

CRISPIN MALABANAN, EVELIO JALOS, DEN LUTHER LUCAS, SOTERO LEONERO, AND JUNE PETITIONERS, VS. THE HONORABLE ANASTACIO D. RAMENTO, IN HIS CAPACITY AS THE DIRECTOR OF THE NATIONAL ...

G.R. No. 62270. May 21, 1984

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

The failure to accord respect to the constitutional rights of freedom of peaceable assembly and free speech is the grievance alleged by petitioners, students of the Gregorio Araneta University Foundation, in this certiorari, prohibition and mandamus proceeding. The principal respondents are Anastacio D. Ramento, Director of the National Capital Region of the Ministry of Education, Culture and Sports and the Gregorio Araneta University Foundation.[1] The nullification of the decision of respondent Ramento affirming the action taken by respondent Gregorio Araneta University Foundation finding petitioners guilty of illegal assembly and suspending them is sought in this petition.

The facts are not open to dispute. Petitioners were officers of the Supreme Student Council of respondent University. They sought and were granted by the school authorities a permit to hold a meeting from 8:00 A.M. to 12:00 P.M. on August 27, 1982. Pursuant to such permit, along with other students, they held a general assembly at the Veterinary Medicine and Animal Science basketball court (VMAS), the place indicated in such permit, not in the basketball court as therein stated but at the second floor lobby. At such gathering they manifested in vehement and vigorous language their opposition to the proposed merger of the Institute of Animal Science with the Institute of Agriculture. At 10:30 A.M., the same day, they marched toward the Life Science Building and continued their rally. It was outside the area covered by their permit. They continued their demonstration, giving utterance to language severely critical of the University authorities and using mega-phones in the process. There was, as a result, disturbance of the classes being held. Also, the non-academic employees, within hearing distance, stopped their work because of the noise created. They were asked to explain on the same day why they should not be held liable for holding an illegal assembly. Then on September 9, 1982, they were informed through a memorandum that they were under preventive suspension for their failure to explain the holding of an illegal assembly in front of the Life Science Building. The validity thereof was challenged by petitioners both before the Court of First Instance of Rizal in a petition for mandamus with damages against private respondents[2] and before the Ministry of Education, Culture, and Sports. On October 20, 1982, respondent Ramento, as Director of the National Capital Region, found petitioners guilty of the charge of having violated par. 146(c) of the Manual for Private Schools more specifically their holding of an illegal assembly which was characterized by the violation of the permit granted resulting in the disturbance of classes and oral defamation. The penalty was suspension for one academic year. Hence this petition.

On November 16, 1982, this Court issued the following resolution: "Acting on the urgent ex-parte motion for the immediate issuance of a temporary mandatory order filed by counsel for petitioners, dated November 12, 1982,

the Court Resolved to ISSUE A TEMPORARY RESTRAINING ORDER enjoining all respondents or any person or persons acting in their place or stead from enforcing the order of the Ministry of Education and Culture dated October 20, 1982 finding the petitioners guilty of the charges against them and suspending them for one (1) academic year with a stern warning that a commission of the same or another offense will be dealt with utmost severity, effective as of this date and continuing until otherwise ordered by this Court, thus allowing them to enroll, if so minded."[3]

Both public and private respondents submitted their comments. Private respondents prayed for the dismissal of the petition "for lack of factual and legal basis and likewise [prayed] for the lifting of the temporary restraining order dated November 16, 1982." [4] Public respondent Ramento, on the other hand, through the Office of the Solicitor General, prayed for the dismissal of the petition based on the following conclusion: "Consequently, it is respectfully submitted that respondent Director of the MECS did not commit any error, much less abused his discretion, when he affirmed the decision of respondent University finding petitioners guilty of violations of the provisions of the Manual of Regulations for Private Schools and the Revised Student's Code of Discipline and ordering their suspension for one (1) academic school year. However, since said suspension has not been enforced except only briefly, thereby enabling petitioners Leonero, Jr., Lucas and Malabanan to finish their courses, and allowing petitioners Lee and Jalos to continue their school-ing, if they so desire, this proceeding is now moot and academic." [5]

With the submission of such comments considered as the answers of public and private respondents, the case was ready for decision.

This petition may be considered moot and academic if viewed solely from the fact that by virtue of the temporary restraining order issued by this Court petitioners were allowed to enroll in the ensuing semester, with three of them doing so and with the other two equally entitled to do so. Moreover, there is the added circumstance of more than a year having passed since October 20, 1982 when respondent Ramento issued the challenged decision suspending them for one year. Nonetheless, with its validity having been put in issue, for being violative of the constitutional rights of freedom of peaceable assembly and free speech, there is need to pass squarely on the question raised.

This Court accordingly rules that respect for the constitutional rights of peaceable assembly and free speech calls for the setting aside of the decision of respondent Ramento, the penalty imposed being unduly severe. It is true that petitioners held the rally at a place other than that specified in the permit and continued it longer than the time allowed. Undeniably too, they did disturb the classes and caused the work of the non-academic personnel to be left undone. Such undesirable consequence could have been avoided by their holding the assembly in the basketball court as indicated in the permit. Nonetheless, suspending them for one year is out of proportion to their misdeed. The petition must be granted and the decision of respondent Ramento nullified, a much lesser penalty being appropriate.

1. As is quite clear from the opinion in *Reyes v. Bagatsing*, [6] the invocation of the right to freedom of peaceable assembly carries with it the implication that the right to free speech has likewise been disregarded. Both are embraced in the concept of freedom of expression, which is identified with the liberty to discuss publicly and truthfully, any matter of public interest without censorship or punishment and which "is not to be limited, much less denied, except on a showing * * * of a clear and present danger of a substantive evil that the state has a right to prevent." [7]
2. In the above case, a permit was sought to hold a peaceful march and rally from the Luneta public park to the gates of the United States Embassy, hardly two blocks away, where in an open space of public property, a short program would be held. Necessarily then, the question of the use of a public park and of the streets leading to

the United States Embassy was before this Court. We held that streets and parks have immemorially been held in trust for the use of the public and have been used for purposes of assembly to communicate thoughts between citizens and to discuss public issues.[8]

3. The situation here is different. The assembly was to be held not in a public place but in private premises, property of respondent University. There is in the Reyes opinion as part of the summary this relevant excerpt: "The applicants for a permit to hold an assembly should inform the licensing authority of the date, the public place where and the time when it will take place. If it were a private place, only the consent of the owner or the one entitled to its legal possession is required." [9] Petitioners did seek such consent. It was granted. According to the petition: "On August 27, 1982, by virtue of a permit granted to them by the school administration, the Supreme Student Council where your petitioners are among the officers, held a General Assembly at the VMAS basketball court of the respondent university." [10] There was an express admission in the Comment of private respondent University as to a permit having been granted for petitioners to hold a student assembly. [11] The specific question to be resolved then is whether on the facts as disclosed resulting in the disciplinary action and the penalty imposed, there was an infringement of the right to peaceable assembly and its cognate right of free speech.

4. Petitioners invoke their rights to peaceable assembly and free speech. They are entitled to do so. They enjoy like the rest of the citizens the freedom to express their views and communicate their thoughts to those disposed to listen in gatherings such as was held in this case. They do not, to borrow from the opinion of Justice Fortas in *Tinker v. Des Moines Community School District*, [12] "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." [13] While, therefore, the authority of educational institutions over the conduct of students must be recognized, it cannot go so far as to be violative of constitutional safeguards. On a more specific level, there is persuasive force to this formulation in the Fortas opinion: "The principal use to which the schools are dedicated is to accommodate students during prescribed hours for the purpose of certain types of activities. Among those activities is personal intercommunication among the students. This is not only an inevitable part of the process of attending school; it is also an important part of the educational process. A student's rights, therefore, do not embrace merely the classroom hours. When he is in the cafeteria, or on the playing field, or on the campus during the authorized hours, he may express his opinions, even on controversial subjects like the conflict in Vietnam, if he does so without 'materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of the school' and without colliding with the rights of others. * * * But conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech." [14]

5. As tested by such a standard, what is the verdict on the complaint of petitioners that there was a disregard of their constitutional rights to peaceable assembly and free speech. It must be in their favor, but subject to qualification, in view of their continuing their demonstration in a place other than that specified in the permit for a longer period and their making use of megaphones therein, resulting in the disruption of classes and the stoppage of work by the non-academic personnel in the vicinity of such assembly.

6. Objection is made by private respondents to the tenor of the speeches by the student leaders. That there would be a vigorous presentation of views opposed to the proposed merger of the Institute of Animal Science with the Institute of Agriculture was to be expected. There was no concealment of the fact that they were against such a move as it confronted them with a serious problem ("isang malaking suliranin.") [15] They believed that such a merger would result in the increase in tuition fees, an additional headache for their parents ("isa na naman sakit sa ulo ng ating mga magulang.") [16] If in the course of such demonstration, with an enthusiastic audience goading them on, utterances, extremely critical, at times even vitriolic, were let loose, that is quite understandable. Student leaders are hardly the timid, diffident types. They are likely to be assertive and dogmatic. They would be ineffective if during a rally they speak in the guarded and judicious language of

the academe. At any rate, even a sympathetic audience is not disposed to accord full credence to their fiery exhortations. They take into account the excitement of the occasion, the propensity of speakers to exaggerate, the exuberance of youth. They may give the speakers the benefit of their applause, but with the activity taking place in the school premises and during the daytime, no clear and present danger of public disorder is discernible. This is without prejudice to the taking of disciplinary action for conduct, which, to borrow from Tinker, "materially disrupts classwork or involves substantial disorder or invasion of the rights of others."

7. Nor is this a novel approach to the issue raised by petitioners that they were denied the right to peaceable assembly. In a 1907 decision, *United States v. Apurado*,^[17] the facts disclosed that shortly before the municipal council of San Carlos, Occidental Negros, started its session, some five hundred residents of the municipality assembled near the municipal building, and, upon the opening of the session, a substantial number of such persons barged into the council chamber, demanding that the municipal treasurer, the municipal secretary, and the chief of police be dismissed, submitting at the same time the proposed substitutes. The municipal council gave its conformity. Such individuals were wholly unarmed except that a few carried canes; the crowd was fairly orderly and well-behaved except in so far as their pressing into the council chamber during a session of that body could be called disorder and misbehavior. It turned out that the movement had its origin in religious differences. The defendant Filomeno Apurado and many other participants were indicted and convicted of sedition in that they allegedly prevented the municipal government from freely exercising its duties. On appeal, the Supreme Court reversed. Justice Carson, who penned the opinion, correctly pointed out that "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 a 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 form of punishment, if the purposes which they sought to attain did not happen to be pleasing to the prosecuting authorities."^[18] The principle to be followed is enunciated thus: "If instances of disorderly conduct occur on such occasions, the guilty individuals should be sought out and punished therefor, but the utmost discretion must be exercised in drawing the line between disorderly and seditious conduct and between an essentially peaceable assembly and a tumultuous uprising."^[19] A careful reading of this decision is in order before private respondents attach, as they did in their comments, a subversive character to the rally held by the students under the leadership of petitioners.

8. It does not follow, however, that petitioners can be totally absolved for the events that transpired. Admittedly, there was a violation of the terms of the permit. The rally was held at a place other than that specified, in the second floor lobby, rather than the basketball court, of the VMAS building of the University. Moreover, it was continued longer than the period allowed. According to the decision of respondent Ramento, the "concerted activity [referring to such assembly] went on until 5:30 p.m."^[20] Private respondents could thus take disciplinary action. On those facts, however, an admonition, even a censure - certainly not a suspension - could be the appropriate penalty. Private respondents could and did take umbrage at the fact that in view of such infraction - considering the places where and the time when the demonstration took place - there was a disruption of the classes and stoppage of work of the non-academic personnel. They would not be unjustified then if they did take a much more serious view of the matter. Even then a one-year period of suspension is much too severe. While the discretion of both respondent University and respondent Ramento is recognized, the rule of reason, the dictate of fairness calls for a much lesser penalty. If the concept of proportionality between the offense committed and the sanction imposed is not followed, an element of arbitrariness intrudes. That would give rise to a due process question. To avoid this constitutional objection, it is the holding of this Court that a one-week suspension would be punishment enough.

9. One last matter. The objection was raised that petitioners failed to exhaust administrative remedies. That is true, but hardly decisive. Here, a purely legal question is presented. Such being the case, especially so where a decision on a question of law is imperatively called for, and time being of the essence, this Court has invariably viewed the issue as ripe for adjudication. What cannot be too sufficiently stressed is that the

constitutional rights to peaceable assembly and free speech are invoked by petitioners. Moreover, there was, and very likely there will continue to be in the future, militancy and assertiveness of students on issues that they consider of great importance, whether concerning their welfare or the general public. That they have a right to do as citizens entitled to all the protection in the Bill of Rights.

10. It would be most appropriate then, as was done in the case of *Reyes v. Bagatsing*,^[21] for this Court to lay down the principles for the guidance of school authorities and students alike. The rights to peaceable assembly and free speech are guaranteed students of educational institutions. Necessarily, their exercise to discuss matters affecting their welfare or involving public interest is not to be subjected to pre-vious restraint or subsequent punishment unless there be a showing of a clear and present danger to a substantive evil that the state has a right to prevent. As a corollary, the utmost leeway and scope is accorded the content of the placards displayed or utterances made. The peaceable character of an assembly could be lost, how-ever, by an advocacy of disorder under the name of dissent, whatever grievances that may be aired being susceptible to correction through the ways of the law. If the assembly is to be held in school premises, permit must be sought from its school authorities, who are devoid of the power to deny such request arbitrarily or unreasonably. In granting such permit, there may be conditions as to the time and place of the assembly to avoid disruption of classes or stoppage of work of the non-academic personnel. Even if, however, there be violations of its terms, the penalty incurred should not be disproportionate to the offense.

WHEREFORE, the petition is granted. The decision dated October 20, 1982 of respondent Ramento imposing a one-year suspension is nullified and set aside. The temporary restraining order issued by this Court in the resolution of November 18, 1982 is made permanent. As of that date, petitioners had been suspended for more than a week. In that sense, the one-week penalty had been served. No costs.

Teehankee, Makasiar, Guerrero, Abad Santos, Melencio-Herrera, Plana, Escolin, Relova, Gutierrez, Jr., and De la Fuente, JJ., concur.

Aquino, Concepcion, Jr., and De Castro, JJ., no part.

[1] The other respondents named are Cesar Mijares, in his capacity as the President of the Gregorio Araneta University Foundation; Gonzalo del Rosario, in his capacity as the Director for Academic Affairs of the Gregorio Araneta University Foundation; Tomas B. Mesina, in his capacity as the Dean of Student Affairs of the Gregorio Araneta University Foundation; Atty. Leonardo Padilla, in his capacity as Chief Legal Counsel and Security Supervisor of the Gregorio Araneta University Foundation; Atty. Fablita Ammay, Rosendo Galvante and Eugenio Tayao, in their capacities as members of the Ad Hoc Committee of the Gregorio Araneta University Foundation.

[2] After obtaining an order to allow petitioners to lift temporarily the suspension and allow their attendance at classes, no further information as to what subsequently transpired was furnished this Court.

[3] Resolution of this Court dated November 16, 1982.

[4] Comment of Private Respondents, 18.

[5] Comment of Public Respondent, 9-10.

[6] G.R. No. 65366, November 9, 1983, 125 SCRA 553.

[7] Ibid, 561. Cf. *Gonzales v. Commission on Elections*, L-27833, April 18, 1969, 27 SCRA 835, 856-857.

[8] Ibid, 563-564. Reference was made to *Municipality of Roxas v. Cavite*, 30 Phil. 602 (1915) and *Primicias v. Fugoso*, 80 Phil. 71 (1948). The above formulation of the immemorial use of public parks comes from the plurality opinion in *Hague v. CIO*, 307 US 495 (1937).

[9] Ibid, 569.

[10] Petition, par. 2, Annex A.

[11] Comment of Private Respondents, par. 2.

[12] 393 US 503 (1969).

[13] Ibid, 507.

[14] Ibid, 513-514.

[15] Comment of Private Respondents, Annex M.

[16] Ibid.

[17] 7 Phil. 422.

[18] Ibid, 426.

[19] Ibid.

[20] Petition, Annex J.

[21] Cf. Reyes v. Bagatsing, G.R. No. 65366, November 9, 1983, 125 SCRA 553.

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