brother. Respondent asked that they forget the whole matter. The next morning he likewise asked forgiveness from Sabuelva.

The evidence for the respondent is that while the station wagon of the Bureau of Health where the respondent, together with Provincial Warden Mendez, Teotimo Sulante and two of his children, was riding to fulfill a speaking engagement was at the Balintawak section, they saw the power-shovel of the Bureau of Public Highways. Fructuoso Arao, the station wagon driver, stopped the vehicle and, upon the signal of assistant operator Dadula, they proceeded, passing on the left side of the road. As the wagon inched its way, the beam of the power-shovel suddenly appeared before them, and some of the soil it carried dropped on the hood of the wagon. Arao stopped the car, and Mendez and Sulante got off, walked towards the power-shovel and told operator Sabuelva to come down. Mendez reprimanded Sabuelva for his carelessness in operating the shovel. Sabuelva simply sneered, whereupon Mendez gave him fist blows. Sulante, who was beside Mendez, saw Dadula running towards him and he also boxed Dadula. While they were thus quarreling, respondent told Sabuelva to be more careful in his work, after which respondent and his party boarded the station wagon and proceeded on their way.

Respondent denied having met Mrs. Tallafer, Sabuelva and Dadula at the capitol as well as on the occasion when she allegedly went to his house after the filing of the complaint. He claims, however, that Mrs. Tallafer and Dadula went to his residence one evening and asked for forgiveness.

It is undisputed that Sabuelva and Dadula were boxed and got injured while they were operating the power-shovel of the Bureau of Public Highways somewhere in Pagadian. Complainants and their witnesses pointed accusing fingers at the respondent, but the latter and his witnesses claimed that it was Mendez and Sulante who boxed Sabuelva and Dadula, respectively. The testimony of respondent's witnesses, namely, Fructuoso Arao, Provincial Warden Mendez and Teotimo Sulante, does not

inspire belief and may not be accepted on its face value. Arao admitted that he did not actually see the boxing of Sabuelva and Dadula allegedly by Mendez and Sulante but only heard them quarreling. Mendez and Sulante owe their present positions to the respondent; hence it is not farfetched if, as a sign of gratitude, they would assume full responsibility for the incident to save the respondent governor, their benefactor.

Indeed it cannot be believed that Sabuelva and Dadula would not offer any opposition if it were Mendez and Sulante who boxed them. That they put up no resistance was because it was the respondent who struck them, out of respect to his position. Subsequent events bear out complainants' contention. Respondent sent for Sabuelva's sister and asked for forgiveness for the incident. Significantly, Provincial Warden Mendez, respondent's witness, never denied this claim during his testimony. Respondent's claim that it was Mrs. Tallafer and Sabuelva who sought forgiveness is as untenable as it is preposterous. They were the offended parties. In the ordinary course of human relations, it is the offender who asks for forgiveness from the offended party, not vice-versa.

Respondent is therefore also guilty of oppression under the complaint of Sabuelva and Dadula.

II. Misconduct

A. Respondent is next charged with oppression and usurpation of public functions by Engineer Cesar Ballesteros of the waterworks system of the National Waterworks and Sewerage Authority (NAWASA) at Pagadian, Zamboanga del Sur. The evidence for the complainant shows that on April 20, 1960, when Vicente Mediodia, the operator of the diesel engine of the waterworks system at Pagadian, reported for work, he met a person, allegedly sent by the respondent, who told him of the necessity of extending the operation of the engine. As two or three other persons, not NAWASA employees, who also claimed to have been sent by the respondent, constantly kept watch over his work, Mediodia extended the hours of operation of the engine for two weeks.

About April 23, 1960, Fidel Migue, NAWASA employee in charge of opening and closing the three principal water valves, went to the one located at Araullo street. There he met one Intong who had a "handle" (locally called "mango") used in opening and closing the valve. Migue asked for it, but Intong replied that there was no need because he was no longer in charge thereof. Nevertheless Migue took the tool and opened the valve. Intong asked for its return, saying that he had been ordered by the respondent to take charge of the water valves. Migue refused and brought home the tool with him. In the succeeding days every time that he either opened or closed the valve, the same was undone by Intong and his companions, so he stopped performing his task.

NAWASA Engineer Ballesteros saw respondent for the return of the control of the waterworks system to the NAWASA but the latter refused. Ballesteros inspected the water valves in three streets and found that they were being opened by the provincial warden and an agent of the respondent whose men did not follow the scheduled hours of opening and closing the valves so that oftentimes water freely flowed to the house of the respondent, to the detriment of the residents in the lower section of the town. He also found agents of the respondent guarding the diesel engine.

Dioscoro Alba, the Waterworks District Engineer, sent a wire to the NAWASA General Manager in Manila, reporting that the provincial warden had removed the "handle" of the gate valve. He also went and wrote to respondent to ask for the return of the control of the system so that the NAWASA plumbers could find a solution for more equitable distribution of water so that the businessmen would begin paying their bills--to no avail. Respondent in his letter of May 10, 1960, to Engineer Alba stated that he had requested Engineer Gopez to immediately inspect the reservoir to see whether it was ready for water deposit and that as soon as the information was received and the reservoir was already filled with water, "the agents of this office now detailed with the Pagadian Waterworks (NAWASA) would be withdrawn."

Respondent declared that long before April 20, 1960, the people of Pagadian had been clamoring for the improvement of the waterworks system, as they had been deprived of their supply of water and it was inadequate. He called for a conference with NAWASA officials to remedy the situation but in view of their indifference no positive action was taken by them to improve the water service. So he took it upon himself to direct the Highway District Engineer to make immediate repairs of the reservoir and assigned his men to open the diesel engine during the nights just so the reservoir could be filled with water and to assist in the control of the water valves regulating the flow of water in the town. Because of the steps he had taken on the matter, the waterworks system was resumed and the people were happy. The actions taken by him were made known to the NAWASA General Manager by telegrams and letters. In view of his recommendation for the dismissal of Engineer Ballesteros for incompetence and non-cooperation, the engineer filed the instant complaint against him. Respondent admitted that on the dates in question he assigned some of his men to operate the diesel engine and the three main valves, that he did so merely to assist but not to take over the control of the water operations and that he merely acted in the interest of the general public.

From the established facts, it is apparent that the respondent actually took control, at least for some time, of the Pagadian waterworks system. This is confirmed by the fact that he requested Engineer Gopez to cause the repair of the reservoir and have it filled with water during nighttime and his men did not follow, but extended, the regular schedule of hours of operating as well as the opening and closing of the three water valves. These acts of the respondent certainly went beyond mere assisting, which means giving help or aid, but constituted actual and effective control by the exercise of power over the system.

Under Republic Act No. 1383 the waterworks systems throughout the country were placed under the direct supervision and control of the NAWASA. When the respondent therefore encroached upon said power of the NAWASA, he contravened the law. It matters not that he was prompted by good and justifiable motives. The law is clear and every one is bound to obey it. No official, however high his position may be, is above the law. One of the duties of the provincial governor is to see that the laws are faithfully executed in his jurisdiction, and when said duty is violated his act constitutes misconduct, of which he is accordingly held guilty.

B. The respondent is also charged with dishonesty and grave abuse of authority by Jose Guillar and Florencio Ubongen in that, among other things, he caused several prisoners to make hollow blocks which they used in the construction of the fence around respondent's residential lot.

Prisoner Cabandera categorically declared that he was one of the prisoners who worked in the residential lot of the respondent. More specifically, he was among those who prepared the canal, which served as the footing of the fence, and he and others actually built the fence, having completed the eastern and southern sides of the lot and was working on the northern part when the job was stopped. He was corroborated by prisoner Princillo who testified that he helped in the construction of the fence around the same residential lot and that he was also one of those who made the hollow blocks, his particular work being to hold the mold while the other prisoners mixed cement in it.

Denying the use of prison labor in his residential lot, respondent claimed that the hollow blocks were done by paid laborers while the fence was built by a private contractor named Jose Canoy. His denial cannot prevail over the positive testimony of the prisoners mentioned. Their version appears supported by respondent's "Answer to Additional Complaint," wherein he stated "that respondent has never caused any prisoner to haul sand or make hollow blocks for the fence in his private lot and on the first occasion that without his knowledge, two or three prisoners appeared in the premises, he immediately had the same prisoners return to the provincial jail." Respondent, however, did not state when the first occasion was, whether it was during the early part of the construction or when the work stopped sometime in January 1962.

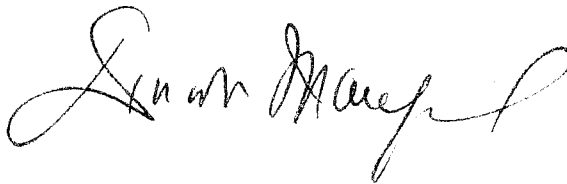
The law prohibits the use of prison labor in private properties for personal benefit. It cannot be denied that the use of said prisoners in respondent's private property would not have been availed of were it not for his position as provincial executive. The use of prison labor for his private benefit constitutes misconduct in office.

The acts committed by respondent are believed of a serious nature amounting as they do to cruelty, grave abuse of power and authority and exploitation. In resorting to personal violence at the slightest provocation and disregarding the law which he was sworn to uphold and enforce, when he should have led, as the first citizen of the province, in observing self-restraint and respect for the law, his right to continue in office is open to serious misgivings. The higher the office, the greater measure of self-control and official decorum is required, if the incumbent is to serve as an example for others to emulate. It is officials of respondent's type that undermine the people's faith in the duly constituted authorities, and I am determined to eradicate that corrosive influence and bolster the people's faith in their government.

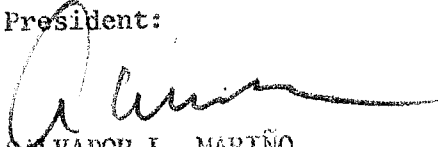
Were respondent an appointive and not an elective official, I would have no hesitation in separating him outright from the service. However, in deference to the collective will of the electorate that voted him into office, I am constrained to go slow in taking drastic action against the respondent and to deviate from the investigator's recommendation for his removal. It is my considered judgment that offenses of the nature committed by the respondent warrant the penalty of deprivation of office for one-half of the term of a local elective official.

Wherefore, Governor Bienvenido A. Ebarle is hereby meted out the penalty of suspension from office without pay for a period of two (2) years.

Done in the City of Manila, this 5th day of January, in the year of Our Lord, nineteen hundred and sixty-three.



By the President:



SALVADOR L. MARIÑO
Executive Secretary