

JOSE W. DIOKNO, BENIGNO S. AQUINO, JR., AND LORENZO M. TAÑADA, PETITIONERS, VS. JUAN PONCE ENRILE, IN HIS CAPACITY AS SECRETARY OF NATIONAL DEFENSE, AND RAFAEL G. ZAGALA, IN HIS...

G.R. No. L-36315. December 19, 1981

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

It is primarily the constitutional right to counsel,[1] as reinforced by statute[2] on which this mandamus proceeding is based, the crucial allegation being that petitioner Lorenzo M. Tañada, a highly-respected member of the Philippine Bar and former Senator as counsel, was denied the right "to visit and confer"[3] with his clients, the other petitioners, Jose W. Diokno and Benigno S. Aquino, Jr., then both under detention. His efforts to do so failed notwithstanding the request made to respondent Brigadier General Rafael G. Zagala, then the Commanding Officer in Fort Bonifacio, and as such "having custody of petitioners Diokno and Aquino." [4] In accordance with the suggestion coming from such respondent, petitioner Tañada, "wrote a letter addressed to respondent Juan Ponce Enrile, in his capacity as Secretary of National Defense, reiterating to him the previous requests addressed to respondent Zagala and asking for final word from him. It was also requested that should petitioner Tañada be allowed to visit and confer with petitioners Diokno and Aquino, petitioner Tañada be permitted to confer with them in 'private without the presence of any officer from the Armed Forces of the Philippines or any third person for that matter, and without any listening devices or similar instruments.' It was made clear in that letter that 'the presence of these nullifies the confidential nature of consultations between lawyer and client, as it would prevent them from fully communicating with each other.'" [5] Again such request "to visit and confer with petitioners Diokno and Aquino was denied. The reason proffered was that 'it is the considered view of this Office and of the Armed Forces authorities that it would be to the best interests of everyone concerned if contacts, such as the one you are requesting for, are minimized pending final disposition of their cases.'" [6] Hence this petition for mandamus.

As could be expected, there was in the answer a reiteration of the stand of then Secretary Ponce Enrile. There was in addition, as an annex to such answer, a true copy of General Order No. 16 ordering "the Secretary of National Defense, in his capacity as Chairman of the Executive Committee of the National Security Council, to immediately organize by utilizing the Armed Forces of the Philippines as the nucleus of the structure, a national command that shall be responsible for the administration of detainees from the time of their arrest to the final disposition of their cases, and in the prosecution thereof, the Secretary of National Defense is hereby authorized to utilize the existing facilities and resources of the government and to promulgate rules and regulations pertaining thereto." [7] After which came this paragraph in the answer: "Pursuant to and in implementation of General Order No. 16, the Secretary of National Defense has promulgated rules and regulations for the orderly administration of persons arrested and detained under Proclamation No. 1081 and general orders. Among such rules and regulations is that limiting visits of detainees to the immediate members of their families. Visits by people other

than the immediate members of the families of detainees, especially those held to protect the national security, have to be approved by the Secretary of National Defense." [8] It was then submitted that the denial of counsel's request to visit his clients, the other petitioners, "is in accord with General Order No. 16 and the above quoted implementing rule and regulation." [9]

The case was then heard and, with the submission of memoranda, submitted for decision. In the deliberations that followed, the Court clearly was of one mind, some members stressing that at no time is the right to counsel more important than during emergency periods where either the privilege of the writ of habeas corpus is suspended or martial law declared. For manifestly, it is of the essence to avoid possible injustice, the power of preventive detention being recognized, to leave unimpeded the opportunity for a detained person consult counsel so that he could be informed as to his legal rights under the circumstances. There was, however, equally a recognition that rules and regulations, if reasonable in character and not arbitrary, may be issued by then respondent Secretary, acting for the President, as long as they did not render nugatory the right to counsel, necessarily implicit in which, is the need for confidentiality and secrecy.

With the release, however, on September 11, 1974 of petitioner Jose W. Diokno [10] with petitioner Benigno S. Aquino, Jr. after being released from custody on May 8, 1980 to enable him to proceed to the Baylor Medical Center in Dallas, Texas for medical treatment and his continued stay abroad resulting in a petition for habeas corpus filed on his behalf by his mother being dismissed for being moot and academic, [11] it becomes quite apparent why there is no need to rule on the constitutional question raised.

WHEREFORE, this petition for mandamus is dismissed for being moot and academic.

Makasiar, Aquino, Fernandez, De Castro, Melencio-Herrera, Ericta, Plana, and Escolin, JJ., concur.

Barredo and Concepcion, Jr., JJ., on leave.

Teehankee, Guerrero, and Abad Santos, JJ., no part.

[1] According to Article IV, Section 19 of the Constitution: "In all criminal prosecutions, the accused * * shall enjoy the right to be heard by himself and counsel, * * *."

[2] According to Section 1 of Rep. Act No. 857 (1953): "Any public officer or employee who shall obstruct, prohibit, or otherwise prevent an attorney entitled to practice in the courts of the Philippines from visiting and conferring privately with a person arrested, at any hour of the day or, in urgent cases, of the night, said visit and conferences being requested by the person arrested or by another acting in his behalf, shall be punished by arresto mayor."

[3] Petition, The Facts, par. 15.

[4] Ibid, pars. 17-20.

[5] Ibid, par. 21

[6] Ibid, par. 23.

[7] Answer, Annex 1.

[8] Answer, par. 9, 8.

[9] Ibid, par. 10, 9.

[10] L-35539, September 17, 1974, 59 SCRA 183.

[11] G. R. No. L-46909, January 8, 1981.

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