

**CIPRIANO P. PRIMICIAS, GENERAL CAMPAIGN MANAGER OF
COALESCED MINORITY PARTIES, PETITIONER, VS. VALERIANO E.
FUGOSO, MAYOR OF CITY OF MANILA, RESPONDENT.**

G.R. No. L-1800. January 27, 1948

Ponente: FERIA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c458b9773259/>

FERIA, J.:

This is an action of mandamus instituted by the petitioner Cipriano Primicias, a campaign manager of the Coalesced Minority Parties against Valeriano Fugoso, as Mayor of the City of Manila, to compel the latter to issue a permit for the holding of a public meeting at Plaza Miranda on Sunday afternoon, November 16, 1947, for the purpose of petitioning the government for redress to grievances on the ground that the respondent refused to grant such permit. Due to the urgency of the case, this Court, after mature deliberation, issued a writ of mandamus, as prayed for in the petition on November 15, 1947, without prejudice to writing later an extended and reasoned decision.

The right to freedom of speech, and to peacefully assemble and petition the government for redress of grievances, are fundamental personal rights of the people recognized and guaranteed by the constitutions of democratic countries. But it is a settled principle growing out of the nature of well-ordered civil societies that the exercise of those rights is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society. The power to regulate the exercise of such and other constitutional rights is termed the sovereign "police power," which is the power to prescribe regulations, to promote the health, morals, peace, education, good order or safety, and general welfare of the people. This sovereign police power is exercised by the government through its legislative branch by the enactment of laws regulating those and other constitutional and civil rights, and it may be delegated to political subdivisions, such as towns, municipalities and cities by authorizing their legislative bodies called municipal and city councils to enact ordinances for the purpose.

The Philippine Legislature has delegated the exercise of the police power to the Municipal Board of the City of Manila, which according to section 2439 of the Administrative Code is the legislative body of the City. Section 2444 of the same Code grants the Municipal Board, among others, the following legislative powers, to wit: "(p) to provide for the prohibition and suppression of riots, affrays, disturbances and disorderly assemblies, (u) to regulate the use of streets, avenues, * * * parks, cemeteries and other public places" and "for the abatement of nuisances in the same," and "(ee) to enact all ordinances it may deem necessary and proper for sanitation and safety, the furtherance of prosperity and the promotion of morality, peace, good order, comfort, convenience, and general welfare of the city and its inhabitants."

Under the above delegated power, the Municipal Board of the City of Manila, enacted sections 844 and 1119. Section 844 of the Revised Ordinances of 1927 prohibits as an offense against public peace, and section 1262 of the same Revised Ordinance penalizes as a misdemeanor, "any act, in any public place, meeting, or procession,

tending to disturb the peace or excite a riot; or collect with other persons in a body or crowd for any unlawful purpose; or disturb or disquiet any congregation engaged in any lawful assembly." And section 1119 provides the following:

"SEC. 1119. Free for use of public.—The streets and public places of the city shall be kept free and clear for the use of the public, and the sidewalks and crossings for the pedestrians, and the same shall only be used or occupied for other purposes as provided by ordinance or regulation: Provided, That the holding of athletic games, sports, or exercises during the celebration of national holidays in any streets or public places of the city and on the patron saint day of any district in question, may be permitted by means of a permit issued by the Mayor, who shall determine the streets or public places, or portions thereof, where such athletic games, sports, or exercises may be held: And provided, further, That the holding of any parade or procession in any streets or public places is prohibited unless a permit therefor is first secured from the Mayor, who shall, on every such occasion, determine or specify the streets or public places for the formation, route, and dismissal of such parade or procession: And provided, finally, That all applications to hold a parade or procession shall be submitted to the Mayor not less than twenty-four hours prior to the holding of such parade or procession."

As there is no express and separate provision in the Revised Ordinance of the City regulating the holding of public meeting or assembly at any street or public places, the provisions of said section 1119 regarding the holding of any parade or procession in any street or public places may be applied by analogy to meeting and assembly in any street or public places.

Said provision is susceptible of two constructions: one is that the Mayor of the City of Manila is vested with unregulated discretion to grant or refuse to grant permit for the holding of a lawful assembly or meeting, parade, or procession in the streets and other public places of the City of Manila; and the other is that the applicant has the right to a permit which shall be granted by the Mayor, subject only to the latter's reasonable discretion to determine or specify the streets or public places to be used for the purpose, with a view to prevent confusion by overlapping, to secure convenient use of the streets and public places by others, and to provide adequate and proper policing to minimize the risk of disorder.

After a mature deliberation, we have arrived at the conclusion that we must adopt the second construction, that is, construe the provisions of the said ordinance to mean that it does not confer upon the Mayor the power to refuse to grant the permit, but only the discretion, in issuing the permit, to determine or specify the streets or public places where the parade or procession may pass or the meeting may be held.

Our conclusion finds support in the decision in the case of *Willis Cox vs. State of New Hampshire*, 312 U. S., 569. In that case, the statute of New Hampshire P. L. chap. 145, section 2, providing that "no parade or procession upon any ground abutting thereon, shall be permitted unless a special license therefor shall first be obtained from the selectmen of the town or from licensing committee," was construed by the Supreme Court of New Hampshire as not conferring upon the licensing board unfettered discretion to refuse to grant the license, and held valid. And the Supreme Court of the United States, in its decision (1941) penned by Chief Justice Hughes affirming the judgment of the State Supreme Court, held that "a statute requiring persons using the public streets for a parade or procession to procure a special license therefor from the local authorities is not an unconstitutional abridgment of the rights of assembly or of freedom of speech and press, where, as the statute is construed by the state courts, the licensing authorities are strictly limited, in the issuance of licenses, to a consideration of the time, place, and manner of the parade or procession, with a view to conserving the public convenience and of affording an opportunity to provide proper policing, and are not invested with arbitrary discretion to issue or refuse license, * *

*."

We cannot adopt the other alternative construction or construe the ordinance under consideration as conferring

upon the Mayor power to grant or refuse to grant the permit, which would be tantamount to authorizing him to prohibit the use of the streets and other public places for holding of meetings, parades or processions, because such a construction would make the ordinance invalid and void or violative of the constitutional limitations. As the Municipal Board is empowered only to regulate the use of streets, parks, and other public places, and the word "regulate," as used in section 2444 of the Revised Administrative Code, means and includes the power to control, to govern, and to restrain, but can not be construed as synonymous with "suppress" or "prohibit" (Kwong Sing vs. City of Manila, 41 Phil., 103), the Municipal Board can not grant the Mayor a power which it does not have. Besides, as the powers and duties of the Mayor as the Chief Executive of the City are executive, and one of them is "to comply with and enforce and give the necessary orders for the faithful performance and execution of the laws and ordinances" (section 2434 [b] of the Revised Administrative Code), the legislative police power of the Municipal Board to enact ordinances regulating reasonably the exercise of the fundamental personal right of the citizens in the streets and other public places, can not be delegated to the Mayor or any other officer by conferring upon him unregulated discretion or without laying down rules to guide and control his action by which its impartial execution can be secured or partiality and oppression prevented.

In *City of Chicago vs. Trotter*, 136 Ill., 430, it was held by the Supreme Court of Illinois that, under Rev. St. Ill. c. 24, article 5 section 1, which empowers city councils to regulate the use of the public streets, the council has no power to ordain that no processions shall be allowed upon the streets until a permit shall be obtained from the superintendent of police, leaving the issuance of such permits to his discretion, since the powers conferred on the council cannot be delegated by them.

The Supreme Court of Wisconsin in *State ex rel. Garabad vs. Dering*, 84 Wis., 585; 54 N. W., 1104, held the following:

"The objections urged in the case of *City of Baltimore vs. Radecke*, 49 Md., 217, were also, in substance, the same, for the ordinance in that case upon its face committed to the unrestrained will of a single public officer the power to determine the rights of parties under it, when there was nothing in the ordinance to guide or control his action, and it was held void because 'it lays down no rules by which its impartial execution can be secured, or partiality and oppression prevented,' and that 'when we remember that action or nonaction may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism and other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or to comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to every one who gives to the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void.' * * * In the exercise of the police power, the common council may, in its discretion, regulate the exercise of such rights in a reasonable manner, but can not suppress them, directly or indirectly, by attempting to commit the power of doing so to the mayor or any other officer. The discretion with which the council is vested is a legal discretion, to be exercised within the limits of the law, and not a discretion to transcend it or to confer upon any city officer an arbitrary authority, making him in its exercise a petty tyrant."

In *re Frazee*, 63 Michigan 399, 30 N. W., 72, a city ordinance providing that "no person or persons, or associations or organizations shall march, parade, ride, or drive, in or upon or through the public streets of the City of Grand Rapids with musical instrument, banners, flags, * * * without having first obtained the consent of the mayor or common council of said city;" was held by the Supreme Court of Michigan to be unreasonable and void. Said Supreme Court in the course of its decision held:

"* * * We must therefore construe this charter, and the powers it assumes to grant, so far as it is not plainly unconstitutional, as only conferring such power over the subjects referred to as will enable the city to keep order, and suppress mischief, in accordance with the limitations and conditions required by the rights of the

people themselves, as secured by the principles of law, which cannot be less careful of private rights under a constitution than under the common law.

"It is quite possible that some things have a greater tendency to produce danger and disorder in the cities than in smaller towns or in rural places. This may justify reasonable precautionary measures, but nothing further; and no inference can extend beyond the fair scope of powers granted for such a purpose, and no grant of absolute discretion to suppress lawful action altogether can be granted at all. * * *

"It has been customary, from time immemorial, in all free countries, and in most civilized countries, for people who are assembled for common purposes to parade together, by day or reasonable hours at night, with banners and other paraphernalia, and with music of various kinds. These processions for political, religious, and social demonstrations are resorted to for the express purpose of keeping unity of feeling and enthusiasm, and frequently to produce some effect on the public mind by the spectacle of union and numbers. They are a natural product and exponent of common aims, and valuable factors in furthering them. * * * When people assemble in riotous mobs, and move for purposes opposed to private or public security, they become unlawful, and their members and abettors become punishable. * * *

"It is only when political, religious, social, or other demonstrations create public disturbances, or operate as nuisance, or create or manifestly threaten some tangible public or private mischief, that the law interferes.

"This by-law is unreasonable, because it suppresses what is in general perfectly lawful, and because it leaves the power of permitting or restraining processions, and their courses, to an unregulated official discretion, when the whole matter, if regulated at all, must be by permanent, legal provisions, operating generally and impartially."

In *Rich vs. Naperville*, 42 Ill., App. 222, the question was raised as to the validity of the city ordinance which made it unlawful for any person, society or club, or association of any kind, to parade any of the streets, with flags, banners, or transparencies, drums, horns, or other musical instruments, without the permission of the city council first had and obtained. The appellants were members of the Salvation Army, and were prosecuted for a violation of the ordinance, and the court in holding the ordinance invalid said, "Ordinances to be valid must be reasonable; they must not be oppressive; they must be fair and impartial; they must not be so framed as to allow their enforcement to rest in official discretion * * * Ever since the landing of the Pilgrims from the Mayflower the right to assemble and worship according to the dictates of one's conscience, and the right to parade in a peaceable manner and for a lawful purpose, have been fostered and regarded as among the fundamental rights of a free people. The spirit of our free institutions allows great latitude in public parades and demonstrations whether religious or political * * * If this ordinance is held valid, then may the city council shut off the parades of those whose notions do not suit their views and tastes in politics or religion, and permit like parades of those whose notions do. When men in authority are permitted in their discretion to exercise power so arbitrary, liberty is subverted, and the spirit of our free institutions violated. * * * Where the granting of the permit is left to the unregulated discretion of a small body of city eldersmen, the ordinance cannot be other than partial and discriminating in its practical operation. The law abhors partiality and discrimination. * * *" (19 L. R. A., p. 861.)

In the case of *Trujillo vs. City of Walsenburg*, 108 Col., 427; 118 P. [2d], 1081, the Supreme Court of Colorado, in construing the provision of section 1 of Ordinance No. 273 of the City of Walsenburg, which provides: "That it shall be unlawful for any person or persons or association to use the street of the City of Walsenburg, Colorado, for any parade, procession or assemblage without first obtaining a permit from the Chief of Police of the City of Walsenburg so to do," held the following:

"[1] The power of municipalities, under our state law, to regulate the use of public streets is conceded. '35 C.S.A., chapter 163, section 10, subparagraph 7. 'The privilege of a citizen of the United States to use the

streets * * * may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.' *Hague, Mayor, vs. Committee for Industrial Organization*, 307 U.S., 496, 516; 59 S. Ct., 954, 964; 83 Law. ed., 1423.

[2, 3] An excellent statement of the power of a municipality to impose regulations in the use of public streets is found in the recent case of *Cox vs. New Hampshire*, 312 U. S., 569; 61 S. Ct., 762, 765; 85 Law. ed., 1049; 133 A.L.R., 1936, in which the following appears: 'The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions. As regulation of the use of the streets for parades and processions is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places. *Lovell vs. Criffin*, 303 U.S., 444, 451; 58 S. Ct., 666, 668, 82 Law. ed., 949 [953]; *Hague vs. Committee for Industrial Organization*, 307 U.S., 496, 515, 516; 59 S. Ct., 954, 963, 964; 83 Law. ed., 1423 [1436, 1437]; *Schneider vs. State of New Jersey [Town of Irvington]*; 308 U. S., 147, 160; 60 S. Ct., 146, 150; 84 Law. ed., 155 [164]; *Cantwell vs. Connecticut*, 310 U.S., 296, 306, 307; 60 S. Ct., 900, 904; 84 Law. ed., 1213 [1219, 1220]; 128 A.L.R. 1352.'

[4] Our concern here is the validity or non-validity of an ordinance which leaves to the uncontrolled official discretion of the chief of police of a municipal corporation to say who shall, and who shall not, be accorded the privilege of parading on its public streets. No standard of regulation is even remotely suggested. Moreover, under the ordinance as drawn, the chief of police may for any reason which he may entertain arbitrarily deny this privilege to any group. This is authorization of the exercise of arbitrary power by a governmental agency which violates the Fourteenth Amendment. *People vs. Harris*, 104 Colo., 386, 394; 91 P. [2d], 989; 122 A.L.R. 1034. Such an ordinance is unreasonable and void on its face. *City of Chicago vs. Trotter*, 136 Ill., 430; 26 N. E., 359. See, also, *Anderson vs. City of Wellington*, 40 Kan. 173; 19 P., 719; 2 L.R.A., 110; 10 Am. St. Rep., 175; *State ex rel. vs. Dering*, 84 Wis., 585; 54 N. W., 1104; 19 L. R. A., 858, 36 Am. St. Rep., 948; *Anderson vs. Tedford*, 80 Fla., 376; 85 So., 673; 10 A. L. R., 1481; *State vs. Coleman*, 96 Conn., 190; 113 A. 385, 387; 43 C. J., p. 419, section 549; 44 C. J., p. 1036, section 3885. * * *

"In the instant case the uncontrolled official suppression of the privilege of using the public streets in a lawful manner clearly is apparent from the face of the ordinance before us, and we therefore hold it null and void."

The Supreme Court of the United States in *Hague vs. Committee for Industrial Organization*, 307 U. S., 496, 515, 516; 83 Law. ed., 1423, declared that a municipal ordinance requiring the obtaining of a permit for a public assembly in or upon the public streets, highways, public parks, or public buildings of the city and authorizing the director of public safety, for the purpose of preventing riots, disturbances, or disorderly assemblage, to refuse to issue a permit when after investigation of all the facts and circumstances pertinent to the application he believes it to be proper to refuse to issue a permit, is not a valid exercise of the police power. Said Court in the course of its opinion in support of the conclusion said:

"* * * Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times,

been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.

"We think the court below was right in holding the ordinance quoted in Note 1 void upon its face. It does not make comfort or convenience in the use of streets or parks the standard of official action. It enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent 'riots, disturbances or disorderly assemblage.' It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right."

Section 2434 of the Administrative Code, a part of the Charter of the City of Manila, which provides that the Mayor shall have the power to grant and refuse municipal licenses or permits of all classes, cannot be cited as an authority for the Mayor to deny the application of the petitioner, for the simple reason that said general power is predicated upon the ordinances enacted by the Municipal Board requiring licenses or permits to be issued by the Mayor, such as those found in Chapters 40 to 87 of the Revised Ordinances of the City of Manila. It is not a specific or substantive power independent from the corresponding municipal ordinances which the Mayor, as Chief Executive of the City, is required to enforce under the same section 2434. Moreover "one of the settled maxims in constitutional law is that the power conferred upon the Legislature to make laws cannot be delegated by that department to any other body or authority," except certain powers of local government, specially of police regulation which are conferred upon the legislative body of a municipal corporation. Taking this into consideration, and that the police power to regulate the use of streets and other public places has been delegated or rather conferred by the Legislature upon the Municipal Board of the City (section 2444 [u] of the Administrative Code) it is to be presumed that the Legislature has not, in the same breath, conferred upon the Mayor in section 2434 (m) the same power, specially if we take into account that its exercise may be in conflict with the exercise of the same power by the Municipal Board.

Besides, assuming arguendo that the Legislature has the power to confer, and in fact has conferred, upon the Mayor the power to grant or refuse licenses and permits of all classes, independent from ordinances enacted by the Municipal Board on the matter, and the provisions of section 2444 (u) of the same Code and of section 1119 of the Revised Ordinances to the contrary notwithstanding, such grant of unregulated and unlimited power to grant or refuse a permit for the use of streets and other public places for processions, parades, or meetings, would be null and void, for the same reasons stated in the decisions in the cases above quoted, specially in *Willis Cox vs. New Hampshire*, supra, wherein the question involved was also the validity of a similar statute of New Hampshire. Because the same constitutional limitations applicable to ordinances apply to statutes, and the same objections to a municipal ordinance which grants unrestrained discretion upon a city officer are applicable to a law or statute that confers unlimited power to any officer either of the municipal or state governments. Under our democratic system of government no such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency. As stated in *State ex rel. Garrabad vs. Dering*, supra, "The discretion with which the council is vested is a legal discretion to be exercised within the limits of the law, and not a discretion to transcend it or to confer upon any city officer an arbitrary authority making in its exercise a petty tyrant."

It is true that Mr. Justice Ostrand cited said provision of article 2434 (m) of the Administrative Code apparently in support of the decision in the case of *Evangelista vs. Earnshaw*, 57 Phil., 255-261, but evidently the quotation of

said provision was made by the writer of the decision under a mistaken conception of its purview and is an obiter dictum, for it was not necessary for the decision rendered. The popular meeting or assemblage intended to be held therein by the Communist Party of the Philippines was clearly an unlawful one, and therefore the Mayor of the City of Manila had no power to grant the permit applied for. On the contrary, had the meeting been held, it was his duty to have the promoters thereof prosecuted for violation of section 844, which is punishable as misdemeanor by section 1262 of the Revised Ordinances of the City of Manila. For, according to the decision, "the doctrine and principles advocated and urged in the Constitution and by-laws of the said Communist Party of the Philippines, and the speeches uttered, delivered, and made by its members in the public meetings or gatherings, as above stated, are highly seditious, in that they suggest and incite rebellious conspiracies and disturb and obstruct the lawful authorities in their duty."

The reason alleged by the respondent in his defense for refusing the permit is, "that there is a reasonable ground to believe, basing upon previous utterances and upon the fact that passions, specially on the part of the losing groups; remains bitter and high, that similar speeches will be delivered tending to undermine the faith and confidence of the people in their government, and in the duly constituted authorities, which might threaten breaches of the peace and a disruption of public order." As the request of the petition was for a permit "to hold a peaceful public meeting," and there is no denial of that fact or any doubt that it was to be a lawful assemblage, the reason given for the refusal of the permit can not be given any consideration. As stated in the portion of the decision in *Hague vs. Committee on Industrial Organization*, supra, "It does not make comfort and convenience in the use of streets or parks the standard of official action. It enables the Director of Safety to refuse the permit on his mere opinion that such refusal will prevent riots, disturbances or disorderly assemblage. It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs, for the prohibition of all speaking will undoubtedly 'prevent' such eventualities." To this we may add the following, which we make our own, said by Mr. Justice Brandeis in his concurring opinion in *Whitney vs. California*, 71 U. S. (Law. ed.), 1105-1107:

"Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burned women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one * * *.

"Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. * * *

"Moreover, even imminent danger cannot justify resort to prohibition of these functions essential effective democracy, unless the evil apprehended is relatively serious. Prohibition of free speech and assembly is a measure so stringent that it would be inappropriate as the means for averting a relatively trivial harm to a society. * * * The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the state. Among freemen, the deterrents ordinarily to be applied to prevent crimes are education and punishment for violations of the law, not abridgment of the rights of free speech and assembly." *Whitney vs. California*, U. S. Sup. Ct. Rep., 71 Law., ed., pp. 1106-1107.)

In view of all the foregoing, the petition for mandamus is granted and, there appearing no reasonable objection to the use of the Plaza Miranda, Quiapo, for the meeting applied for, the respondent is ordered to issue the corresponding permit, as requested. So ordered.

Moran, C.J., Pablo, Perfecto, Bengzon, and Briones, JJ., concur.

CONCURRING OPINION

PARAS, J.:

The subject-matter of the petition is not new in this jurisdiction. Under Act No. 2774, section 4, amending section 2434, paragraph (m) of the Revised Administrative Code, the Mayor has discretion to grant or deny the petition to hold the meeting. (See *Evangelista vs. Earnshaw*, 57 Phil., 255.) And, in the case of *U. S. vs. Apurado*, 7 Phil., 422, 426, this Court said:

"It is rather to be expected that more or less disorder will mark the public assembly of the people to protest against grievances whether real or imaginary, because on such occasions feeling is always wrought to a high pitch of excitement, and the greater the grievance and the more intense the feeling, the less perfect, as a rule, will be the disciplinary control of the leaders over their irresponsible followers. But if the prosecution be permitted to seize upon every instance of such disorderly conduct by individual members of a crowd as an excuse to characterize the assembly as a seditious and tumultuous rising against the authorities, then the right to assemble and to petition for redress of grievances would become a delusion and snare and the attempt to exercise it on the most righteous occasion and in the most peaceable manner would expose all those who took part therein to the severest and most unmerited punishment, if the purposes which they sought to attain did not happen to be pleasing to the prosecuting authorities. If instances of disorderly conduct occur on such occasions, the guilty individuals should be sought out and punished therefor."

The petitioner is a distinguished member of the bar and Floor Leader of the Nacionalista Party in the House of Representatives; he was the chief campaigner of the said party in the last elections. As the petition comes from a responsible party, in contrast to Evangelista's Communist Party which was considered subversive, I believe that the fear which caused the Mayor to deny it was not well founded and his action was accordingly far from being a sound exercise of his discretion.

BRIONES, M., conforme:

En nombre del Partido Nacionalista y de los grupos opositores aliados, Cipriano P. Primicias, director general de campaña de las minorías coaligadas en las últimas elecciones y "Floor Leader" de dichas minorías en la Cámara de Representantes, solicito del Alcalde de Manila en comunicación de fecha 14 de Noviembre, 1947, permiso "para celebrar un mitin público en la Plaza Miranda el Domingo, 16 de Noviembre, 1947, desde las 5:00 p.m. hasta la 1:00 a.m., a fin de pedir al gobierno el remedio de ciertos agravios." También se pedía en la comunicación licencia para usar la plataforma ya levantada en dicha Plaza.

El Vice-Alcalde Cesar Miraflor actuó sobre la solicitud en aquel mismo día dando permiso tanto para la celebración del mitin como para el uso de la plataforma, "en la inteligencia de que no se pronunciaran discursos subversivos, y además, de que usted (el solicitante) será responsable del mantenimiento de la paz y orden durante la celebración del mitin."

Sin embargo, al día siguiente, 15 de Noviembre, el Alcalde Valeriano E. Fugoso revocó el permiso concedido, expresándose los motivos de la revocación en su carta de tal fecha dirigida al Rep. Primicias.

"Sirvase dar por informado—dice el Alcalde Fugoso en su carta—que después de haber leído los periódicos metropolitanos de esta mañana en que aparece que vuestro mitin va a ser un 'rally' de indignación en donde se denunciarán ante el pueblo los supuestos fraudes electorales perpetrados en varias partes de Filipinas para anular la voluntad popular, por la presente se revoca dicho permiso.

"Se cree—añade el Alcalde—que la paz y el orden en Manila sufriran daño en dicho 'rally' considerando que las pasiones todavia no se han calmado y la tension sigue alta como resultado de la ultima contienda politica.

"Segun los mismos periodicos, delegados venidos de provincias y estudiantes de las universidades locales participaran en el 'rally,' lo cual, a mi juicio, no haria mas que causar disturbios, pues no se puede asegurar que concurriran alli solamente elementos de la oposicion. Desde el momento en que se mezclen entre la multitud gentes de diferentes matices politicos, que es lo que probablemente va a ocurrir, el orden queda en peligro una vez que al publico se le excite, como creo que sera excitado, teniendo en cuenta los fines del mitin tal como han sido anunciados en los periodicos mencionados.

"Se dice que los resultados de las ultimas elecciones seran protestados. No hay base para este proceder toda vez que los resultados todavia no han sido oficialmente anunciados.

"Por tanto—termina el Alcalde su orden revocatoria—la accion de esta oficina se toma en interes del orden publico y para prevenir la perturbacion de la paz en Manila."

De ahi el presente recurso de mandamus para que se ordene al Alcalde recurrido a que expida inmediatamente el permiso solicitado. Se pide tambien que ordenemos al Procurador General para que investigue la fase criminal del caso y formule la accion que justifiquen las circunstancias.

Dada la premura del asunto, se llamo inmediatamente a vista arguyendo extensamente los abogados de ambas partes ante esta Corte en sus informes orales.[1]

El recurso se funda, respecto de su aspecto civil, en el articulo III, seccion 1, inciso 8 de la Constitucion de Filipinas, el cual preceptua "que no se aprobara ninguna ley que coarte la libertad de la palabra, o de la prensa, o el derecho del pueblo de reunirse pacificamente y dirigir peticiones al gobierno para remedio de sus agravios." Con respecto al posible aspecto criminal del caso se invoca el articulo 131 delCodigo Penal Revisado, el cual dispone que "la pena de prision correccional en su periodo minimo, se impondra al funcionario publico o empleado que, sin fundamento legal, prohibiere o interrumpiere una reunion pacifica, o disolviere la misma."

La defensa del recurrido invoca a su favor los llamados poderes de policia que le asisten como guardian legal de las plazas, calles y demas lugares publicos. Se alega que como Alcalde de la Ciudad de Manila tiene plena discrecion para conceder o denegar el uso de la Plaza Miranda, que es una plaza publica, para la celebracion de un mitin o reunion, de conformidad con las exigencias del interes general tal como el las interpreta. Especificamente se citan dos disposiciones, a saber : el articulo 2434 (b), inciso (m) delCodigo Administrativo Revisado, y el articulo 1119, capitulo 118 de la Compilacion de las Ordenanzas Revisadas de la Ciudad de Manila, edicion de 1927. El articulo aludido delCodigo Administrativo Revisado se lee como sigue:

* * * * *

"(m) To grant and refuse municipal license or permits of all classes and to revoke the same for violation of the conditions upon which they were granted, or if acts prohibited by law or municipal ordinance are being committed under the protection of such licenses or in the premises in which the business for which the same have been granted is carried on, or for any other good reason of general interest."

La ordenanza municipal indicada reza lo siguiente:

"SEC. 1119. Free for use of public.—The streets and public places of the city shall be kept free and clear for the use of the public, and the sidewalks and crossings for the pedestrians, and the same shall only be used or occupied for other purposes as provided by the ordinance or regulation: Provided, That the holding of athletic games, sports, or exercises during the celebration of national holidays in any streets or public places of the city and on the patron saint day of any district in question, may be permitted by means of a permit issued by the Mayor, who shall determine the streets or public places, or portions thereof, where such athletic games, sports,

or exercises may be held: And provided, further, That the holding of any parade or procession in any streets or public places is prohibited unless a permit therefor is first secured from the Mayor, who shall, on every occasion, determine or specify the streets or public places for the formation, route, and dismissal of such parade or procession: And provided, finally, That all applications to hold a parade or procession shall be submitted to the Mayor not less than twenty-four hours prior to the holding of such parade or procession."

Parece conveniente poner en claro ciertos hechos. El mitin o "rally" de indignacion de que habla el Alcalde recurrido en su carta revocando el permiso ya concedido no consta en la peticion del recurrente ni en ningun documentacion o manifestacion verbal atribuida al mismo, sino solamente en las columnas informativas de la prensa metropolitana. El recurrente admite, sin embargo, que el objeto del mitin era comunicar al pueblo la infinidad de telegramas y comunicaciones que como jefe de campaña de las oposiciones habia recibido de varias partes del archipelago denunciando tremendas anomalias, escandalosos fraudes, actos vandalicos de terrorismo politico, etc., etc., ocurridos en las elecciones de 11 de Noviembre; llamar la atencion del Gobierno hacia tales anomalias y abusos; y pedir su pronta, eficaz y honrada intervencion para evitar lo que todavia se podia evitar, y con relacion a los hechos consumados urgir la pronta persecucion y castigo inmediato de los culpables y malhechores. De esto resulta evidente que el objeto del mitin era completamente pacifico, absolutamente legal. No hay ni la menor insinuacion de que el recurrente y los partidos oposicionistas coaligados que representa tuvieran el proposito de utilizar el mitin para derribar violentamente al presente gobierno, o provocar una rebelion o siquiera un motin. En realidad, teniendo en cuenta las serias responsabilidades del recurrente como jefe de campaña electoral de las minorias aliadas y como "Floor Leader" en el Congreso de dichas minorias, parecia que esta consideracion debia pesar decisivamente en favor de la presuncion de que el mitin serfa una asamblea pacifica, de ciudadanos conscientes, responsables y amantes de la ley y del orden.[2]

Se ha llamado nuestra atencion a que en el articulo arriba citado y transcrito de las Ordenanzas Revisadas de Manila no figura el mitin entre las materias reglamentadas, sino solo la procesion o parada por las calles. Esto demuestra, se sostiene, que cuando se trata de un mitin en una plaza o lugar publico, la concesion del permiso es ineludible y el Alcalde no tiene ninguna facultad discrecional. Pareceme, sin embargo, que no es necesario llegar a este extremo. Creo no debe haber inconveniente en admitir que el mitin esta incluido en la reglamentacion, por razones de conveniencia publica. Verbigracia, es perfectamente licito denegar el permiso para celebrar un mitin en una plaza publica en un dia y una hora determinados cuando ya previamente se ha concedido de buena fe el uso del mismo lugar a otro a la misma hora. La prevencion de esta clase de conflictos es precisamente uno de los ingredientes que entran en la motivacion de la facultad reguladora del Estado o del municipio con relacion al uso de calles, plazas y demas lugares publicos. Por ejemplo, es tambien perfectamente licito condicionar el permiso atendiendo a su relacion con el movimiento general del trafico tanto de peatones como de vehiculos. Estas consideraciones de comfort y conveniencia publica son por lo regular la base, el leit-motif de toda ley u ordenanza encaminada a reglamentar el uso de parques, plazas y calles. Desde luego que la regla no excluye la consideracion a veces de la paz y del buen orden, pero mas adelante veremos que este ultimo, para que sea atendible, requiere que exista una situacion de peligro verdadero, positivo real, claro, inminente y substantial. La simple conjetura, la mera aprehension, el temor mas o menos exagerado de que el mitin, asamblea o reunion pueda ser motivo de desorden o perturbacion de la paz no es motivo bastante para denegar el permiso, pues el derecho constitucional de reunirse pacificamente, ya para que los ciudadanos discutan los asuntos publicos o se comuniquen entre si su pensamiento sobre ellos, ya para ejercer el derecho de peticion recabando del gobierno el remedio a ciertos agravios, es infinitamente superior a toda facultad reguladora en relacion con el uso de los parques, plazas y calles.

La cuestion, por tanto, que tenemos que resolver en el presente recurso es bien sencilla. ¿Tenia razon el Alcalde recurrido para denegar el permiso solicitado por el recurrente, ora bajo los terminos de la ordenanza pertinente,

ora bajo la carta organica de Manila, y sobre todo, bajo el precepto categorico, terminante, expresado en el inciso 8, section 1, del Artículo III de la Constitucion? ¿No constituye la denegacion del permiso una seria conculcacion de ciertos privilegios fundamentales garantizados por la Constitucion al ciudadano y al pueblo?

Resulta evidente, de autos, que el recurrido denego el permiso bajo lo que el mismo llama "all-pervading power of the state to regulate," temiendo que el mitin solicitado iba a poner en peligro la paz y el orden publico en Manila. No se fundo la denegacion en razones de "comfort" o conveniencia publica, vgr., para no estorbar el trafico, o para prevenir un conflicto con otro mitin ya previamente solicitado y concedido, sino en una simple conjetura, en un mero temor o aprension—la aprension de que, dado el tremendo hervor de los animos resultante de una lucha electoral harto reñida y apasionada, un discurso violento, una arenga incendiaria podria amotinar a la gente y provocar serios desordenes. La cuestion en orden es la siguiente: ¿se puede anular o siquiera poner en suspenso el derecho fundamentalisimo de reunion o asamblea pacifica, garantizado por la Constitucion, por razon de esta clase de conjetura, temor o aprension? Es obvio que la contestacion tiene que ser decididamente negativa. Elevar tales motivos a la categoria de razon legal equivaldria practicamente a sancionar o legitimar cualquier pretexto, a colocar los privilegios y garantias constitucionales a merced del capricho y de la arbitrariedad. Si la vigencia de tales privilegios y garantias hubiera de depender de las suspicacias, temores, aprensiones, o hasta humor del gobernante, uno podria facilmente imaginar los resultados desastrosos de semejante proposicion; un partido mayoritario dirigido por caudillos y lidens sin escrupulos y sin conciencia podria facilmente anular todas las libertades, atropellar todos los, derechos incluso los mas sagrados, ahogar todo movimiento legitimo de protesta o peticion, estrangular, en una palabra, a las minorias, las cuales—como sabe todo estudiante de ciencia politica—en el juego y equilibrio de fuerzas que integran el sistema democratico son tan indispensables como las mayorias. ¿Que es lo que todavia podria detener a un partido o a un hombre que estuviera en el poder y que no quisiera oir nada desagradable de sus adversarios si se le dejara abiertas las puertas para que, invocando probables peligros o amagos de peligro, pudiera de una sola plumada o de un solo gesto de repulsa anular o poner en suspenso los privilegios y garantias constitucionales? ¿No seria esto retornar a los dias de aquel famoso Rey que dijo: "El Estado soy yo," o de aquel notorio cabecilla politico de uno de los Estados del Sur de America que asombro al resto de su pais con este nefasto pronunciamiento: "I am the only Constitution around here"? Es inconcebible que la facultad de reglamentar o el llamado poder de policia deba interpretarse en el sentido de justificar y autorizar la anulacion de on derecho, privilegio o garantia constitucional. Sin embargo, tal seria el resultado si en nombre de un concepto tan vago y tan elastico como es el "interes general" se permitiera interdecir la libertad de la palabra, de la cual los derechos de reunion y de peticion son nada mas que complemento logico y necesario. Una mujer famosa de Francia[3] en la epoca del terror, momentos antes de subir al cadalso y colocar su hermoso cuello bajo la cuchilla de la guillotina, hizo historica esta exclamacion: "¡Libertad, cuantos crímenes se cometen en tu nombre!" Si se denegara el presente recurso legitimando la accion del recurrido y consiguientemente autorizando la supresion de los mitines so pretexto de que la paz y el orden publico corren peligro con ellos, un desengañado de la democracia en nuestro pais acaso exprese entonces su suprema desilusion parafraseando la historica exclamacion de la siguiente manera: "¡Interes general, paz, orden publico, cuantos atentados se cometen en vuestro nombre contra la libertad!"

El consenso general de las autoridades en los paises constitucionalmente regidos como Filipinas, particularmente en Estados Unidos, es que el privilegio del ciudadano de usar los parques, plazas y calles para el intercambio de impresiones y puntos de vista sobre cuestiones nacionales si bien es absoluto es tambien relativo en el sentido de que se puede regular, pero jamas se puede denegar o coartar so pretexto o a guisa de regulacion (Hague vs. Committee for Industrial Organization, 307 U. S., 515-517). Este asunto, planteado y decidido en 1938, ha venido a ser clasico en la jurisprudencia americana sobre casos del mismo tipo que el que nos ocupa. La formidable asociacion obrera Committee for Industrial Organization conocida mas popularmente por la famosa abreviatura

CIO, planteo una queja ante los tribunales de New Jersey contra las autoridades de Jersey City, (a) atacando, por fundamentos constitucionales, la validez de una ordenanza municipal que regulaba y restringia el derecho de reunion; y (b) tachando de inconstitucionales los metodos y medios en virtud de los cuales ponian en vigor la ordenanza las referidas autoridades.

Los hechos del caso, brevemente expuestos, son, a saber : La CIO trataba de celebrar mitines y asambleas publicas en Jersey City a fin de comunicar a los ciudadanos sus puntos de Vista sobre la "National Labor Relations Act." Las autoridades de la ciudad, comenzando por el Alcalde Hague el famoso cabecilla de la muy notoria maquina politica de New Jersey, rehusaron consistentemente conceder licencia para dichos mitines bajo la especiosa alegacion de que los miembros de la organizacion obrera solicitante eran comunistas y del orden publico corria peligro de grave perturbacion; es decir, casi, casi la misma alegacion que en el presente caso. La denegacion de la licencia se fundaba en una ordenanza municipal que trataba de reglamentar el derecho constitucional de reunion y asamblea pacifica.

Los tribunales de New Jersey, declarando inconstitucionales la ordenanza en cuestion y los metodos por los cuales se trataba de poner en vigor, sentenciaron a favor de la CIO permitiendole celebrar los mitines solicitados. Elevado el asunto en casacion a la Corte Suprema Federal, esta confirmo la sentencia con solo una ligera modificacion. Entre otros pronunciamientos se dijo que: (a) donde quiera este alojado el titulo sobre las calles, parques y plazas, desde tiempo inmemorial los mismos siempre se han considerado como un fideicomiso para uso del publico, y desde tiempos remotos que la memoria no alcanza se han usado siempre para fines de reunion y de intercambio de impresiones y puntos de vista entre los ciudadanos, asi como para la libre discusion de los asuntos publicos; (b) que el uso de las calles y plazas publicas para tales fines ha sido siempre, desde la antiguedad, una parte importante y esencial de los privilegios, inmunidades, derechos y libertades de los ciudadanos; (c) que el privilegio del ciudadano de los Estados Unidos de usar las calles, plazas y parques para la comunicacion de impresiones y puntos de vista sobre cuestiones nacionales puede ser regulado en interes de todos; es en tal sentido absoluto pero relativo, y debe ser ejercitado con sujecion al "comfort" y conveniencia generales y en consonancia con la paz y el buen orden; pero no puede ser coartado o denegado so pretexto y forma de regulacion; (d) que el tribunal inferior estuvo acertado al declarar invalida la ordenanza en su faz, pues no hace del "comfort" o conveniencia en el uso de calles y plazas la norma y patron de la accion oficial; por el contrario, faculta al Director de Seguridad a rehusar el permiso en virtud de su simple opinion de que la denegacion es para prevenir motines, trastornos o reuniones turbulentas y desordenadas; (e) que, de esta manera, y conforme lo demuestra el record, la denegacion puede ser utilizada como instrumento para la supresion arbitraria de la libre expresion de opiniones sobre asuntos nacionales, pues la prohibicion de hablar producira indudablemente tal efecto: (f) y, por ultimo, que no puede echarse mano de la supresion oficial del privilegio para ahorrarse el trabajo y el deber de mantener el orden en relacion con el ejercicio del derecho. En otras palabras, traduciendo literalmente la fraseologia de la sentencia, aun a riesgo de incurrir en un anglicismo, "no puede hacerse de la supresion oficial incontrolada del privilegio un sustituto del deber de mantener el orden en relacion con el ejercicio del derecho." He aqui ad verbatim la doctrina:

"5. Regulation of parks and streets.—"Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of the citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience and in consonance with peace and good order; but it must not in the guise of regulation be abridged or denied. We think the court below was right in holding the ordinance * * * void upon its face. It does not make comfort or convenience in the use of streets or parks the

standard of official action. It enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent riots, disturbances, or disorderly assemblage. It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right." (*Hague vs. Committee for Industrial Organization*, 307 U. S. 496, 515-516.)

Durante la audiencia del presente asunto se hizo mencion del caso de Evangelista contra Earnshaw, 57 Jur. Fil., 255, como un precedente en apoyo de la accion del Alcalde recurrido. Pero la similitud es solo en el hecho de que el entonces Alcalde D. Tomas Earnshaw tambien revoco el permiso previamente concedido al partido comunista que representaba Crisanto Evangelista para celebrar mitines en Manila, pero las circunstancias en ambos casos son enteramente diferentes. El Alcalde Earnshaw revoco el permiso despues de una minuciosa investigacion en que se habian encontrado pruebas indubitables no solo de que en los estatutos y documentos del partido comunista se preconizaba como uno de sus primordiales objetivos el derribar al gobierno americano en Filipinas—gobierno que ellos calificaban de imperialista y capitalistico—sino que de hecho en mitines celebrados con anterioridad los comunistas habian pronunciado discursos clara y positivamente sediciosos predicando una abierta rebelion e incitando un alzamiento para liberar, segun ellos, al proletariado filipino de las garras del imperialismo capitalista. La accion, por tanto, del Alcalde Earnshaw se fundo no en una simple conjetura, en un mero temor o aprehension, sino en la existencia de un peligro inminente, claro, real, sustantivo—ingrediente unico y excepcionalisimo que permite una salvedad suspensiva singularisima en el ejercicio de los privilegios constitucionales de que se trata.

¿Existe ese ingrediente en el caso que nos ocupa? Indudablemente que no. Ni siquiera se ha hecho la mas pequena insinuacion de que las minorias coaligadas en cuyo nombre se ha pedido la celebracion del mitin en cuestion tuvieran el proposito de derribar al gobierno por metodos y procedimientos violentos. El mismo Fiscal Villamor, en su informe oral, admitio francamente la legalidad de la coalicion y de sus fines. Podemos tomar conocimiento judicial de que esas minorias coaligadas lucharon en todas las provincias y municipios de Filipinas presentando candidatos para todos los cargos—nacionales, provinciales y locales, y de que su candidatura senatorial triunfo en 21 provincias de las 50 que componen el mapa electoral, y en 5 ciudades con carta especial de las 8 que existen, incluyendose entre dichas 5 la de Manila, capital del archipelago.

Que la coalicion minoritaria no es una organizacion subversiva como la que fue proscripta en el caso de Evangelista contra Earnshaw, sino que por el contrario propugna la balota, no la bala, como el instrumento normal y democratico para cambiar los gobiernos y las administraciones, lo demuestra, ademas del hecho ya apuntado de que lucho en las ultimas elecciones prevaleciendo de las armas proveidas por la legalidad y sacando partido de los medios de que disponia frente a la natural superioridad del partido gobernante, lo demuestra, repito, la circunstancia de que despues de hechas las votaciones y mientras se estaban contando los votos y cuando vio que, segun ella, se habia escamoteado o se estaba escamoteando la voluntad popular en varias partes mediante engaños, abusos y anomalias de diferentes clases, no busco la violencia ni recurrio a la accion directa para hallar remedio a sus agravios o vengarlos, sino que trato de cobijarse bajo la Constitucion reuniendo al pueblo en asamblea magna al aire libre para comunicar y discutir sus quejas y recabar del gobierno el correspondiente remedio. Y esto lo hizo la coalicion oficialmente, con todas las rubricas del protocolo, formulando la petition del mitin el hombre que mejor podia representarla y ofrecer garantias de legalidad y orden ante los poderes constituidos—el recurrente en este caso, cuya solvencia moral y politica esta doblemente garantida por su condicion de lider de las minorias en el Congreso y jefe de campaña de las mismas en las pasadas elecciones. ¿Que mejor prueba de legalidad y de propositos pacificos y ordenados?

Por tanto, las circunstancias han venido a situar al gobierno en una encrucijada : por un lado, el camino angosto de la represion, de una politica de fuerza y de cordon ferreo policiaco; por otro lado, la amplia avenida de la libertad,

una politica que consista en abrir espitas y valvulas por donde pueda extravasarse no ya la protesta sino inclusive la indignacion del pueblo, previniendo de esta manera que los vapores mal reprimidos hagan estallar la caldera, o que la desesperacion lo arrastre a conspirar en la sombra o a confiar su suerte a los azares de una cruenta discordia civil. Creo que entre ambas politicas la eleccion no es dudosa.

Se alega que antes del 11 de Noviembre, dia de las elecciones, el Alcalde recurrido habia concedido a las minorias coaligadas permisos para celebrar varios mitines politicos en diferentes sitios de Manila; que en dichos mitines se habian pronunciado discursos altamente inflamatorios y calumniosos llamandose ladrones y chanchulleros a varios funcionarios del gobierno nacional y de la Ciudad de Manila, entre ellos el Presidente de Filipinas, el Presidente del Senado y el mismo recurrido, suscitandose contra ellos la animadversion y el desprecio del pueblo mediante la acusacion de que han estado malversando propiedades y fondos publicos con grave detrimento del bienestar e interes generales ; que, dado este antecedente, habia motivo razonable para creer que semejantes discursos se pronunciarian de nuevo, minandose de tal manera la fe y la confianza del pueblo en su gobierno y exponiendose consiguientemente la paz y el orden a serias perturbaciones, teniendo en cuenta la temperatura elevadisima de las pasiones, sobre todo de parte de los grupos perdidosos y derrotados.

Estas alegaciones son evidentemente insostenibles. Darles les valor equivaldria a instituir aqui un regimen de previa censura, el cual no solo es extraño sino que es enteramente repulsivo e incompatible con nuestro sistema de gobierno. Nuestro sistema, mas que de prevencion, es de represion y castigo sobre la base de los hechos consumados. En otras palabras, es un sistema que permite el amplio juego de la libertad, exigiendo, sin embargo, estricta cuenta al que abusase de ella. Este es el espiritu que informa nuestras leyes que castigan criminalmente la calumnia, la difamacion oral y escrita, y otros delitos semejantes. Y parafraseando lo dicho en el citado asunto de *Hague vs. Committee for Industrial Organization*, la supresion incontrolada del privilegio constitucional no puede utilizarse como sustituto de la operacion de dichas leyes.

Se temia—dice el recurrido en su contestation—que la probable virulencia de los discursos y la fuerte tension de los animos pudiesen alterar seriamente la paz y el orden publico. Pero—cabe preguntar—¿de cuando aca la libertad, la democracia no ha sido un peligro, y un peligro perpetuo? En realidad, de todas las formas de gobierno la democracia no solo es la mas dificil y compleja, sino que es la mas peligrosa. Rizal tiene en uno de sus libros inmortales una hermosa imagen que es perfectamente aplicable a la democracia. Puede decirse que esta es como la mar: serena, inmovil, sin siquiera ningun rizo que arrugue su superficie, cuando no lo agita ningun viento. Pero cuando sopla el huracan—lease, *Vientos de la Libertad*—sus aguas se alborotan, sus olas se encrespan, y entonces resulta horrible, espantosa, con la espantabilidad de las fuerzas elementales que se desencadenan liberrimamente.

¿Ha dejado, sin embargo, el hombre de cruzar los mares tan solo porque pueden encresparse y enfurecerse a veces? Pues bien; lo mismo puede decirse de la democracia: hay que tomarla con todos sus inconvenientes, con todos sus peligros. Los que temen la libertad no merecen vivirla. La democracia no es para pusilanimos. Menos cuando de la pusilanimidad se hace pretexto para imponer un regimen de fuerza fundado en el miedo. Porque entonces el absolutismo se disfraza bajo la careta odiosa de la hipocresia. Ejemplo: los Zares de Rusia. Y ya se sabe como terminaron.

El Magistrado Sr. Carson describio con mano maestra los peligros de la libertad y democracia y previno el temor a ellos con las luminosas observaciones que se transcriben a continuacion, expuestas en la causa de *Estados Unidos contra Apurado*, 7 Jur. Fil., 440 (1907), a saber:

"Es de esperar que haya mas o menos desorden en una reunion publica del pueblo para protestar contra agravios ya sean reales o imaginarios porque en esos casos los animos siempre estan excesivamente exaltados, y mientras mayor sea el agravio y mas intenso el resentimiento, tanto menos perfecto sera por regla general el control disciplinario de los directores sobre sus secuaces irresponsables. Pero si se permitiese al ministerio

fiscal agarrarse de cada acto aislado de desorden cometido por individuos o miembros de una multitud como pretexto para caracterizar la reunion como un levantamiento sedicioso y tumultuoso contra las autoridades, entonces el derecho de asociacion, y de pedir reparacion de agravios seria completamente ilusorio, y el ejercicio de ese derecho en la ocasion mas propia y en la forma mas pacifica expondria a todos los que tomaron parte en ella, al mas severo e inmerecido castigo si los fines que perseguian no fueron del agrado de los representantes del ministerio fiscal. Si en tales asociaciones ocurren casos de desorden debe averiguarse quienes son los culpables y castigarseles por este motivo, pero debe procederse con la mayor discrecion al trazar la linea divisoria entre el desorden y la sedicion, y entre la reunion esencialmente pacifica y un levantamiento tumultuoso."

En el curso de los informes se pregunto al Fiscal, defensor del recurrido, si con motivo de los discursos que se dicen calumniosos y difamatorios pronunciados en los mitines de la oposicion antes de las elecciones ocurrio algun serio desorden: la contestacion fue negativa. Como se dice mas arriba, en el mitin monstruo que despues se celebro en virtud de nuestra decision en el presente asunto tampoco ocurrio nada. ¿Que demuestra esto? Que los temores eran exagerados, por no llamarlos fantasticos; que el pueblo de Manila, con su cordura, tolerancia y amplitud de criterio, probó ser superior a las aprensiones, temores y suspicacias de sus gobernantes.

La democracia filipina no puede ni debe sufrir un retroceso en la celosa observancia de las garantias constitucionales sobre la libertad de la palabra y los derechos concomitantes—el de reunion y peticion. Se trata de derechos demasiado sagrados, harto metidos en el Corazon y alma de nuestro pueblo para ser tratados negligentemente, con un simple encogimiento de hombros. Fueron esas libertades las que inspiraron a nuestros antepasados en sus luchas contra la opresion y el despotismo. Fueron esas libertades la base del programa politico de los laborantes precursors del '96. Fueron esas libertades las que cristalizaron en la carta organizacional de Bonifacio, generando luego el famoso Grito de Balintawak. Fueron esas libertades las que despues informaron los documentos politicos de Mabini y la celebre Constitucion de Malolos. Y luego, durante cerca de medio siglo de colaboracion Filipino-americana, fueron esas mismas libertades la esencia de nuestras instituciones, la espina dorsal del regimen constitucional y practicamente republican aqui establecido. Nada mayor, creo yo, para historiar el proceso de esas libertades que los atinados y elocuentes pronunciamientos del Magistrado Sr. Malcolm en la causa de Estados Unidos contra Bustos, 37 Jur. Fil., 764 (1918). Es dificil mejorarlos; así que opto por transcribirlos ad verbatim a continuacion:

"Hojeando las paginas de la historia, no decimos nada Nuevo al afirmar que la libertad de la palabra, tal y como la han defendido siempre todos los paises democraticos, era desconocida en las Islas Filipinas antes de 1900. Por tanto, existia latente la principal causa de la revolucion. Jose Rizal en su obra 'Filipinas Dentro de Cien Años' (paginas 62 y siguientes) describiendo 'las reformas sine quibus non,' en que insistian los Filipinos, dijo:

"El ministro, * * * que quiera que sus reformas sean reformas, debe principiari por declarar la prensa libre en Filipinas, y por crear diputados Filipinos.

"Los patriotas Filipinos que estaban en España, por medio de las columnas de La Solidaridad y por otros medios, al exponer los deseos del Pueblo Filipino, pidieron invariablemente la 'libertad de prensa, de cultos y de asociacion.' (Vease Mabini, 'La Revolucion Filipina.') La Constitucion de Malolos, obra del Congreso Revolucionario, en su Bill de Derechos, garantizaba celosamente la libertad de la palabra y de la prensa y los derechos de reunion y de peticion.

"Tan solo se mencionan los datos que anteceden para deducir la afirmacion de que una reforma tan sagrada para el pueblo de estas Islas y a tan alto precio conseguida, debe ampararse ahora y llevarse adelante en la misma forma en que se protegeria y defenderia el derecho a la libertad.

"Depues sigue el period de la mutual colaboracion americano-filipina. La Constitucion de los Estados Unidos y

las de los diversos Estados de la Union garantizan el derecho de la libertad y de la palabra y de la prensa y los derechos de reunion y de peticion. Por lo tanto, no nos sorprende encontrar consignadas en la Carta Magna de la Libertad Filipina del Presidente McKinley, sus Instrucciones a la Segunda Comision de Filipinas, de 7 de abril de 1900, que sientan el siguiente inviolable principio:

"Que no se aprobara ninguna ley que coarte la libertad de la palabra o de la prensa o de los derechos del pueblo para reunirse pacificamente y dirigir peticiones al Gobierno para remedio de sus agravios."

"El Bill de Filipinas, o sea la Ley del Congreso de 1.º de Julio de 1902, y la Ley Jones, o sea la Ley del Congreso de 29 de Agosto de 1916, que por su naturaleza son leyes organicas de las Islas Filipinas, siguen otorgando esta garantia. Las palabras ente comillas no son extrañas para los estudiantes de derecho constitucional, porque estan calcadas de la Primera Enmienda a la Constitucion de los Estados Unidos que el pueblo Americano pidio antes de otorgar su aprobacion a la Constitucion.

"Mencionamos los hechos expuestos tan solo para deducir la afirmacion, que no debe olvidarse por un solo instante, de que las mencionadas garantias constituyen parte integrante de la Ley Organica—La Constitucion—de las Islas Filipinas.

"Estos parrafos que figuran insertos en el Bill de Derechos de Filipinas no son una huera palabreria. Las palabras que alli se emplean llevan consigno toda la jurisprudencia que es de aplicacion a los grandes casos constitucionales de Inglaterra y America. (Kepner vs. U.S. [1904], 195 U.S., 100; Serra vs. Mortiga [1917], 214 U.S., 470.) Y ¿cuales son estos principios? Volumen tras volumen no bastaria a dar una contestacion adecuada. Pero entre aquellos estan los siguientes:

"Los intereses de la sociedad y la conservacion de un buen gobierno requieren una discusion plena de los asuntos publicos. Completa libertad de comentar los actos de los funcionarios publicos viene a ser un escalpelo cuando se trata de la libertad de la palabra. La penetrante incision de la tinta libra a la burocracia del absceso. Los hombres que se dedican a la vida publica podran ser victimas de una acusacion injusta y hostil; pero podra calmarse la herida con el balsemo que proporciona una conciencia tranquila. El funcionario publico no debe ser demasiado quisquilloso con respeto a los comentarios de sus actos oficiales. Tan solo en esta forma puede exaltarse la mente y la dignidad de los individuos. Desde luego que la critica no debe autorizar la difamacion. Con todo, como el individuo es menos que el Estado, debe esperarse que sobrelleve la critica en beneficio de la comunidad. Elevandose a mayor altura que todos los funcionarios o clases de funcionarios, que el Jefe Ejecutivo, que la Legislatura, que el Poder Judicial—que cualesquiera o sobre todas las dependencias del Gobierno—la opinion publica debe ser el constante manantial de la libertad y de la democracia. (Veanse los casos perfectamente estudiados de Wason vs. Walter, L. R. 4 Q. B., 73, Seymour vs. Butterworth, 3 F. & F., 372; The Queen vs. Sir R. Carden, 5 Q. B. D., 1.)

Ahora que ya somos independientes es obvio que la republica no solo no ha de ser menos celosa que la antigua colonia en la tenencia y conservacion de esas libertades, sino que, por el contrario, tiene que ser muchisimo mas activa y militante. Obrar de otra manera seria como borrar de una plumada nuestras mas preciosas conquistas en las jornadas mas brillantes de nuestra historia. Seria como renegar de lo mejor de nuestro pasado: Rizal, Marcelo H. del Pilar, Bonifacio, Mabini, Quezon, y otros padres inmortales de la patria. Seria, en una palabra, como si de un golpe catastrofico se echara abajo la recia fabrica de la democracia filipina que tanta sangre y tantos sacrificios ha costado a nuestro pueblo, y en su lugar se erigiera el tinglado de una dictadura de opera bufa, al amparo de caciquillos y despotillas que pondrian en ridiculo el pais ante el mundo * * * Es evidente que no hemos llegado a estas alturas, en la trabajosa ascension hacia la cumbre de nuestros destinos, para permitir que ocurra esa tragedia.

No nos compete determinar el grado de certeza de los fraudes e irregularidades electorales que la coalicion minoritaria trataba de airear en el mitin en cuestion con vistas a recabar del gobierno y del pueblo el propio y correspondiente remedio. Pudieran ser reales o pudieran ser imaginarios, en todo o en parte. Pero de una cosa

estamos absolutamente seguros y es que la democracia no puede sobrevivir a menos que este fundada sobre la base de un sufragio efectivo, sincero, libre, limpio y ordenado. El colegio electoral es el castillo, mejor todavia, el baluarte de la democracia. Suprimido eso, y la democracia resulta una farsa.

Asi que todo lo que tienda a establecer un sufragio efectivo[4] no solo no debe ser reprimido, sino que debe ser alentado. Y para esto, en general para la salud de la republica, no hay mejor profilaxis, no hay mejor higiene que la critica libre, la censura desembarazada. Solamente se pueden corregir los abusos permitiendo que se denuncien publicamente, sin trabas y sin miedo[5] Esta es la mejor manera de asegurar el imperio de la ley por encima de la violencia.

[1] El letrado Sr. D. Ramon Diokno, en representacion del recurrente, y el Fiscal Auxiliar de Manila D. Julio Villamor, en representacion del recurrido.

[2] Los hechos confirmaron plenamente esta presuncion: el mitin monstruo que se celebro en la noche del 22 de Noviembre en virtud de nuestra resolucion concediendo el presente recurso de mandamus—el mas grande que se haya celebrado jamas en Manila, segun la prensa, y al cual se calcula que asistieron unas 80,000 personas—fue completamente pacifico y ordenado, no registrandose el menor incidente desagradable. Segun los periodicos, el mitin fue un magnifico acto de ciudadania militante y responsable, vindicatoria de la fe de todos aquellos que jamas habian dudado de la sensatez y cultura del pueblo de Manila.

[3] Madame Roland.

[4] En Mejico el lema, la consigna political es: "Sufragio efectivo, sin reeleccion." Los que conocen Mejico aseguran que, merced a esta consigna, la era de las convulsiones y guerras civiles en aquella republica ha pasado definitivamente a la historia.

[5] "No puedo pasar por alto una magistratura que contribuyo mucho a sostener el Gobierno de Roma; fue la de los censores. Hacian el censo del pueblo, y, ademas, como la fuerza de la republica consistia en la disciplina, la austeridad de las costumbres y la observacion constante de ciertos ritos, los censores corregian los abusos que la ley no habia previsto o que el magistrado ordinario no podia castigar. * * *

"El Gobierno de Roma fue admirable, porque desde su nacimiento, sea por espiritu del pueblo, la fuerza del Senado o la autoridad de ciertos magistrados, estaba constituido de tal modo, que todo abuso de poder pudo ser siempre corregido.

"El Gobierno de Inglaterra es mas sabio, porque hay un cuerpo encargado de examinarlo continuamente y de examinarse a si mismo; sus errores son de suerte que nunca se prolongan, y por el espiritu de atencion que despiertan en el pais, son a menudo utiles.

"En una palabra: un Gobierno libre, siempre agitado, no podria mantenerse, si no es por sus propias leyes capaz de corregirse." ("Grandeza y decadencia de los romanos," por Montesquieu, pags. 74, 76 y 77.)

DISSENTING OPINION

HILADO, J.:

Because the constitutional right of assembly and petition for redress of grievances has been here invoked on behalf of petitioner, it has been considered doubly necessary to expound at length the grounds of my dissent. We are all ardent advocates of this right, whenever and wherever properly exercisable. But, in considering the legal

problem here presented serenely and dispassionately, as I had to, I arrived at a different conclusion from that of the majority.

(a) Right not absolute but subject to regulation.—It should be recognized that this right is not absolute and is subject to reasonable regulations. (Philippine Constitutional Law by Malcolm and Laurel, 3d ed., p. 407; Commonwealth vs. Abrahams, 156 Mass., 57, 30 N.E. 79.)

Messrs. Malcolm and Laurel say: "The right of peaceful assemblage is not an absolute one. Assemblies are subject to reasonable regulations."

In the above cited case of Commonwealth vs. Abrahams, which is cited in support of the text on page 407 of the above cited work on Philippine Constitutional Law by Malcolm and Laurel, the Supreme Judicial Court of Massachusetts considered and decided a case involving a regulation by the Board of Park Commissioners forbidding all persons "to make orations, harangues, or loud outcries" in a certain park, under penalty of \$20, except upon prior consent of the board. The defendant requested permission to deliver an oration in the park, which was refused by the board, and thereafter entered the park, and delivered an "oration or harangue" about ten or fifteen minutes in length. In a criminal trial of said defendant for violating the rules promulgated by the Board of Park Commissioners, said rules were held valid and reasonable, and not inconsistent with article 19 of the Bill of Rights (of the Massachusetts Constitution), providing that "the people have a right, in an orderly and peaceable manner, to assemble to consult upon the common good, give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer." In that case the defendant admitted that the people would not have the right to assemble for the purposes specified in the public streets, and might not have such right in the public gardens or on the common, because such an assembly would or might be inconsistent with the public use for which these places are held. And the Supreme Court of Massachusetts said:

"* * * The same reasons apply to any particular park. The parks of Boston are designed for the use of the public generally; and whether the use of any park or a part of any park can be temporarily set aside for the use of any portion of the public, is for the park commissioners to decide, in the exercise of a wise discretion."

In the above-quoted case it appears from the statement of facts preceding the opinion that within the limits of Franklin Park, there involved, were large areas not devoted to any special purpose and not having any shrubbery that would be injured by the gathering thereon of a large concourse of people; that defendant's speech contained nothing inflammatory or seditious, and was delivered in an ordinary oratorical tone; that at the close of the oration the audience quietly dispersed; and that no injury of any kind was done to the park. Still, it was held that the regulation under which the Board of Park Commissioners denied the permission to deliver said oration requested by the defendant was valid and was not inconsistent with that provision of the Massachusetts Bill of Rights guaranteeing to the people the "right, in an orderly and peaceable manner, to assemble to consult upon the common good, give instructions to their representatives, and to request of the legislative body, by the way of addresses, petitions, or remonstrances, redress of the wrongs done them, and of the grievances they suffer."

In the case at bar, the Mayor of Manila had the duty and the power, inter alia, "to grant and refuse municipal * * * permits of all classes * * * for any (other) good reason of general interest" (Rev. Ad. Code, section 2434 [b]-[m] ; italics ours) ; and "to comply with and enforce and give the necessary orders for the faithful enforcement and execution of the laws and ordinances in effect within the jurisdiction of the city." [Ibid., section 2434 (b)-(a)]; and among the general powers and duties of the Municipal Board, whose ordinances the said Mayor was at once bound and empowered to comply with and enforce, were such as "regulate the use of streets, * * * parks, * * * and other public places." [Ibid., section 2444 (u); italics ours.]

Another legal doctrine which should not be lost sight of is that, without abridging the right of assembly and petition, the government may regulate the use of places—public places—wholly within its control, and that the state or municipality may require a permit for public gatherings in public parks and that, while people have the right to assemble peaceably on the highways and to parade on streets, nevertheless the state may regulate the use of the streets by requiring a permit (16 C. J. S., p. 642). In our government the state, through the Charter of Manila, has conferred certain powers pertinent to the subject under consideration upon the City Mayor and upon the Municipal Board. Among these is the duty and power of said Mayor "to grant and refuse municipal * * * permits of all classes * * * for any good reason of general interest" (italics ours), and the power and duty of the Municipal Board "to regulate the use * * * of street, * * * parks, * * * and other public places * * *" (italics ours), already above discussed.

Plaza Miranda in a way is a public square or plaza, and in another sense, in view of its more frequent public use, is a public place devoted to traffic between several streets which empty into it within the district of Quiapo. It is a fact of common knowledge and within the judicial notice of this Court that said plaza is one of the public places constantly used by an usually great number of people during all hours of the day and up to late hours of the night, both for vehicular and for pedestrian traffic. It is one of the centers of the city where a heavy volume of traffic during those hours converges and from which it again proceeds in all directions; and the holding during those hours of a meeting, assembly or rally of the size and nature of that contemplated by petitioner and those belonging to the Coalesced Minority Parties when the permit in question was requested from the City Mayor, must have been expected to greatly inconvenience and interfere with the right of the public in general to devote said plaza to the public uses for which it has been destined since time immemorial.

The rule may perhaps be more aptly stated by saying that the right of peaceful assembly and petition is not absolute but subject to regulation as regards the time, place, and manner of its exercise. As to time, it seems evident, for example, that the State, directly or through the local government of the city or municipality, by way of regulation of the right of free speech, may validly prohibit the delivery of speeches on public streets near private residences between midnight and dawn. As to place, we have the example of the instant case involving Plaza Miranda or any other public place. And as to manner, it is a familiar rule that the freedom of speech does not authorize the speaker to commit slander or defamation, and that laws and ordinances aimed at preventing such abuses are valid regulations of the right. Among other cases which may be cited on the same point, we have that of *Hague vs. Committee on Industrial Organization*, 307 U. S., 496, 83 Law. ed., 1423, cited in the majority opinion and from which the following passage is copied from the quotation therefrom in the said opinion:

"* * * The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied." (Italics ours.)

I construe this declaration of principles by the United States Supreme Court to imply that where the regulatory action is predicated upon the "general comfort and convenience," and is "in consonance with peace and good order," as in the instant case, such action is regulation and not "guise of regulation," and therefore does not abridge or deny the right.

(b) No constitutional right to use public places under government control, for exercise of right of assembly and petition, etc.—

Indeed, carefully analyzed, the action taken by the City Mayor was not even a regulation of the constitutional right of assembly and petition, or free speech, claimed by petitioner, but rather of the use of a public place under the exclusive control of the city government for the exercise of that right. This, I submit, is a distinction which

must be clearly maintained throughout this discussion. No political party or section of our people has any constitutional right to freely and without government control make use of such a public place as Plaza Miranda, particularly if such use is a deviation from those for which said public places have been by their nature and purpose immemorially dedicated. In other words, the City Mayor did not attempt to have anything to do with the holding of the "indignation rally" or the delivery of speeches thereat on the date desired, at any place over which said mayor had no control—his action was exclusively confined to the regulation of the use of Plaza Miranda for such a purpose and at such a time. Chief Justice Hughes, speaking for a unanimous court in *Cox vs. New Hampshire*, 312 U. S., 569, 85 Law. ed., 1049, 1054, said:

"If a municipality has authority to control the uses of its public streets for parades or processions, as it undoubtedly has, it can not be denied authority to give consideration, without unfair discrimination, to time, place, and manner in relation to the other proper uses of the streets. We find it impossible to say that the limited authority conferred by the licensing provisions of the statute in question as thus construed by the state court contravened any constitutional right." (Italics ours.)

That case was concerned with a prosecution of sixty-eight "Jehovah's Witnesses" in a municipal court in the State of New Hampshire for violation of a state statute prohibiting a "parade or procession" upon a public street without a special license. The appellants invoked the constitutional right of free speech and press, as well as that of assembly. The judgment of the municipal court was affirmed by the Supreme Court of New Hampshire and that of the latter was affirmed by the United States Supreme Court. Among other things, the United States Supreme Court said that the appellants were not prosecuted for distributing leaflets, or for conveying information by placards or otherwise, or for issuing invitations to a public meeting, or for holding a public meeting, or for maintaining or expressing religious beliefs. Their right to do any of these things apart from engaging in a "parade or procession," upon a public street was not involved in the case. The question of the validity of a statute addressed to any other sort of conduct than that complained of was declared not to be before the court (85 Law. ed., 1052). By analogy, I may say that in the instant case the constitutional rights of free speech, assembly and petition are not before the court but merely the privilege of petitioner and of the Coalesced Minorities to exercise any or all of said rights by using Plaza Miranda, a public place under the complete control of the city government. In the same case of *Cox vs. New Hampshire*, supra, Chief Justice Hughes, in his opinion, used the following eloquent language:

"Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relation is designed to promote the public convenience in the interest of all, it can not be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinion. * * *" (85 Law. ed., 1052-1053.)

In other words, when the use of public streets or places is involved, public convenience, public safety and public order take precedence over even particular civil rights. For if the citizen asserting the civil right were to override the right of the general public to the use of such streets or places, just because it is guaranteed by the constitution, it would be hard to conceive how upon the same principle that citizen be prevented from using the private property of his neighbor for the exercise of the asserted right. The constitution, in guaranteeing the right of peaceful assembly and petition, the right of free speech, etc., does not guarantee their exercise upon public places,

any more than upon private premises, without government regulation in both cases, or the owner's consent in the second.

In *Davis vs. Commonwealth*, 167 U. S. 43, 42 Law. ed., 71, 72, the United States Supreme Court, in affirming the decision of the Supreme Judicial Court of Massachusetts written by Justice Oliver Wendell Holmes, then of the latter tribunal, quoted from said decision as follows:

"* * * As representative of the public it (legislature) may and does exercise control over the use which the public may make of such places (public parks and streets), and it may and does delegate more or less of such control to the city or town immediately concerned. For the legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house. When no proprietary right interferes the legislature may end the right of the public to enter upon the public place by putting an end to the dedication to public uses. So it may take the lesser step of limiting the public use to certain purposes. See Dill. Mun. Corp. secs. 393, 407, 651, 656, 666; *Brooklyn Park Comrs. vs. Armstrong*, 45 N. Y. 234, 243, 244 (6 Am. Rep. 70) *

* *"

(c) Authorities cited.—

I have examined the citations of authorities in the majority opinion. Most of the cases therein cited are, I think, inapplicable to the one under consideration, and those which may have some application, I believe reinforce this dissent. None of them was for mandamus to compel the granting of a permit for holding a meeting, assembly, or the like, upon a public place within the control of the general or local government.

The fact that a law or municipal ordinance under which a person had been prosecuted for delivering a speech without the required permit, for example, was declared unconstitutional or otherwise void for delegating an unfettered or arbitrary discretion upon the licensing authority, thus completely failing to confer the discretion, does not mean that such person has the right by mandamus to force said authority to grant him the permit. If, in such a case, the law or ordinance, conferring the discretion, is unconstitutional or void, the mandamus suit becomes entirely idle. Such a suit would involve a self-contradictory proposition, for the very idea of a permit is something which may be granted or withheld. He who has the power to grant permission for the doing of an act necessarily has the correlative power to deny the permission. A "permit" which under no conditions or circumstances and at no time can be refused needs a different name.

Willis Cox vs. State of New Hampshire, 312 U. S., 569, was concerned with a statute of the State of New Hampshire which was construed by the Supreme Court of the same State as not conferring upon the licensing board unfettered discretion to refuse the license, and was held valid both by said Supreme Court and the Supreme Court of the United States.

In our case, section 2434 (b)-(m) of the Revised Administrative Code does not confer upon the Mayor of Manila an unfettered discretion to grant or to refuse the permit—his power to grant or to refuse the permit is controlled and limited by the all-important requirement of the same section that whatever his determination, it should be "for any good reason of general interest."

In *City of Chicago vs. Trotter*, 136 Ill., 430, the Supreme Court of the State of Illinois held that the power of city councils under the state laws to regulate the use of the public streets could not be delegated by them, and therefore could not be delegated to the superintendent of police. But in our case the power of the City Mayor under the Revised Administrative Code has not been delegated by the Municipal Board of Manila but has been directly conferred by the State through its legislature.

In *State ex rel. Garrabad vs. Dering*, 84 Wis., 585, what was involved was a city ordinance committing to the

unrestrained will of a public officer the power to determine the rights of parties under the ordinance without anything "to guide or control his action." In our case, as already stated, the City Mayor received his power from the State through the Legislature which enacted the Revised Administrative Code, and moreover, his action was therein provided to be guided and controlled by the already mentioned requirement that whether he grants or refuses a municipal permit of any class, it shall be for some "good reason of general interest," and not as his unfettered will may dictate.

The case of *In re Fradzee*, 63 Mich., 399, involved a city ordinance declared unreasonable and void by the Supreme Court of Michigan, the ordinance prohibiting certain uses of the public streets of the City of Grand Rapids "without having first obtained the consent of the mayor or common council of said city." The ordinance did not prescribe any guide, control or limitation for, of, and to, the exercise of the power thus conferred upon the mayor or common council. The following passage from the quotation from the decision of the Supreme Court of Michigan made in the majority opinion would seem to reinforce the stand taken in this dissent.

"* * * We must therefore construe this charter, and the powers it assumes to grant, so far as it is not plainly unconstitutional, as only conferring such power over the subjects referred to as will enable the city to keep order, and suppress mischief, in accordance with the limitations and conditions required by the rights of the people themselves, as secured by the principles of law, which can not be less careful of private rights under a constitution than under the common law.

"It is quite possible that some things have a greater tendency to produce danger and disorder in the cities than in smaller towns or in rural places. This may justify reasonable precautionary measures, but nothing further; and no inference can extend beyond the fair scope of powers granted for such a purpose, and no grant of absolute discretion to suppress lawful action altogether can be granted at all * * *." (Italics ours.)

The instant case is concerned with an "indignation rally" to be held at one of the busiest and most frequented public places in this big cosmopolitan city, with a present population estimated to be 150 per cent larger than its prewar population, and the public officer who was being called upon to act on the petition for permit was the chief executive of the city who was by reason of his office the officer most directly responsible for the keeping and maintenance of peace and public order for the common good. And as stated elsewhere in this dissent, his power in the premises was not without control, limitation or guide and, lastly, the action taken by him was not an absolute suppression of the right claimed but was merely, a postponement of the use of a public place for the exercise of that right when popular passions should have calmed down and public excitement cooled off sufficiently to better insure the avoidance of public peace and order being undermined.

Rich vs. Mapervill, 42 Ill. Ap., 222, had to do with another city ordinance. The court there held that when men in authority are permitted in their discretion to exercise "power so arbitrary, liberty is subverted, and the spirit of our free institution violated." (Italics ours.) This is not our case, as the power of the Manila Mayor now under consideration is not at all arbitrary. It was further held in that case that where the granting of the permit is left to the unregulated discretion of a small body of city alderman, the ordinance can not be other than partial and discriminating in its practical operation. The case at bar is radically different for, as already shown, the discretion of the City Mayor here is not unregulated, for the phrase "any good reason of general interest" is certainly an effective regulatory condition precedent to the exercise of the power one way or the other. And just as certainly the reasons alleged by the respondent Mayor for his action stated in his letters dated November 15 and 17, 1947, addressed to petitioner and in his affidavit Annex 1, seem entirely well founded and well taken, consideration being had of his grave responsibilities as the immediate keeper of peace and public order in the city. Elsewhere in this dissent we quote from said documents textually.

On page 13 of the majority opinion there is a quotation of another passage from the case of *Cox vs. New*

Hampshire, *supra*, which says:

"As regulation of the use of the streets for parades and processions is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion of public questions immemorially associated with resort to public places."

The above rule means that if the control exerted does not deny or unwarrantedly abridge the right of assembly, such control is legally valid. This is precisely our case, since the respondent Mayor neither denied nor unwarrantedly abridged the right asserted by petitioner and his companions. If the postponement of the granting of the permit should be taken as a denial of the right, then we would be practically denying the discretion of the proper official for it would be tantamount to compelling him to grant the permit outright, which would necessarily mean that he can never refuse the permit, for one who cannot even postpone the granting of such permit much less can altogether refuse it.

Hague vs. Committee for Industrial Organization, 307 U. S. 496, 83 Law. ed., 1423, apart from being clearly distinguishable from the instant case as later demonstrated, contains the passage quoted on page 7 of this dissent, which decidedly supports it. The distinction between that case and this is that there "the ordinance deals only with the exercise of the right of assembly for the purpose of communicating views entertained by speakers, and is not a general measure to promote the public convenience in the use of the streets or parks" (83 Law. ed., 1436); while in the instant case section 2434 (b)-(m) of the Revised Administrative Code is not solely aimed at prohibition of any particular act for it likewise provides for permission, and in both cases is expressly aimed at promoting the "general interest."

Cox vs. State of New Hampshire, 312 U. S., 569, 95 Law, ed., 1049, is equally in solid support of this dissent as appears from No. 2 of the syllabus therein:

"A statute requiring persons using the public streets for a parade or procession to procure a special license therefor from the local authorities is not an unconstitutional abridgement of the rights of assembly or of freedom of speech and press, where, as the statute is construed by the state courts, the licensing authorities are strictly limited, in the issuance of licenses, to a consideration of the time, place, and manner, of the parade or procession, with a view to conserving the public convenience and of affording an opportunity to provide proper policing, and are not invested with arbitrary discretion to issue or refuse licenses, but are required to exercise their discretion free from improper or inappropriate considerations and from unfair discrimination." (Italics ours).

In empowering and directing the City Mayor to grant or refuse permits "for any * * * good reason of general interest," the Revised Administrative Code plainly has in view only the common good and excludes all "improper or inappropriate considerations" and "unfair discrimination" in the exercise of the granted discretion.

Lastly, as between *Hague vs. Committee for Industrial Organization*, *supra*, and *Cox vs. State of New Hampshire* *supra*, the choice is obvious with regard to their authoritative force, when it is considered that in the former out of the nine Justices of the United States Supreme Court two did not take part and of the seven who did only two, Justices Roberts and Black, subscribed the opinion from which the majority here quote, while in the latter (*Cox vs. State of New Hampshire*) the decision was unanimous.

(d) *Mandamus* unavailable.—

McQuillin on Municipal Corporations, 2nd ed., Revised, Volume 6, p. 848, section 2714, expresses the rule obtaining in the United States that the immunity from judicial control appertaining to the Office of the Governor of the State, or to the Presidency of the United States, does not attach to the mayoralty of a city. But on page 878,

section 2728, he has the following to say on the unavailability of mandamus to compel the granting of licenses and permits by municipal officers:

"Sec. 2728. To compel the granting of licenses and permits.—If the issuance of the license or permit is discretionary with the officer or municipal board, it is clear that it cannot be compelled by mandamus. The cases rarely, if ever, depart from this well established rule, and in consequence in doubtful cases the judicial decisions uniformly disclose a denial of the remedy. As already stated, the fundamental condition is that the petition must show a clear legal right to the writ and a plain neglect of duty on the part of the public officer to perform the act sought to be enforced. For example, one who seeks to compel a city to issue to him a permit for the erection of a building must show compliance with all the valid requirements of the building ordinances and regulations.

"The granting of licenses or permits by municipal or other public authorities, as mentioned, is usually regarded as a discretionary duty, and hence, ordinarily, mandamus will not lie to compel them to grant a license or issue a permit to one claiming to be entitled thereto, especially where it is not alleged and shown that the exercise of such discretion was arbitrary. All the court can do is to see that the licensing authorities have proceeded according to law. Their decision will not be reviewed on its merits. Where, however, refusal to grant a license or to issue a permit, as said above, is arbitrary or capricious mandamus will lie to compel the appropriate official action. * * *"

To my mind, the following reasons, alleged by the respondent Mayor, negative all element of arbitrariness in his official action:

"* * * please be advised that upon reading the metropolitan newspapers this morning wherein it appears that your meeting will be an indignation rally at which all the supposed election frauds allegedly perpetrated in many parts of the Philippines for the purpose of overriding the popular will, will be bared before the people, this office hereby revokes the said permit.

"It is believed that public peace and order in Manila will be undermined at the proposed rally considering that passions have not as yet subsided and tension remains high as an aftermath of the last political contest.

"According to the same newspapers, delegates from the provinces and students from local universities will participate in the said rally which, in my opinion, would only precipitate trouble since no guarantee can be given that only the opposition elements will be there. The moment the crowd becomes mixed with people of different political colors which is most likely to happen, public order is exposed to danger once the people are incited, as they will be incited, considering the purposes for which the meeting will be held as reported in the newspapers above mentioned.

"* * *." (Mayor's letter dated November 15, 1947.)

"I have the honor to acknowledge receipt of your letter of November 7, 1947, requesting for a permit to hold a public meeting at Plaza Miranda, Quiapo, on Saturday, November 22, 1947, for the purpose of denouncing the alleged fraudulent manner in which the last elections have been conducted and the alleged nationwide flagrant violation of the Election Law, and of seeking redress therefor. It is regretted that for the same reasons stated in my letter of November 15, 1947, your request can not be granted for the present. This Office has adopted the policy of not permitting meetings of this nature which are likely to incite the people and disrupt the peace until the results of the elections shall have been officially announced. After this announcement, requests similar to yours will be granted.

"* * *." (Mayor's letter dated November 17, 1947.)

"That according to Congressman Primicias, the meeting will be an indignation rally for the purpose of denouncing the alleged fraudulent manner the said elections were conducted and the nationwide flagrant

violations of the Election Law:

"2. That it is a fact that the returns of the last elections are still being recounted in the City of Manila in the Commission on Elections, and pending the final announcement of the results thereof, passions, especially on the part of the losing groups, remain bitter and high;

"3. That allusions have been made in the metropolitan newspapers that in case of defeat, there will be minority resignations in Congress, rebellion and even revolution in the country;

"4. That I am sure that the crowd that will attend the said meeting will be a multitude of people of different and varied political sentiments;

"5. * * * * *

"6. That judging from the tenor of the request for permit and taking into consideration the circumstances under which said meeting will be held, it is safe to state that once the people gathered thereat are incited, there will surely be trouble between the opposing elements, commotion will follow, and then peace and order in Manila will be disrupted; and

"7. That the denial of said request for permit has been made for no other reasons except to perform my duty as Mayor of Manila to maintain and preserve peace and order in this City.

"8. That I have assured Congressman Primicias that immediately after the election returns shall have been officially announced, the Nacionalista Party or any party will be granted permit to hold meetings of indignation and to denounce alleged frauds." (Annex 1, Answer.)

For these and other reasons which could be advanced in corroboration, I am of the considered opinion that the respondent Mayor had under the law the requisite discretion to grant or to refuse the permit requested, and therefore to revoke that which had previously been granted, and that the reasons for such revocation alleged in his letters dated November 15 and 17, 1947, to petitioner and in his affidavit Annex 1 were amply sufficient to justify his last action. And be it distinctly observed that this last action was not an absolute denial of the permit, but a mere postponement of the time for holding the "rally" for good reasons "of general interest" in the words of section 2434 (b)-(m) of the Revised Administrative Code.

DISSENTING OPINION

TUASON, J.:

I join in Mr. Justice Hilado's dissent and wish to add a few remarks.

As Mr. Justice Hilado says, freedom of speech, of the press, and of peaceable assemblage, is only an incidental issue in this case. No one will contest the proposition that the mayor or the Congress itself may not stop the petitioner and his men from meeting peaceably and venting their grievances in a private place. The main issue rather is the extent of the right of any group of people to use a public street or a public plaza for a purpose other than that for which it is dedicated.

The constitutional guaranty of free speech does not prevent the government from regulating the use of places within its control. A law or ordinance may forbid the delivery of addresses on the public parks, or on the streets as a valid exercise of the police power. (12 C. J., 954.) Rights of assembly and of petition are not absolute rights and are to be construed with regard to the general law. (16 C. J. S., 640.) Indeed, "the privileges of a citizen of the United States to use the streets and parks for communication of views on national questions * * * must be

exercised in subordination to the general comfort and convenience." (Hague vs. Committee for Industrial Organization, 307 U. S., 496, 83 Law. ed., 1433.) And so long as the municipal authorities act within the legitimate scope of their police power their discretion is not subject to outside interference or judicial revision or reversal. (44 C. J., 1101.) Of necessity a municipality must be allowed reasonable latitude in this regard. (14 C. J., 931.)

The mayor did not act capriciously or arbitrarily in withholding or postponing the permit applied for by the petitioner. His reasons were real, based on contemporary events of public knowledge, and his temporary refusal was reasonably calculated to avoid possible disturbances as well as to advance and protect the public in the proper use of the most congested streets and public plaza in an overcrowded city. There was reason to fear disturbances, not from the petitioner and his men but from elements who had no connection with the holding of the meeting but who, having gripes, might be easily excited to violence by inflammatory harangues when nerves were on edge.

The fact that no untoward incident occurred, does not prove the judiciousness of this Court's resolution. The court is not dealing with an isolated case; it is laying down a rule of transcendental importance and far-reaching consequences, in the administration of cities and towns. If nothing happened, it is well to remember that, according to newspapers, 500 policemen were detailed to prevent possible disorder at the gathering. It should also be borne in mind that vehicular traffic in the vicinity of Plaza Miranda had to be suspended and vehicles had to be rerouted before, during and after the meeting. All of which entailed enormous expense by the city and discomforts to the general public.

No individual citizen or group of citizens certainly has a right to claim the use of a public plaza or public streets at such great expense and sacrifice on the part of the city and of the rest of the community. Yet, by virtue of this Court's resolution any person or group of persons invoking political, civil or religious freedom under the constitution is at liberty to stage a rally or parade or a religious procession, with the mayor powerless to do anything beyond seeing to it that no two meetings or parades were held in the same place or close to each other. No precedent in the United States, after whose institutions ours are modelled, approaches this Court's resolution in its disregard of the government's authority to control public streets and to maintain peace and order. In an infant republic where the state of peace and order is still far from normal, where the forces of law are far from adequate to cope with lawlessness; in a city where conditions of traffic are among the worst if not the worst on earth, this Court sets down a principle that outstrips its prototype in "liberality," forgetting that personal rights can only exist in a properly regulated society. As Mr. Chief Justice Hughes said in *Cox vs. New Hampshire*, 61 S. Ct., 762, "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses. The authority of the municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent with civil liberties, but rather as one of the means of safeguarding the good order upon which they ultimately depend." To be logical, peddlers and merchants should be given, as a matter of right, the freedom to use public streets and public squares to ply their trade, for the freedom of expression and of assemblage is no more sacred than the freedom to make a living. Yet no one has dared make such claim.

The cases cited in the resolution are not applicable. It will be seen that each of those cases involved the legality of a law or municipal ordinance. And if in some of said cases a law or an ordinance was declared void, the grounds of invalidation were either discrimination or lack of authority of the Legislature or the municipal council under the state constitution or under the law to adopt the contested measure.

As applied to Manila, there are both a law and an ordinance regulating the use of public places and the holding of meetings and parades in such places. As long as this law and this ordinance are in force the mayor does not only

have the power but it is his sworn duty to grant or refuse a permit according to what he believes is in consonance with peace and order or is proper to promote the general comfort and convenience of the inhabitants.

The Court says that section 2434 (m) of the Revised Administrative Code "is not a specific of substantive power independent from the corresponding municipal ordinance which the Mayor, as Chief Executive of the City, is required to enforce under the same section 2434." The Court advances the opinion that because section 2444 confers upon the municipal board "the police power to regulate the use of streets and other public places," "it is to be presumed that the Legislature has not, in the same breath, conferred upon the Mayor in section 2434 (m), the same power, specially if we take into account that its exercise may be in conflict with the exercise of the same power by the municipal board."

Section 2434 (m) is written in the plainest language for any casual reader to understand, and it is presumed that it means what it says. This provision certainly was not inserted in the city charter, which must have been drawn with painstaking care, for nothing. And I am aware of no constitutional provision or constitutional maxim which prohibits the delegation by the Legislature of part of its police power affecting local matters, directly upon the mayor instead of through the municipal board. Nor is there incompatibility between section 2434 (m) and section 2444 or the ordinance enacted under the latter. At any rate, section 2434 (m) is of special character while section 2444 is general, so that, if there is any conflict between section 2434 (m) and the ordinance passed under section 2444, the former is to prevail.

This Court has already set at rest the validity, meaning and scope of section 2434 (m) in a unanimous decision with all the nine members voting, when it sustained the mayor's refusal to grant a permit for a public meeting on a public plaza to be followed by a parade on public streets. (*Evangelista vs. Earnshaw*, 57 Phil., 255.) The reference to section 2434 (m) in that decision was not an obiter dictum as the majority say. The sole question presented there, as we gather from the facts disclosed, was the legality of the mayor's action, and the court pointed to section 2434 (m) as the mayor's authority for his refusal. The fact that the mayor could have denied the petitioner's application under the general power to prohibit a meeting for unlawful purposes did not make the disposition of the case on the strength of section 2434 (m) obiter dictum. An adjudication on any point within the issues presented by the case cannot be considered a dictum; and this rule applies as to all pertinent questions, although only incidentally involved, which are presented and decided in the regular course of the consideration of the case, and lead up to the final conclusion, and to any statement in the opinion as to a matter on which the decision is predicated. Accordingly, a point expressly decided does not lose its value as a precedent because the disposition of the case is or might have been made on some other ground, or even though, by reason of other points in the case, the result reached might have been the same if the court had held, on the particular point, otherwise than it did. (1 C. J. S. 314-315.)

But the Court asserts that if the meaning of section 2434 (m) is what this Court said in the *Evangelista-Earnshaw* case, then that section is void. I do not think that that provision is void—at least not yet. Until it is invalidated in the proper case and in the proper manner, the mayor's authority in respect of the issuance of permits is to be measured by section 2434 (m) and by the municipal ordinance in so far as the ordinance does not conflict with the law. The validity of that provision is not challenged and is nowhere in issue. It is highly improper, contrary to the elementary rules of practice and procedure for this Court to say or declare that that provision is void. Moreover, Article VIII, section 10, of the Constitution provides that "all cases involving the constitutionality of a treaty or law shall be heard and decided by the Supreme Court in banc, and no treaty or law may be declared unconstitutional without the concurrence of two-thirds of all the members of the Court." Only seven members voted in favor of the resolution.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.