

EPICHARIS T. GARCIA, PETITIONER, VS. THE FACULTY ADMISSION COMMITTEE, LOYOLA SCHOOL OF THEOLOGY, HEREIN REPRESENTED BY FR. ANTONIO B. LAMBINO, RESPONDENT.

G.R. No. L-40779. November 28, 1975

Ponente: FERNANDO, J.

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FERNANDO, J.:

The specific issue posed by this mandamus proceeding to compel the Faculty Admission Committee of the Loyola School of Theology, represented by Father Antonio B. Lambino, to allow petitioner Epicharis T. Garcia to continue studying therein is whether she is deemed possessed of such a right that has to be respected. That is denied not only on general principle, but also in view of the character of the particular educational institution involved. It is a seminary. It would appear therefore that at most she can lay claim to a privilege, no duty being cast on respondent school. Moreover, as a reinforcement to such an obvious conclusion, there is the autonomy recognized by the Constitution in this explicit language: "All institutions of higher learning shall enjoy academic freedom." [1] The petition must therefore fail.

Petitioner alleged: "3. That in summer, 1975, Respondent admitted Petitioner for studies leading to an M.A. in Theology; 4. That on May 30, 1975, when Petitioner wanted to enroll for the same course for the first semester, 1975-76, Respondent told her about the letter he had written her, informing her of the faculty's decision to bar her from re-admission in their school; 5. That the reasons stated in said letter, dated May 19, 1975 *** do not constitute valid legal ground for expulsion, for they neither present any violation of any of the school's regulation, nor are they indicative of gross misconduct; 6. That from June 2-5, 1975, Petitioner spent much time and effort in said school for the purpose of arriving at a compromise that would not duly inconvenience the professors and still allow her to enjoy the benefits of the kind of instruction that the school has to offer, but all in vain; she was in fact told by Fr. Pedro Sevilla, the school's Director, that the compromises she was offering were unacceptable, their decision was final, and that it were better for her to seek for admission at the UST Graduate School; 7. Petitioner then subsequently made inquiries in said school, as to the possibilities for her pursuing her graduate studies for an M.A. in Theology, and she was informed that she could enroll at the UST Ecclesiastical Faculties, but that she would have to fulfill their requirements for Baccalaureate in Philosophy in order to have her degree later in Theology — which would entail about four to five years more of studies — whereas in the Loyola School of Studies to which she is being unlawfully refused re-admission, it would entail only about two years more; 8. That Petitioner, considering that time was of the essence in her case, and not wanting to be deprived of an opportunity for gaining knowledge necessary for her life's work, enrolled as a special student at said UST Ecclesiastical Faculties, even if she would not thereby be credited with any academic units for the subject she would take; 9. That Petitioner could have recourse neither to the President of her school, Fr. Jose Cruz, he being with the First Couple's entourage now in Red China, nor with the Secretary of Education, since this is his busiest time of the year, and June 11, 1975 is the last day for registration; ***. [2] She prayed for a writ of mandamus for the purpose of allowing her to enroll in the current semester. She made it more specific in a pleading she called Amended

Petition so that she would be allowed cross-enrollment even beyond the June 11, 1915 deadline for registration and that whatever units may be accredited to her in the UST Ecclesiastical Faculties be likewise recognized by respondent. Her petition included the letter of respondent Father Lambino which started on a happy note that she was given the grade of B+ and B in two theology subjects, but ended in a manner far from satisfactory for her, as shown by this portion thereof: "Now, you will have to forgive me for going into a matter which is not too pleasant. The faculty had a meeting after the summer session and several members are strongly opposed to having you back with us at Loyola School of Theology. In the spirit of honesty may I report this to you as their reason: They felt that your frequent questions and difficulties were not always pertinent and had the effect of slowing down the progress of the class; they felt you could have tried to give the presentation a chance and exerted more effort to understand the point made before immediately thinking of difficulties and problems. The way things are, I would say that the advisability of your completing a program (with all the course work and thesis writing) with us is very questionable. That you have the requisite intellectual ability is not to be doubted. But it would seem to be in your best interests to work with a faculty that is more compatible with your orientation. I regret to have to make this report, but I am only thinking of your welfare." [3]

This Court, in a resolution of June 23, 1975, required comment on the part of respondent Faculty Admission Committee, Loyola School of Theology. [4] As submitted on behalf of Father Lambino, it set forth the following: "Respondent is the Chairman of the Faculty Admission Committee of the Loyola School of Theology, which is a religious seminary situated in Loyola Heights, Quezon City; In collaboration with the Ateneo de Manila University, the Loyola School of Theology allows some lay students to attend its classes and/or take courses in said Loyola School of Theology but the degree, if any, to be obtained from such courses is granted by the Ateneo de Manila University and not by the Loyola School of Theology; For the reason above given, lay students admitted to the Loyola School of Theology to take up courses for credit therein have to be officially admitted by the Assistant Dean of the Graduate School of the Ateneo de Manila University in order for them to be considered as admitted to a degree program: Petitioner in the summer of 1975 was admitted by respondent to take some courses for credit but said admission was not an admission to a degree program because only the Assistant Dean of the Ateneo de Manila Graduate School can make such admission; That in the case of petitioner, no acceptance by the Assistant Dean of the Ateneo de Manila Graduate School was given, so that she was not accepted to a degree program but was merely allowed to take some courses for credit during the summer of 1975; Furthermore, petitioner was not charged a single centavo by the Loyola School of Theology and/or the Ateneo de Manila University in connection with the courses she took in the summer of 1975, as she was allowed to take it free of charge; That respondent Fr. Antonio B. Lambino, S.J., and/or the Loyola School of Theology thru its Faculty Admission Committee, necessarily has discretion as to whether to admit and/or to continue admitting in the said school any particular student, considering not only academic or intellectual standards but also other considerations such as personality traits and character orientation in relation with other students as well as considering the nature of Loyola School of Theology as a seminary. The Petition for Mandamus therefore does not lie. as there is no duty, much less a clear duty, on the part of respondent to admit the petitioner therein in the current year to take up further courses in the Loyola School of Theology." [5]

It was likewise alleged in the aforesaid comment that as set forth in the letter of May 9, 1975, the decision not to allow petitioner to take up further courses in the said seminary "is not arbitrary as it based on reasonable grounds, * * *." [6] Then reference was made to the availability of non-judicial remedies which petitioner could have persuade. [7] The prayer was for the dismissal of the petition for lack of merit. Petitioner sought permission to replay and it was granted. Thereafter, she had a detailed to relief from the courts. In a resolution of August 8, 1975, this Court considered the comment of the respondent as answer and required the parties to file their respective memoranda. That they did, and the petition was deemed submitted for decision. As was made clear at

the outset, we do not see merit in it. It must therefore be dismissed.

1. In respondent's memorandum, it was made clear why a petition for mandamus is not the proper remedy. Thus: "Petitioner cannot compel by mandamus, the respondent to admit her into further studies in the Loyola School of Theology. For respondent has no clear duty to so admit the petitioner. The Loyola School of Theology is a seminary for priesthood. Petitioner is admittedly and obviously not studying for the priesthood, she being a lay person and a woman. And even assuming *ex gratia argumenti* that she is qualified to study for the priesthood, there is still no duty on the part of respondent to admit her to said studies, since the school has clearly the discretion to turn down even qualified applicants due to limitations of space, facilities, professors and optimum classroom size and component considerations"[8] No authorities were cited, respondent apparently being of the view that the law has not reached the stage where the matter of admission to an institution of higher learning rests on the sole and uncontrolled discretion of the applicant. There are standards that must be met. There are policies to be pursued. Discretion appears to be of the essence. In terms of Hohfeld's terminology, what a student in the position of petitioner possesses is a privilege rather than a right. She cannot therefore satisfy the prime and indispensable requisite of a mandamus proceeding. Such being the case, there is no duty imposed on the Loyola School of Theology. In a rather comprehensive memorandum of petitioner, who unfortunately did not have counsel, an attempt was made to dispute the contention of respondent. There was a labored effort to sustain her stand, but it was not sufficiently persuasive. It is understandable why. It was the skill of a lay person rather than a practitioner that was evident. While she pressed her points with vigor, she was unable to demonstrate the existence of the clear legal right that must exist to justify the grant of this writ.

2. Nor is this all. There is, as previously noted, the recognition in the Constitution of institutions of higher learning enjoying academic freedom. It is more often identified with the right of a faculty member to pursue his studies in his particular specialty and thereafter to make known or publish the result of his endeavors without fear that retribution would be visited on him in the event that his conclusions are found distasteful or objectionable to the powers that be, whether in the political, economic, or academic establishments. For the sociologist, Robert Mclver, it is "a right claimed by the accredited educator, as teacher and as investigator, to interpret his findings and to communicate his conclusions without being subjected to any interference, molestation, or penalization because these conclusions are unacceptable to some constituted authority within or beyond the institution."[9] As for the educator and philosopher Sidney Hook, this is his version: "What is academic freedom? Briefly put, it is the freedom of professionally qualified persons to inquire, discover, publish and teach the truth as they see it in the field of their competence. It is subject to no control or authority except the control or authority of the rational methods by which truths or conclusions are sought and established in these disciplines."[10]

3. That is only one aspect though. Such a view does not comprehend fully the scope of academic freedom recognized by the Constitution. For it is to be noted that the reference is to the "institutions of higher learning" as the recipients of this boon. It would follow then that the school or college itself is possessed of such a right. It decides for itself its aims and objectives and how best to attain them. It is free from outside coercion or interference save possibly when the overriding public welfare calls for some restraint. It has a wide sphere of autonomy certainly extending to the choice of students. This constitutional provision is not to be construed in a niggardly manner or in a grudging fashion. That would be to frustrate its purpose, nullify its intent. Former President Vicente G. Sinco of the University of the Philippines, in his *Philippine Political Law*, is similarly of the view that it "definitely grants the right of academic freedom to the university as an institution as distinguished from the academic freedom of a university professor."[11] He cited the following from Dr. Marcel Bouchard, Rector of the University of Dijon, France, President of the conference of rectors and vice-chancellors of European universities: "It is a well-established fact, and yet one which sometimes tends to be obscured in discussions of the problems of freedom, that the collective liberty of an organization is by no means the same thing as the freedom

of the individual members within it; in fact, the two kinds of freedom are not even necessarily connected. In considering the problems of academic freedom one must distinguish, therefore, between the autonomy of the university, as a corporate body, and the freedom of the individual university teacher." [12] Also: "To clarify further the distinction between the freedom of the university and that of the individual scholar, he says: 'The personal aspect of freedom consists in the right of each university teacher — recognized and effectively guaranteed by society — to seek and express the truth as he personally sees it, both in his academic work and in his capacity as a private citizen. Thus the status of the individual university teacher is at least as important, in considering academic freedom, as the status of the institutions to which they belong and through which they disseminate their learning.'" [13] He likewise quoted from the President of the Queen's University in Belfast, Sir Eric Ashby: "'The internal conditions for academic freedom in a university are that the academic staff should have de facto control of the following functions: (i) the admission and examination of students; (ii) the curricula for courses of study; (iii) the appointment and tenure of office of academic staff; and (iv) the allocation of income among the different categories of expenditure. It would be a poor prospect for academic freedom if universities had to rely on the literal interpretation of their constitutions in order to acquire for their academic members control of these four functions, for in one constitution or another most of these functions are laid on the shoulders of the lay governing body.'" [14] Justice Frankfurter, with his extensive background in legal education as a former Professor of the Harvard Law School, referred to what he called the business of a university and the four essential freedoms in the following language: "It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail 'the four essential freedoms' of a university — to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.'" [15] Thus is reinforced the conclusion reached by us that mandamus does not lie in this case.

4. It is not an easy matter then to disregard the views of persons knowledgeable in the field, to whom cannot be imputed lack of awareness of the need to respect freedom of thought on the part of students and scholars. Moreover, it could amount to minimizing the full respect that must be accorded the academic freedom expressly granted by the Constitution "to institutions of higher learning." It is equally difficult to yield conformity to the approach taken that colleges and universities should be looked upon as public utilities devoid of any discretion as to whom to admit or reject Education, especially higher education, belongs to a different, and certainly higher, category.

5. It only remains to be added that the futility that marked the persistence of petitioner to continue her studies in the Loyola School of Theology is the result solely of a legal appraisal of the situation before us. The decision is not to be construed as in any way reflecting on the scholastic standing of petitioner. There was on the part of respondent due acknowledgment of her intelligence. Nonetheless, for reasons explained in the letter of Father Lambino, it was deemed best, considering the interest of the school as well as of the other students and her own welfare, that she continue her graduate work elsewhere. There was nothing arbitrary in such appraisal of the circumstances deemed relevant. It could be that on more mature reflection, even petitioner would realize that her transfer to some other institution would redound to the benefit of all concerned. At any rate, as indicated earlier, only the legal aspect of the controversy was touched upon in this decision.

WHEREFORE, the petition is dismissed for lack of merit.

Barredo, Antonio, Esguerra, Muñoz Palma, Aquino, Concepcion Jr., and Martin, JJ., concur.

Makalintal, C.J., in this and in the separate opinion of Justice Teehankee.

Teehankee, J., concurs in a separate opinion.

Makasiar, J., dissents in a separate opinion.

Castro, J., took no part.

[1] Article XV. Section 8. par. 2 of the Constitution.

[2] Petition, pars. 3- 9.

[3] Letter of Father Antonio B. Lambino. Annex A to Petition.

[4] Reference was made to respondents as the amended petition included The Director. Bureau of Private Schools and The Director. UST Graduate School as respondents. However, they did not deem it to submit comments, and this Court, in view of the nature of the controversy which solely involved the original respondent, did not press them to do so. The case is therefore decided as if they were not even made parties.

[5] Comment, pars. 1-7.

[6] Ibid, par 8.

[7] Ibid, pars. 9-10.

[8] Respondent's Memorandum, 1.

[9] McIver. Academic Freedom in Our Time, 6 (1955).

[10] Hook, Academic Freedom and Academic Anarchy (1965).

[11] Sinco, Philippine Political Law, 489 (1962).

[12] Ibid. 489-490.

[13] Ibid, 490.

[14] Ibid, 490-491.

[15] Justice Frankfurter, concurring in *Sweezy v. New Hampshire*. 354 US 234. 263 (1957).

CONCURRING OPINION

TEEHANKEE, J.:

I concur with the dismissal of the petition for manifest lack of merit.

On the threadbare claim that during the summer of 1975 she had been admitted by respondent Fr. Antonio B. Lambino, S.J., chairman of the Faculty Admission Committee of the Loyola School of Theology (a religious seminary for the priesthood) to attend therein free of charge two summer courses for credits, petitioner has filed the present petition for mandamus against respondents to order her admission in said school as a student for an M.A. in Theology and for the payment to her of exemplary and moral damages and "an amount equivalent more or less to attorney's fees which petitioner would have paid a competent lawyer, had she employed one." (According to petitioner, her enrollment in the Loyola seminary would allegedly entail "only about two years more" where she would need "about four to five years more of studies" at the UST Graduate School for Ecclesiastical Faculties where she has now enrolled as a special student without credit for any academic units for the subjects taken by her.)

The original respondent, Fr. Lambino, filed his comment on the petition, while the two other respondents, the Director of Private Schools and the Director, UST Graduate School, did not even deign (and were not required) to file their comments, notwithstanding the Court's resolution of June 23, 1975 requiring their comment on the amended petition, since by the very terms of said petition, petitioner had not even bothered to make any application or representations with them before haling them before this Court, as parties-respondents on her fancied right to enrollment and cross-enrollment at the two institutions (Loyola and UST).

The petition must be dismissed, since petitioner has admittedly failed to exhaust her administrative remedies. The facts of record amply show that petitioner is obviously disqualified, and is not studying, for the priesthood, she being a laywoman and not eligible for admission to respondent seminary. Mandamus to order her admission in respondent seminary cannot lie in the absence of a clear right on her part and a clear duty on respondent's part to so admit her.

Petitioner in her petition admits that she has failed to avail of and exhaust the administrative remedies open to her but seeks to justify her failure by alleging

"That Petitioner could have recourse neither to the President of her school, Fr. Jose Cruz, he being with the First Couple's entourage now in Red China, nor with the Secretary of Education, since this is his busiest time of the year, and June 11, 1975 is the last day for registration; x x x".

This excuse is of course patently inept, since neither the university president's temporary absence nor the Secretary of Education's having "his busiest time of the year" justifies petitioner's by-passing these officials whose final administrative decision should first be given. Such exhaustion of administrative remedies is a precondition for court action and would get all the facts in so as to enable the courts in a petition for review simply to decide on the basis of the facts whether the questioned act of petitioner's non-admission constitutes an arbitrary action that would warrant judicial intervention.

Withal, the facts of record amply show that far from being arbitrary, petitioner's non-admission was for perfectly valid considerations, as follows:

— The Loyola School of Theology is a seminary for the priesthood; and petitioner is admittedly and obviously disqualified, and is not studying, for the priesthood, she being a laywoman, and therefore not eligible for admission;

— Petitioner was admitted free to take some summer courses this year for credits, but according to respondent Fr. Lambino this was not an admission to a degree program since the official admission by the Assistant Dean of the Graduate School of the Ateneo de Manila University (which is the institution, not the Loyola School of Theology, that grants the decree) required for the purpose has neither been sought by petitioner nor granted by the said Assistant Dean. Respondent Fr. Lambino thus asserts that he is the wrong party to be sued;

— Petitioner claims on the contrary that she was actually admitted for a degree program, and arguing that "The factual issue, however, of whether or not petitioner was actually admitted for a degree program needs to be resolved first"[1] vehemently insists that this Court resolve the factual issue in her favor on the basis of her bare counter-assertions and the respondent school's very letter rejecting her admission; (Petitioner who is not a lawyer of course does not appreciate that this Court is neither a trier nor reviewer of facts and that precisely one of the reasons for exhaustion of administrative remedies is that all the facts may be placed before the final administrative authorities, whose decision may be reviewed by the courts only, upon a clear showing of fraud, collusion, arbitrariness, illegality, imposition or mistake.[2]); and

— Aside from the fact that her non-admission to respondent seminary for the priesthood by virtue of her being disqualified as a laywoman is a matter of school policy and regulation that obviously can in no way be said to be arbitrary (since females all over the world are up to now not admitted to the priesthood), the faculty's

"strong opposition" to having her back in the school after summer because "they felt that (her) frequent questions and difficulties were not always pertinent and had the effect of slowing down the progress of the class" and respondent Fr. Lambino's courteous but candid appraisal "that the advisability of (her) completing a program (with all the course work and thesis writing) with us is very questionable" are matters of technical and academic judgment that the courts will not ordinarily interfere with.

Petitioner's action for mandamus clearly does not lie, since no clear right for her admission to a degree program for an M.A. in Theology nor a clear duty on the part of the Loyola School of Theology (or of the Ateneo Graduate School which is not even a party) to so admit her have been shown.

Only after exhaustion of administrative remedies and when there is marked arbitrariness, will the courts interfere with the academic judgment of the school faculty and the proper authorities as to the competence and fitness of an applicant for enrollment or to continue taking up graduate studies in a graduate school. The courts simply do not have the competence nor inclination to constitute themselves as Admission Committees of the universities and institutions of higher learning and to substitute their judgment for that of the regularly constituted Admission Committees of such educational institutions. Were the courts to do so, they would conceivably be swamped with petitions for admission from the thousands refused admission every year, and next the thousands who flunked and were dropped would also be petitioning the courts for a judicial review of their grades!

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Before closing this concurrence, I must make of record my concurrence with and adherence to the fundamental principles of freedom and liberty eloquently expressed by Mr. Justice Makasiar in his dissent. His expression of deep concern for the preservation and enhancement of the dignity and worth of the human personality, citing Justice Cardoso's injunction that man's freedom must be given sanctuary "against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments and the scorn and derision of those who have no patience with general principles", and Laski's thesis that "the happiness of the individual, not the well-being of the State, was the criterion by which its behavior was to be judged, his interests, not its power, set the limits to the authority it was entitled to exercise" reaffirm forcefully the basic tenet that distinguishes a democratic froth a totalitarian state, viz, that the State exists for the individual rather than the other way around.

I part ways with him of course in his factual premises and assumptions which to my mind are not supported by the record nor the facts at bar. Foremost among these are the premise that petitioner had been admitted to the theology course and cannot be refused further attendance therein, when as shown above, the question of whether petitioner was in fact admitted to a degree program is a controverted one with petitioner herself making no such averment in her petition and precisely asking that this Court resolve this "factual issue" and the disinclination to give due credence to the reason given by Fr. Lambino for the faculty's "strong opposition" to petitioner's admission (viz, that her "frequent questions and difficulties were not always pertinent and had the effect of slowing down the progress of the class" and her failure "to give the (faculty's) presentation a chance and exert(ed) more effort to understand the point made before immediately thinking of problems and difficulties"[3]) when not even the petitioner questions in her petition the veracity of such faculty opposition and the quoted factual reasons therefor but only whether the same "constitutes valid legal ground for expulsion".

I do not share his view that private educational institutions may operate only by delegation of the State and "are no different in this respect from the commercial public utilities whose right to exist and to operate depends upon State authority"[4] and the assumption that respondent has prescribed "unreasonable rules or regulations" when such rules have not even been submitted to the Court nor is there any claim that such rules have even been questioned in or disapproved by the Director of Public Schools (assuming that said official has jurisdiction over a religious seminary such as the Loyola School of Theology).

Petitioner according to her petition has obtained enrollment at the UST Graduate School for Ecclesiastical Faculties where according to her own petition she could pursue her graduate studies for an M.A. in Theology (after fulfilling their requirements for Baccalaureate in Philosophy and assuming she has the required recognized undergraduate units, as to which there is some question). Under the circumstances, it seems fair to state that petitioner may well heed the voices and visions (that call her to a degree in Theology) without rejection other than that of respondent school and certainly without being destined to be another Joan of Arc.

[1] Petitioner's memorandum, page 2.

[2] See *Lacuesta vs. Herrera*, 62 SCRA 115.

[3] At page 6.

[4] At page 7.

DISSENTING OPINION

MAKASIAR, J.:

With his usual scholarship and characteristic style, Mr. Justice Fernando has woven a persuasive majority opinion that commands respect.

The 1973 Constitution provides that: "All institutions of higher learning shall enjoy academic freedom" (Sec. 8[2], Art. XV). This is broader than Section 6 of Article XIV of the 1935 Constitution, which provides that: "Universities established by the State shall enjoy academic freedom." Under the aforesaid clause of the 1973 Constitution, all colleges and universities of higher learning, whether established by the State or not, are guaranteed academic freedom.

It should be stressed that the academic freedom thus guaranteed is not limited to the members of the faculty nor to the administrative authorities of the educational institution. It should also be deemed granted in favor of the student body; because all three — the administrative authorities of the college or university, its faculty and its student population — constitute the educational institution, without any one of which the educational institution can neither exist nor operate. The educational institution is permitted by the State to exist and operate, not for the benefit of its administrative authorities or faculty members, but for the benefit of its studentry.

As Chief Justice Warren, who penned the opinion in *Sweezy vs. New Hampshire*, emphasized: "No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die" (354 US 234, 250; 1 L. ed. 2d 1311, 1325, italics supplied).

An individual has a natural and inherent right to learn and develop his faculties. It is for this reason that the 1973 Constitution directs the State to aid and support the parents in the rearing of the youth (Sec. 4, Art. II, 1973 Constitution); to promote their physical, intellectual and social well-being (Sec. 5, Art. II); to establish, maintain and ensure adequate social services in the field of education (Sec. 7, Art. II); to establish and maintain a complete, adequate and integrated system of education relevant to the goals of national development (Sec. 8[1], Art. XV); to recognize and protect the academic freedom of all institutions of higher learning (Sec. 8[2], Art. XV); to maintain

a system of free public elementary education and where finances permit, a system of free public education up to the secondary level (Sec. 8[5], Art. XV); to provide citizenship and vocational training to adult citizens and out-of-school youths and to create and maintain scholarships for poor and deserving students (Sec. 8[6], Art. XV); and to promote scientific research and invention, to patronize arts and letters, to provide scholarships, grants-in-aid or other forms of incentives for specially gifted children (Sec. 9 [1], [2] and [3], Art. XV).

On the other hand, no private person or entity has the inherent right to establish and operate a school, college or university.

Hence, there is need of re-examining and recasting the limited definition of academic freedom conceived by Professor Arthur Lovejoy (Encyclopedia of Social Sciences, p. 384) to the effect that it is "the freedom of the teacher or research worker in higher institutions of learning to investigate and discuss the problems of his science and to express his conclusions, whether through publication or in the instruction of the teacher, without interference from political and ecclesiastical authorities or administrative opinions of institutions in which he is employed, unless his methods are found by a qualified body of his own profession to be clearly incompetent or contrary to professional ethics", which is echoed by MacIver (MacIver, Academic Freedom in Our Time [6], 1955) and by Hook (Hook, Academic Freedom and Academic Anarchy). The scope of academic freedom should not be restricted to the narrow formulation of Mr. Justice Frankfurter as "an atmosphere in which there prevail 'the four essential freedoms of a university — to determine for its own academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study'" (His concurring opinion in *Sweezy vs. New Hampshire*, 353, US 234, 263 [1957]), which neutralizes his belief that "it is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation", to which he however exhibits loyalty as he continued to state:

"Progress in the natural sciences is not remotely confined to findings made in the laboratory. Insights into the mysteries of nature are born of hypothesis and speculation. The more so is this true in the pursuit of understanding in the groping endeavors of what are called the social sciences, the concern of which is man and society. The problems that are the respective preoccupations of anthropology, economics, law, psychology, sociology and related areas of scholarship are merely departmentalized dealing, by way of manageable division of analysis, with interpenetrating aspect of holistic perplexities. For society's good — if understanding be an essential need of society — inquiries into these problems, speculations about them, stimulation in others of reflection upon them, must be left as unfettered as possible x x x .

"x x x One need only refer to the address of T.H. Huxley at the opening of Johns Hopkins University, x x x :

'In a university knowledge is its own end, not merely a means to an end. A university ceases to be true to its own nature if it becomes the tool of Church or State or any sectional interest. A university is characterized by the spirit of free inquiry, its ideal being the ideal of Socrates — 'to follow the argument where it leads.' This implies the right to examine, question, modify or reject traditional ideas and beliefs. Dogma and hypothesis are incompatible, and the concept of an immutable doctrine is repugnant to the spirit of a university. The concern of its scholars is not merely to add and revise facts in relation to an accepted framework, but to be ever examining and modifying the framework itself.

'Freedom to reason and freedom for disputation on the basis of observation and experiment are the necessary conditions for the advancement of scientific knowledge. A sense of freedom is also necessary for creative work in the arts which, equally with scientific research, is the concern of the university'" (*Sweezy vs. New Hampshire* 354 US 234; 262-263, italics supplied).

The cardinal article of faith of our democratic civilization is the preservation and enhancement of the dignity and worth of the human personality. It was Mr. Justice Frankfurter himself who emphasized that man's "inviolable

character" should be "protected to the largest possible extent in his thoughts and in his beliefs as the citadel of his person" (American Communications Association, etc. vs. Douds, 339 US 382, 421, cited in Phil. Blooming Mills Employees Assn. vs. Phil. Blooming Mills Co., Inc., et al., L-31195, June 5, 1973, 51 SCRA 189, 200), so that the individual can fully develop himself and achieve complete fulfillment. His freedom to seek his own happiness would mean nothing if the same were not given sanctuary "against the assaults of opportunism, the expediency of the passing hour, the erosion of small encroachments and the scorn and derision of those who have no patience with general principles" (Justice Cardoso, The Nature of Judicial Process, 90-93, cited in the Phil. Blooming Mills Employees Assn. vs. Phil. Blooming Mills Co., Inc., supra, 201).

WE likewise reiterated in the Philippine Blooming Mills case, supra, that "the purpose of the Bill of Rights is to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the Courts. One's rights to life, liberty and property, to free speech or free press, freedom of worship and assembly, and to the fundamental rights may not be submitted to a vote; they depend on the outcome of no elections" (51 SCRA 201), much less on the caprice of bigoted, intolerant and impatient professors and college administrators. In the stirring language of Laski, "the happiness of the individual, not the well-being of the State, was the criterion by which its behaviour was to be judged, his interests, not its power, set the limits to the authority it was entitled to exercise" (51 SCRA 201). This individual freedom and right to happiness should be recognized and respected not only by the State but also by enterprises authorized by the State to operate; for as Laski stressed: "Without freedom of the mind x x x a man has no protection in our social order. He may speak wrongly or foolishly, x x x. Yet a denial of his right ... is a denial of his happiness. Thereby he becomes an instrument of other people's ends, not himself an end" (Laski, Liberty in the Modern State, 73, cited in Tanada and Fernando, Constitution of the Philippines, 1952 ed., 315).

As Justice Holmes pronounced, "the ultimate good desired is better reached by free trade in ideas — that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out" (ABRAMS vs. U.S. 250 US 616).

The human mind is by nature an inquiring mind, whether of the very young or of the very old or in-between; for freedom of speech in the words of John Milton is the "liberty to know, to utter, and to argue freely according to conscience above all liberties."

What is involved here is not merely academic freedom of the higher institutions of learning as guaranteed by Section 8(2) of Article XV of the 1973 Constitution. The issue here strikes at the broader freedom of expression of the individual — the very core of human liberty.

Even if the term "academic freedom" were to be limited to institutions of higher learning — which to the mind of Dr. Vicente Sinco, an eminent authority in Constitutional Law, is the right of the university as an institution, not the academic freedom of the university professor (Sinco, Phil. Political Law, 1962 ed., 489) — the term "institutions of higher learning" contained in the aforecited provision of our New Constitution comprehends not only the faculty and the college, administrators but also the members of the student body. While it is true that the university professor may have the initiative and resourcefulness to pursue his own research and formulate his conclusions concerning the problem of his own science or subject, the motivation therefor may be provoked by questions addressed to him by his students. In this respect, the student — specially a graduate student — must not be restrained from raising questions or from challenging the validity of dogmas, whether theological or not. The true scholar never avoids, but on the contrary welcomes and encourages, such searching questions even if the same will have the tendency to uncover his own ignorance. It is not the happiness and self-fulfillment of the professor alone that are guaranteed. The happiness and full development of the curious intellect of the student are protected by the narrow guarantee of academic freedom and more so by the broader right of free expression, which includes

free speech and press, and academic freedom.

After having been admitted to the theology course, petitioner cannot be refused further attendance therein on the ground that "her frequent questions and difficulties were not always pertinent and had the effect of slowing down the progress of the class x x x ." It seems that this excuse is merely an euphemistic way of characterizing her questions which might be embarrassing to the clergy or to the professor or other sensitive souls, for her questions might impugn the validity of their tenets, dogmas and beliefs. It is hard to believe that "her frequent questions and difficulties" slowed down the progress of the class; because respondent Father Lambino himself recognized that petitioner is endowed with "the requisite intellectual ability" and accordingly merited grades of B+ and B in two theology subjects.

Respondents obviously fear Laski's prophecy: "The heresies we may suppress today may be the orthodoxies of tomorrow. New truth begins always in a minority of one; it must be someone's perception before it becomes a general perception. The world gains nothing from a refusal to entertain the possibility that a new idea may be true. Nor can we pick and choose among our suppressions with any prospect of success. It would, indeed, be hardly beyond the mark to affirm that a list of opinions condemned in the past as wrong or dangerous would be a list of the commonplaces of our time" (Laski, *Liberty in the Modern State*, p. 75, cited in Tañada and Fernando, *Constitution of the Philippines*, 1952 ed., 316-317).

If she flunked in said subjects or the entire course, she could have been justifiably denied enrollment in the second semester. But that is not the case here, as aforesated.

The respondents never offered as justification for their refusing petitioner admission to the next semester limitations of space facilities, professors and optimum classroom size. It is doubtful whether the same could have been a valid reason in refusing her further admission, after she had complied with all the other requirements.

And the fact that she was admitted free to study theology without intending to be a priest, does not weaken her position. It should be stressed that education is a sovereign state function. It is a vital duty of the State which can delegate the same to private educational institutions that are qualified and duly authorized to operate. Private educational institutions therefore are no different in this respect from the commercial public utilities, whose right to exist and to operate depends upon State authority. The moment they are allowed to operate, they must abide by the Constitution, laws and implementing rules of the Government on the matter. While the college or university can prescribe regulations for admission to the various courses of study offered by it, this prerogative does not include the power to prescribe unreasonable rules or regulations violative of the constitutional rights of the citizen, such as freedom of expression in general and academic freedom in particular. The educational institutions perform a more vital function than the ordinary public utilities. The institution of learning feeds and nurtures the human mind and spirit to insure a robust, healthy and educated citizenry on whom national survival and national greatness depend. The ordinary public utilities merely serve the material comforts and convenience of the people, who can certainly go on living without them. But the people cannot wallow in darkness and ignorance without hastening their extermination from the face of the earth.

To repeat the reminder of Chief Justice Warren: "Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die" (354 US 234, 250; 1 L. ed. 2nd 1311, 1325, *italics supplied*).

Justice Fernando himself fittingly concludes: "Intellectual liberty occupies a place inferior to none in the hierarchy of human values. The mind must be free to think what it wills, whether in the secular or religious sphere, to give expression to its beliefs by oral discourse or through the media, and thus seek other candid views in occasions or

gatherings or in more permanent aggrupations. Embraced in such concept then are freedom of religion, freedom of speech, of the press, assembly and petition, and freedom of association" (Fernando on the Philippine Constitution, 1974 ed., p. 565).

The case of herein petitioner is a mild prelude to a re-enactment of the persecution of Joan of Arc. Sectarian schools should have realized by now that intolerance, bigotry and the inquisition — relics of the Dark Ages — tyrannize the mind and spirit of man and are antithetical to their very function of nourishing the intellect and spreading enlightenment.

In my view, the petitioner has a clear right, and the respondents have the equally clear duty to allow her to continue studying theology.

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