

**HECTOR S. RUIZ, AS COORDINATOR OF THE OLONGAPO
CITIZEN'S ALLIANCE FOR NATIONAL RECONCILIATION,
PETITIONER, VS. RICHARD GORDON, AS CITY MAYOR OF
OLONGAPO CITY, RESPONDENT.**

G.R. No. 65695. December 19, 1983

Ponente: FERNANDO, C.J.

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FERNANDO, C.J.:

The constitutional rights to free speech and free assembly are invoked in this mandamus proceeding filed on November 25, 1983 against respondent Richard Gordon, City Mayor of Olongapo City. It was alleged: "On 21 November 1983, petitioner personally delivered to the respondent a letter-application dated 19 November 1983, the full text of which reads as follows: 'November 19, 1983, The Honorable City Mayor, Olongapo City. Sir: In behalf of the Olongapo Citizen's Alliance for National Reconciliation, Justice for Aquino Justice for AH (JAJA), Concern (sic) Citizen for Justice and Peace (CCJP), Damdamin Bayan na Nagkakaisa (DAMBANA), United Nationalist Democratic Organization (UNIDO), we are respectfully requesting for a permit to hold a prayer-rally at the Rizal Triangle, Olongapo City on December 4, 1983 from 1:00 P.M. until it will be finished in the early evening. It is likewise requested the above named organizations to be allowed to hold a parade/march from Gordon Avenue to the Rizal Triangle starting at 1:00 P.M. Your preferential attention on this request will be highly appreciated. [It was signed by petitioner Hector S. Ruiz, Coordinator of Olongapo Citizen's Alliance for National Reconciliation.]' "[1] Reference was then made to the minute resolution of this Court in *Jose B.L. Reyes v. Bagatsing*. [2] The prayer was for "the immediate issuance of the writ of mandamus, without prejudice to an extended decision; or that a writ of preliminary mandatory injunction be issued immediately so as not to render moot and academic the purpose for which the permit was applied for on 4 December 1983 from 1:00 to 6:00 (early evening) o'clock in the afternoon." [3]

At the next session day, on November 29, 1983, the Court issued the following resolution: "The Court, after considering the pleadings filed and deliberating on the issues raised in the petition for mandamus with prayer for a writ of preliminary mandatory injunction filed on November 25, 1983, Resolved to require the respondents to file an ANSWER, not a motion to dismiss, within two (2) days from notice." [4]

On the very afternoon of the same day, there was this manifestation from respondent Mayor: "1. On November 22, 1983, the petitioner, allegedly the coordinator of the Olongapo Citizen's Alliance for National Reconciliation, had their request for a prayer rally and parade/march received in the Office of the Mayor. 2. That even before the request, the respondent had repeatedly announced in his regular program on Sunday over the radio (DWGO) and at the Monday morning flag ceremony before hundreds of government employees that he would grant the request of any group that would like to exercise their freedom of speech and assembly. That respondent when interviewed on the matter by the Editor-in-Chief of the 'Guardian,' a newspaper of general circulation in Olongapo and Zambales, mentioned the fact that he had granted the permit of the petitioner, which interview appeared in the November 22-28, 1983 issue of the said newspaper. A copy of the newspaper is hereto attached and made an

integral part hereof as Annex 'A.' 4. On November 23, 1983, the City Mayor approved the request of the petitioner to hold a prayer rally and a parade/march on December 4, 1983. A copy of the permit is hereto attached and made an integral part hereof as Annex 'B.' "[5] The prayer was for the dismissal of the petition. The permit reads as follows: "23 November 1983, Dr. Hector S. Ruiz, Coordinator, Olongapo Citizen's Alliance for National Reconciliation, Olongapo City. Dear Dr. Ruiz: Your request for a PERMIT to hold a prayer rally at the Rizal Triangle, Olongapo City and a parade/march from Gordon Avenue at 1:00 p.m. of 4 December 1983 as stated in your letter dated 19 November 1983 received in this office on 22 November is hereby GRANTED provided that: 1. The parade/march and rally will be peaceful and orderly; 2. Your organization will be responsible for any loss or damage to government property and for the cleanliness of the Rizal Triangle; 3. The parade/march shall proceed from the corner of Gordon Ave., and Magsaysay Drive, through Magsaysay Drive, to Rizal Ave., thence to the Rizal Triangle. Please coordinate with the Integrated National Police for appropriate traffic assistance. Very truly yours, (Sgd.) Richard J. Gordon, City Mayor." [6]

At its next session then of November 27, the Court, in the light of the above manifestation, resolved to grant such plea for dismissal. From petitioner came, on December 1, 1983, a motion dated November 29 to withdraw petition. As therein stated: "Petitioner, by counsel, respectfully moves to withdraw the above-entitled petition on the ground that the permit being sought in the prayer-rally to be held on 4 December 1983 from 1:00 to 6:00 PM has been granted by the respondent." [7] Then the next day, December 2, 1983, the answer of respondent came reiterating what was set forth in his manifestation. The reason for the delay of such pleading, the due date the service had been served on petitioner being December 1, 1983, was obviously the distance between Manila and Olongapo City. It was not served until November 30. At any rate, no prejudice was caused either party as in the meanwhile, the Court had acted on the very day the manifestation was submitted. That was on December 1, 1983.

There is relevance to a recital of such facts. It appears that the guidelines set forth in the extended opinion in the aforesaid J.B.L. Reyes decision as to the role of the judiciary in petitions for permits to hold peaceable assemblies may have to be supplemented. This is how the J.B.L. Reyes opinion reads on this point: "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. Such application should be filed well ahead in time to enable the public official concerned to 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. Free speech and peaceable assembly, along with the other intellectual freedoms, are highly ranked in our scheme of constitutional values. It cannot be too strongly stressed that on the judiciary,— even more so than on the other departments — rests the grave and delicate responsibility of assuring respect for and deference to such preferred rights. No verbal formula, no sanctifying phrase can, of course, dispense with what has been so felicitously termed by Justice Holmes 'as the sovereign prerogative of judgment.' Nonetheless, the presumption must be to incline the weight of the scales of justice on the side of such rights, enjoying as they do precedence and primacy. Clearly then, to the extent that there may be inconsistencies between this resolution and that of *Navarro v. Villegas*, that case is pro tanto modified. So it was made clear in the original resolution of October 25, 1983." [8]

As shown both in the manifestation and the answer, this action for mandamus could have been obviated if only petitioner took the trouble of verifying on November 23 whether or not a permit had been issued. A party desirous of exercising the right to peaceable assembly should be the one most interested in ascertaining the action taken on

a request for a permit. Necessarily, after a reasonable time or, if the day and time was designated for the decision on the request, such party or his representative should be at the office of the public official concerned. If he fails to do so, a copy of the decision reached, whether adverse or favorable, should be sent to the address of petitioner. In that way, there need not be waste of time and effort not only of the litigants but likewise of a court from which redress is sought in case of a denial or modification of a request for a permit.

Lately, several petitions of this character have been filed with this Court. It could be due to the lack of knowledge of the guidelines set forth in the extended opinion. Steps have been taken to send the Regional Trial judges copies thereof. In the future, therefore, without precluding the filing of petitions directly with this Court, the interest of justice and of public convenience would be better served if litigation starts on the trial court level.

While, therefore, this petition should be dismissed, the Court deems it best to set forth the above to specify in more detail, the steps necessary for the judicial protection of constitutional rights with the least delay and inconvenience to the parties and with the greater assurance that the factual background on which is dependent the determination of whether or not the clear and present danger standard has been satisfied. Lastly, a certiorari petition to this Court is likewise available to the losing party.

WHEREFORE, as prayed for, this case is dismissed.

Makasiar, Aquino, Guerrero, Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Relova and Gutierrez, Jr., JJ., concur.

Teehankee, J., concurs in a separate opinion.

Concepcion Jr., J., files separate opinion.

[1] Petition, III, par. 4.

[2] G.R. No. 65366, October 25, 1983.

[3] Petition, par. 8.

[4] Resolution of this Court dated November 29, 1983.

[5] Manifestation of Respondent Mayor, 1-2.

[6] Annex B to Manifestation of Respondent.

[7] Motion to Withdraw Petition, 1.

[8] J.B.L. Reyes v. Bagatsing, G.R. No. 65366, November 9, 1983, 14-15.

CONCURRING

TEEHANKEE, J.,

The Chief Justice's opinion for the Court reaffirms and reproduces the guidelines in the J.B.L. Reyes vs. Bagatsing case (G.R. No. 65366, November 9, 1983) for the guidance of applicants for permit to hold peaceful assemblies in public places and of the licensing authorities, generally the city or town mayors. It stresses that the right to peacefully assemble, speak out freely and petition the government for redress of grievances should be accorded the utmost deference and respect and is not to be limited, much less denied, except under the clear and

present danger standard, i.e. there must be a clear showing of 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" -a substantive evil that the State has a right to prevent (at paragraph 1).

The Court's opinion suggests that in the future such petitions of mandamus to compel the granting of such permits be filed with the regional trial courts rather than directly with this Court, with the statement that "without precluding the filing of petitions directly with this Court, the interest of justice and of public convenience would be better served if litigation starts on the trial court level (at page 5). This is the ideal situation and would need reorientation on the part of everybody concerned - the applicants and the licensing authorities, as well as the police authorities - to resolve the question of granting of such permits for peaceful assemblies at the administrative and regional trial court levels rather than to get the ultimate verdict from the Supreme Court. This Court has after all laid down the clear guidelines in the J.B.L. Reyes case for the licensing authorities and has taken steps to furnish copies thereof to all regional trial courts for their information and guidance. It is to be hoped that what has happened in Manila after the J.B.L. Reyes case, wherein the Mayor as the licensing authority has in compliance with the guidelines granted all subsequent applications for such permits, seeing to it only that there be no conflict in the scheduling of such assemblies and thereby eliminated the need for the applicant's having to go to court, would be emulated by all other cities and towns concerned. The granting of such permits for the exercise of a fundamental right, absent any clear and present danger, is after all practically a ministerial duty.

The salient points of such guidelines need only be restated herein for the guidance of all concerned.

As stressed by the Chief Justice in the J.B.L. Reyes case, the presumption "must be to incline the weight of the scales of justice on the side of such right [of free speech and peaceful assembly], enjoying as they do precedence and primacy."

The application should be filed ahead of time and the licensing authority should act promptly thereon and his decision, whether favorable or adverse, must be transmitted to the applicants at the earliest opportunity to give them time to go to court, if necessary.

It is an "indispensable condition to such refusal or modification [of the application] that the clear and present danger test be the standard for decision reached," and if the licensing authority "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."

The burden to show the existence of such grave and imminent danger that would justify an adverse action lies on the mayor as the licensing authority. There must be objective and convincing, not subjective or conjectural, proof of the existence of such clear and present danger. As the Court stated in its Resolution of October 25, 1983 in the J.B.L. Reyes case, "It is essential for the validity of a denial of a permit which amounts to a previous restraint or censorship that the licensing authority does not rely solely on his own appraisal of what public welfare, peace or safety may require. To justify such a limitation, there must be proof of such weight and sufficiency to satisfy the clear and present danger test. The possibility that subversives may infiltrate the ranks of the demonstrators is not enough."

As likewise underscored in the J.B.L. Reyes case, the exercise of the right of peaceable assembly is not to be "abridged on the plea that it may be exercised in some other place" (at paragraph 6) and "it is the duty of the city authorities to provide the proper police protection to those exercising their right to peaceable assembly and freedom of expression" (at paragraph 7).

The organizers of the assembly should take all the precautions that the march-rally be peaceful and orderly. As Chief Justice Hughes had aptly pointed out, such 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." Still, Condition No. [2 of respondent Mayor's permit that "petitioner organization would be responsible for any loss or damage to any government property and for the cleanliness of the assembly site" seems to be too loosely worded. The basic right of peaceable assembly could well be abridged, if not denied, if its exercise were to be saddled with onerous conditions. Generally, the individuals responsible for any damage should be the ones sought out and held accountable and the task of cleaning up the assembly site would normally rest on the city or town authorities who presumably have the necessary facilities therefor, secured with revenues or funds paid by the taxpayers.

As we stated in the *J.B.L. Reyes* case, "the leaders of the peaceable assembly should take all the necessary measures to ensure a peaceful march and assembly and to avoid the possibility of infiltrators and troublemakers disrupting the same, concomitantly with the duty of the police to extend protection to the participants 'staying at a discreet distance, but ever ready and alert to perform their duty.' " Should any disorderly conduct or incidents occur, the police authorities may well recall the injunction since the 1907 case of *U.S. vs. Apurado* (7 Phil. 422) that such instances of "disorderly conduct by individual members of a crowd (be not seized) as an excuse to characterize the assembly as a seditious and tumultuous rising against the authorities" and render illusory the right of peaceable assembly.

If these clear guidelines were followed by all concerned with goodwill and in good faith, there would then be hardly any need to have to go to court to exercise the primary and fundamental right of peaceable assembly, free expression and petition for redress of grievances.

SEPARATE OPINION

CONCEPCION JR., J.,

- No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.[1]

- These constitutional rights give life and meaning to a democratic society. They are sacred and inviolate.

- But while they are sacred, they are not absolute; while they are inviolate, they are not licentious. The exercise of these rights must take into account the exercise of the rights of others - and of the State.

- While a person has a constitutional right to freedom of speech, the exercise of such right does not give him any license to libel or slander another. Nor to incite the people to commit the crime of treason, rebellion or insurrection, sedition or assault upon a person in authority or his agents.[2]

- Neither can those who choose to exercise their constitutional right to peaceably assemble and petition the Government for a redress of grievances claim the privilege to use a public park, plaza, or street to the exclusion of the general public and all others. The right to peaceably assemble is not absolute but relative.

- Public officials charged with the duty of granting or denying permits to hold rallies, demonstrations, parades, and the like, do right by basing their decisions on the existence or non-existence of a "clear and present danger of a substantive evil that the State has a right to prevent."

- But it should be remembered that the clear that the clear and present danger rule is not a hard and fast rule. Its application and interpretation should be measured and weighed in the light of circumstances as to persons, time and place.

- To grant a permit for holding a rally along Ayala Avenue in Makati presents no problem to the authorities because Makati is a peaceful and law-abiding community. But the same application filed in a place where ambushes of government troops and assassination of government officials have occurred cannot be considered in the same light as that one filed in Makati.

- In order that public officials may not be charged, rightly or wrongly, with dereliction of duty or abuse of powers in the granting or denying of such permits, the following guidelines are deemed necessary:

(a) When a peaceful assembly is to be held in a private lot, house, or edifice, only the consent of the owner of the place is necessary. No permit from the government or any public officer is required.

(b) When an application to hold a rally, parade, or peaceful assembly has to make use of public places like parks, plazas, and streets, the public authority charged with the duty of granting or denying the permit should also consider the convenience and the right of the rest of the public to use and enjoy these same facilities.

(c) Conditions of peace and order in the locality should be carefully considered and precautionary steps taken to prevent vandals, hooligans, provocateurs, and other criminals from turning into a violent one what otherwise should be a peaceful demonstration.

- Anarchy should never again be permitted to return to the streets of our cities and towns. We experienced it before and certainly we have no desire that the experience be repeated. The right to free speech and assembly must never be suppressed. At the same time, there can be no indiscriminate granting of permits to anyone who applies lest we jeopardize the lives and security of the general public and prevent our people from living in peace and tranquility and enjoying the fruits of their labor.

[1] Section 9, Article IV, Constitution.

[2] Arts. 114, 134, 142-A; 146-1949, Revised Penal Code.

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