

INTEGRATED BAR OF THE PHILIPPINES REPRESENTED BY ITS NATIONAL PRESIDENT, JOSE ANSELMO I. CADIZ, H. HARRY L. ROQUE, AND JOEL RUIZ BUTUYAN, PETITIONERS, VS. HONORABLE MANILA MAYOR...

G.R. No. 175241. February 24, 2010

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Petitioners Integrated Bar of the Philippines[1] (IBP) and lawyers H. Harry L. Roque and Joel R. Butuyan appeal the June 28, 2006 Decision[2] and the October 26, 2006 Resolution[3] of the Court of Appeals that found no grave abuse of discretion on the part of respondent Jose "Lito" Atienza, the then mayor of Manila, in granting a permit to rally in a venue other than the one applied for by the IBP.

On June 15, 2006, the IBP, through its then National President Jose Anselmo Cadiz (Cadiz), filed with the Office of the City Mayor of Manila a letter application[4] for a permit to rally at the foot of Mendiola Bridge on June 22, 2006 from 2:30 p.m. to 5:30 p.m. to be participated in by IBP officers and members, law students and multi-sectoral organizations.

Respondent issued a permit[5] dated June 16, 2006 allowing the IBP to stage a rally on given date but indicated therein Plaza Miranda as the venue, instead of Mendiola Bridge, which permit the IBP received on June 19, 2006.

Aggrieved, petitioners filed on June 21, 2006 before the Court of Appeals a petition for certiorari docketed as CA-G.R. SP No. 94949.[6] The petition having been unresolved within 24 hours from its filing, petitioners filed before this Court on June 22, 2006 a petition for certiorari docketed as G.R. No. 172951 which assailed the appellate court's inaction or refusal to resolve the petition within the period provided under the Public Assembly Act of 1985.[7]

The Court, by Resolutions of July 26, 2006, August 30, 2006 and November 20, 2006, respectively, denied the petition for being moot and academic, denied the relief that the petition be heard on the merits in view of the pendency of CA-G.R. SP No. 94949, and denied the motion for reconsideration.

The rally pushed through on June 22, 2006 at Mendiola Bridge, after Cadiz discussed with P/Supt. Arturo Paglinawan whose contingent from the Manila Police District (MPD) earlier barred petitioners from proceeding thereto. Petitioners allege that the participants voluntarily dispersed after the peaceful conduct of the program.

The MPD thereupon instituted on June 26, 2006 a criminal action,[8] docketed as I.S. No. 06I-12501, against Cadiz for violating the Public Assembly Act in staging a rally at a venue not indicated in the permit, to which charge Cadiz filed a Counter-Affidavit of August 3, 2006.

In the meantime, the appellate court ruled, in CA-G.R. SP No. 94949, by the first assailed issuance, that the petition became moot and lacked merit. The appellate court also denied petitioners' motion for reconsideration by

the second assailed issuance.

Hence, the filing of the present petition for review on certiorari, to which respondent filed his Comment of November 18, 2008 which merited petitioners' Reply of October 2, 2009.

The main issue is whether the appellate court erred in holding that the modification of the venue in IBP's rally permit does not constitute grave abuse of discretion.

Petitioners assert that the partial grant of the application runs contrary to the Public Assembly Act and violates their constitutional right to freedom of expression and public assembly.

The Court shall first resolve the preliminary issue of mootness.

Undoubtedly, the petition filed with the appellate court on June 21, 2006 became moot upon the passing of the date of the rally on June 22, 2006.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness. However, even in cases where supervening events had made the cases moot, this Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench, bar and public. Moreover, as an exception to the rule on mootness, courts will decide a question otherwise moot if it is capable of repetition, yet evading review.[9]

In the present case, the question of the legality of a modification of a permit to rally will arise each time the terms of an intended rally are altered by the concerned official, yet it evades review, owing to the limited time in processing the application where the shortest allowable period is five days prior to the assembly. The susceptibility of recurrence compels the Court to definitively resolve the issue at hand.

Respecting petitioners' argument that the issues presented in CA-G.R. SP No. 94949 pose a prejudicial question to the criminal case against Cadiz, the Court finds it improper to resolve the same in the present case.

Under the Rules,[10] the existence of a prejudicial question is a ground in a petition to suspend proceedings in a criminal action. Since suspension of the proceedings in the criminal action may be made only upon petition and not at the instance of the judge or the investigating prosecutor,[11] the latter cannot take cognizance of a claim of prejudicial question without a petition to suspend being filed. Since a petition to suspend can be filed only in the criminal action,[12] the determination of the pendency of a prejudicial question should be made at the first instance in the criminal action, and not before this Court in an appeal from the civil action.

In proceeding to resolve the petition on the merits, the appellate court found no grave abuse of discretion on the part of respondent because the Public Assembly Act does not categorically require respondent to specify in writing the imminent and grave danger of a substantive evil which warrants the denial or modification of the permit and merely mandates that the action taken shall be in writing and shall be served on respondent within 24 hours. The appellate court went on to hold that respondent is authorized to regulate the exercise of the freedom of expression and of public assembly which are not absolute, and that the challenged permit is consistent with Plaza Miranda's designation as a freedom park where protest rallies are allowed without permit.

The Court finds for petitioners.

Section 6 of the Public Assembly Act reads:

Section 6. Action to be taken on the application -

(a) It shall be the duty of the mayor or any official acting in his behalf to issue or grant a permit unless there is

clear and convincing evidence that the public assembly will create a clear and present danger to public order, public safety, public convenience, public morals or public health.

(b) The mayor or any official acting in his behalf shall act on the application within two (2) working days from the date the application was filed, failing which, the permit shall be deemed granted. Should for any reason the mayor or any official acting in his behalf refuse to accept the application for a permit, said application shall be posted by the applicant on the premises of the office of the mayor and shall be deemed to have been filed.

(c) If the mayor is of the view that there is imminent and grave danger of a substantive evil warranting the denial or modification of the permit, he shall immediately inform the applicant who must be heard on the matter.

(d) The action on the permit shall be in writing and served on the application [sic] within twenty-four hours.

(e) If the mayor or any official acting in his behalf denies the application or modifies the terms thereof in his permit, the applicant may contest the decision in an appropriate court of law.

(f) In case suit is brought before the Metropolitan Trial Court, the Municipal Trial Court, the Municipal Circuit Trial Court, the Regional Trial Court, or the Intermediate Appellate Court, its decisions may be appealed to the appropriate court within forty-eight (48) hours after receipt of the same. No appeal bond and record on appeal shall be required. A decision granting such permit or modifying it in terms satisfactory to the applicant shall, be immediately executory.

(g) All cases filed in court under this Section shall be decided within twenty-four (24) hours from date of filing. Cases filed hereunder shall be immediately endorsed to the executive judge for disposition or, in his absence, to the next in rank.

(h) In all cases, any decision may be appealed to the Supreme Court.

(i) Telegraphic appeals to be followed by formal appeals are hereby allowed. (underscoring supplied)

In *Bayan, Karapatan, Kilusang Magbubukid ng Pilipinas (KMP) v. Ermita*,^[13] the Court reiterated:

x x x Freedom of assembly connotes the right of the people to meet peaceably for consultation and discussion of matters of public concern. It is entitled to be accorded the utmost deference and respect. It is not to be limited, much less denied, except on a showing, as is the case with freedom of expression, of a clear and present danger of a substantive evil that the state has a right to prevent. Even prior to the 1935 Constitution, Justice Malcolm had occasion to stress that it is a necessary consequence of our republican institutions and complements the right of free speech. To paraphrase the opinion of Justice Rutledge, speaking for the majority of the American Supreme Court in *Thomas v. Collins*, it was not by accident or coincidence that the rights to freedom of speech and of the press were coupled in a single guarantee with the rights of the people peaceably to assemble and to petition the government for redress of grievances. All these rights, while not identical, are inseparable. In every case, therefore, where there is a limitation placed on the exercise of this right, the judiciary is called upon to examine the effects of the challenged governmental actuation. The sole justification for a limitation on the exercise of this right, so fundamental to the maintenance of democratic institutions, is the danger, of a character both grave and imminent, of a serious evil to public safety, public morals, public health, or any other legitimate public interest.^[14] (emphasis supplied)

The Court in *Bayan* stated that the provisions of the Public Assembly Act of 1985 practically codified the 1983 ruling in *Reyes v. Bagatsing*.^[15] In juxtaposing Sections 4 to 6 of the Public Assembly Act with the pertinent portion of the *Reyes* case, the Court elucidated as follows:

x x x [The public official concerned shall] appraise whether there may be valid objections to the grant of the permit or to its grant but at another public place. It is an indispensable condition to such refusal or modification

that the clear and present danger test be the standard for the decision reached. If he is of the view that there is such an imminent and grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, his decision, whether favorable or adverse, must be transmitted to them at the earliest opportunity. Thus if so minded, they can have recourse to the proper judicial authority.[16] (*italics and underscoring supplied*)

In modifying the permit outright, respondent gravely abused his discretion when he did not immediately inform the IBP who should have been heard first on the matter of his perceived imminent and grave danger of a substantive evil that may warrant the changing of the venue. The opportunity to be heard precedes the action on the permit, since the applicant may directly go to court after an unfavorable action on the permit.

Respondent failed to indicate how he had arrived at modifying the terms of the permit against the standard of a clear and present danger test which, it bears repeating, is an indispensable condition to such modification. Nothing in the issued permit adverts to an imminent and grave danger of a substantive evil, which "blank" denial or modification would, when granted imprimatur as the appellate court would have it, render illusory any judicial scrutiny thereof.

It is true that the licensing official, here respondent Mayor, is not devoid of discretion in determining whether or not a permit would be granted. It is not, however, unfettered discretion. While prudence requires that there be a realistic appraisal not of what may possibly occur but of what may probably occur, given all the relevant circumstances, still the assumption - especially so where the assembly is scheduled for a specific public place - is that the permit must be for the assembly being held there. The exercise of such a right, in the language of Justice Roberts, speaking for the American Supreme Court, is not to be "abridged on the plea that it may be exercised in some other place." [17] (*emphasis and underscoring supplied*)

Notably, respondent failed to indicate in his Comment any basis or explanation for his action. It smacks of whim and caprice for respondent to just impose a change of venue for an assembly that was slated for a specific public place. It is thus reversible error for the appellate court not to have found such grave abuse of discretion and, under specific statutory provision, not to have modified the permit "in terms satisfactory to the applicant." [18]

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 94949 are REVERSED. The Court DECLARES that respondent committed grave abuse of discretion in modifying the rally permit issued on June 16, 2006 insofar as it altered the venue from Mendiola Bridge to Plaza Miranda.

SO ORDERED.

Puno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, JJ., concur.

[1] Represented by its National President Jose Anselmo Cadiz.

[2] Penned by Justice Myrna Dimaranan Vidal with Justice Eliezer R. De Los Santos and Justice Fernanda Lampas Peralta concurring; rollo, pp. 50-54.

[3] Penned by Justice Myrna Dimaranan Vidal with Justice Amelita G. Tolentino and Justice Fernanda Lampas Peralta concurring; *id.* at 56.

[4] *Id.* at 62-63.

[5] *Id.* at 64. It was signed by Business Promotion and Development Office Director Gerino Tolentino, Jr. by authority of the Mayor.

[6] Id. at 65-74.

[7] Batas Pambansa Blg. 880 (October 22, 1985), Sec. 6(g).

[8] Rollo, pp. 81-82. The Complaint-Affidavit filed with the Manila City Prosecutor's Office was signed by Police Superintendents Teodorico Perez, Danilo Estapon and Jose Asayo.

[9] *Funa v. Ermita*, G.R. No. 184740, February 11, 2010.

[10] RULES OF COURT, Rule 111, Secs. 6-7.

[11] *Philippine Agila Satellite, Inc. v. Lichauco*, G.R. 134887, July 27, 2006, 496 SCRA 588, 598; *Yap v. Paras*, G.R. No. 101236, January 30, 1992, 205 SCRA 625, 629.

[12] Vide *Yap v. Paras*, id. at 630, holding that it is the issue in the civil action that is prejudicial to the continuation of the criminal action, not the criminal action that is prejudicial to the civil action.

[13] G.R. No. 169838, April 25, 2006, 488 SCRA 226.

[14] Id. at 251.

[15] *Reyes v. Bagatsing*, G.R. No. L-65366, November 9, 1983, 125 SCRA 553.

[16] *Supra* note 13 at 256.

[17] Id. at 254-255.

[18] Vide *supra* note 7 at Sec. 6(f).

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