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SECOND DIVISION

[G.R. No. L-24810. June 19, 1979]

HON. JOSE M. VILLARAMA, Governor of Bulacan, Lt. COL. CESAR B. LUCERO, Philippine Constabulary Provincial Commander of Bulacan, M. M. REYES, Provincial Treasurer of Bulacan, C.C. REYES, Municipal Treasurer of Bulacan, *petitioners, vs.* **THE HON. COURT OF APPEALS, VICENTE DE LA CRUZ and MARIANO MENDOZA,** *respondents.*

SYLLABUS

REMEDIAL LAW; ACTIONS; MOOT CASE; CIRCUMSTANCES THAT RENDERED THE PETITION FOR *CERTIORARI* WITH PRELIMINARY INJUNCTION MOOT AND ACADEMIC; CASE AT BAR.— It appears that the Provincial Governor of Bulacan had virtually abrogated his Memorandum Circular of December 22, 1964, prohibiting the issuance of licenses and permits to operators of nightclubs of said province beginning January, 1965 by the subsequent issuance of licenses and permits to other nightclub operators in the province of Bulacan with the full knowledge of the provincial officials concerned. The records also show that petitioners manifested on October 15, 1965 that since this Court dissolved its preliminary injunction on Oct. 6, 1965 they no longer consider as necessary the filing of their opposition to respondents' Motion to Dissolve Injunction and Supplemental Motion to Lift Preliminary Injunction, thereby implying that petitioners no longer have objection to respondents' operation of the night clubs. Finally, it appears that no other pleadings have been filed nor further inquiries made by either of the parties as to the status of this case. This petition may, therefore, be dismissed as moot and academic.

RESOLUTION

SANTOS, *J.*:

This petition for *certiorari*, with prayer for writ of preliminary injunction, filed July 30, 1965 seeks — (1) to set aside the

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decision of the Court of Appeals dated July 12, 1965 in CA-G.R. No. 35405-R which reinstated Civil Case No. 3164-M previously dismissed by the Court of First Instance of Bulacan, and (2) to dissolve its writ of mandatory injunction ordering the herein petitioners to allow the operation of nightclubs and restaurants owned by the private respondents.

Initially, private respondents, Vicente de la Cruz and Mariano Mendoza, operators respectively of Nepa Night and Princess Night Clubs in Bocaue, Bulacan, filed before the Court of First Instance of Bulacan Civil Case No. 3164-M for *Mandamus* and Prohibition with Preliminary Mandatory and Preventive Injunction to declare null and void a Memorandum Circular dated December 22, 1964 issued by Governor Jose M. Villarama directing that no permits be issued for the operation of "nightclubs, saloons, cabarets or the like" beginning January 1, 1965; to require the Municipal Treasurer of Bocaue to accept payment of the license fees; and to order the Provincial Governor and the Provincial Constabulary Commander to desist from preventing petitioners from operating their respective establishments.[1]

On February 22, 1965, Judge Emmanuel M. Muñoz dismissed Civil Case No. 3164-M on the ground that the municipal ordinance vests upon the Municipal Treasurer the right and the duty to exercise his judgment on whether or not a license is to be issued to any applicant and that this function not being ministerial may not be controlled by *mandamus*, citing *Pedro vs. Provincial Board of Rizal*, 56 Phil. 123.[2]

Forthwith, de la Cruz and Mendoza filed a Petition for *Certiorari* with a prayer for a Writ of Preliminary Mandatory Injunction dated February 25, 1965 with the Court of Appeals, (CA-G.R. No. 35405-R), to set aside the order of dismissal, to order the respondent Judge to try the case on the merits and, pending final determination of the case on the merits, to issue a writ of preliminary mandatory injunction against the public

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[1] *Rollo*, pp. 52-58. Annex "H".

[2] *Id.*, pp. 69-71, Annex "J".

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officials to allow them to open and operate their respective establishments.[3]

On June 16, 1965, the Court of Appeals issued its Decision of even date.[4] It held that the Municipal Treasurer did not exercise his discretion under Section 8 of Municipal Ordinance No. 2, in refusing to issue a license but merely complied with the instructions of the Provincial Treasurer and the Memorandum Circular of the Provincial Governor and, that the said Memorandum Circular was null and void as it abrogates Municipal Ordinance No. 2, Series of 1958, and that it constitutes an exercise of control over local officials and not merely supervision over them as allowed under Section 2082 of the Revised Administrative Code. The Court of Appeals, therefore, set aside the order of dismissal as constituting grave abuse of discretion, ordered the public officials to answer and directed that due hearing of the case shall be held and the case decided on the merits.[5]

The petitioners and the respondents both filed separate motions for reconsideration[6] of the above-mentioned decision of June 16, 1965. And on July 12, 1965, the Court of Appeals denied the public officials' motion for reconsideration and issued a writ of mandatory injunction ordering the respondents Provincial Governor, Provincial Constabulary Commander and Provincial Treasurer of Bulacan and the Municipal Treasurer of Bocaue, Bulacan to restore the nightclubs of de la Cruz and Mendoza to their status as of December 29, 1964 upon payment of the corresponding license fees.[7]

Hence, this present recourse.

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[3] *Id.*, pp. 72-89, Annex "K".

[4] Justice Esguerra as *ponente* with *JJ.* Conrado Sanchez and Juan Enriquez, concurring.

[5] *Id.*, pp. 99-109, Annex "M".

[6] *Id.*, pp. 110-116, Annex "N".

[7] *Id.*, pp. 117-122, Annex "O".

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We gave due course to this petition and on August 2, 1965, required the respondents to file their answer to the petition.[8] On August 4, 1965, We issued a writ of preliminary injunction restraining the respondents from enforcing or implementing the writ of mandatory injunction issued in CA-G.R. No. 35405-R.[9]

Respondents filed on September 7, 1965 a motion for the dissolution of the writ of preliminary injunction issued *ex parte* on August 4, 1965.[10] In our resolution dated September 13, 1965, we required the petitioners to answer the motion to dissolve the writ of preliminary injunction issued by Us in favor of respondents.

On September 24, 1965, respondents Vicente de la Cruz and Mariano Mendoza filed their supplemental motion to lift the writ of preliminary injunction and *moved for the dismissal of this petition* alleging that since the filing of the petition for *certiorari*, *other nightclub operators in the province of Bulacan have been issued licenses to operate their night spots* and considering the inconsistency of the stand taken by the petitioners, the present petition should be dismissed as petitioners themselves have rendered the issues raised moot and academic.

On the scheduled date of hearing of October 6, 1965, the parties were heard in oral argument and on the same date *We resolved to dissolve* the writ of preliminary injunction issued by Us after considering the arguments presented and the pleadings filed by the parties and the case was considered submitted for decision.[11]

It appears that the Provincial Governor of Bulacan had virtually abrogated his Memorandum Circular of December 22, 1964, prohibiting the issuance of licenses and permits to operators of

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[8] *Id.*, p. 127.

[9] *Id.*, pp. 125-126.

[10] *Id.*, p. 128.

[11] *Id.*, p. 218. Dissolution of Writ.

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nightclubs of said province beginning January, 1965 by the subsequent issuance of licenses and permits to other nightclub operators in the province of Bulacan with the full knowledge of the provincial officials concerned.[12] The records also show that petitioners manifested on October 15, 1965[13] that since this Court dissolved its preliminary injunction on Oct. 6, 1965 they no longer consider as necessary the filing of their opposition to respondents' Motion to Dissolve Injunction and Supplemental Motion to Lift Preliminary Injunction, thereby implying that petitioners no longer have objection to respondents' operation of the night clubs. Finally, it appears that no other pleadings have been filed nor further inquiries made by either of the parties as to the status of this case. This petition may, therefore, be dismissed as moot and academic.

WHEREFORE, let this petition be, as it is hereby dismissed, as moot and academic. No pronouncement as to costs.

SO ORDERED.

Antonio (Acting Chairman), Aquino, Abad Santos,* and *De Castro,** JJ.,* concur.

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[12] *Id.*, p. 211. Permit to Operate nightclubs dated July 22. 1965.

[13] *Id.*, p. 225.

* Justice Barredo is on leave of absence.

** Justice Pacifico de Castro was designated to sit in the Second Division in lieu of Justice Hermogenes Concepcion Jr. who is also on leave.