

RELI GERMAN, RAMON PEDROSA, TIRSO SANTILLAN, JR., MA. LUISA ANDAL, NIEVA MALINIS, RICARDO LAVIÑA, CESAR CORTES, DANILO REYES, JOSE REYES, JOSEFINA MATE, LOURDES CALMA, MILDRED J...

G.R. No. 68828. March 27, 1985

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

Invoking their constitutional freedom to religious worship and locomotion, petitioners seek the issuance of [1] a writ of mandamus to compel respondents to allow them to enter and pray inside St. Jude Chapel located at J.P. Laurel Street, Manila; and [2] a writ of injunction to enjoin respondents from preventing them from getting into and praying in said church.

The facts to be considered are the following:

At about 5:00 in the afternoon of October 2, 1984, petitioners, composed of about 50 businessmen, students and office employees converged at J.P. Laurel Street, Manila, for the ostensible purpose of hearing Mass at the St. Jude Chapel which adjoins the Malacañang grounds located in the same street. Wearing the now familiar inscribed yellow T-shirts, they started to march down said street with raised clenched fists[1] and shouts of anti-government invectives. Along the way, however, they were barred by respondent Major Isabelo Lariosa, upon orders of his superior and co-respondent Gen. Santiago Barangan, from proceeding any further, on the ground that St. Jude Chapel was located within the Malacañang security area. When petitioners' protestations and pleas to allow them to get inside the church proved unavailing, they decided to leave. However, because of the alleged warning given them by respondent Major Lariosa that any similar attempt by petitioners to enter the church in the future would likewise be prevented, petitioners took this present recourse.

Petitioners' alleged purpose in converging at J.P. Laurel Street was to pray and hear mass at St. Jude church. At the hearing of this petition, respondents assured petitioners and the Court that they have never restricted, and will never restrict, any person or persons from entering and worshipping at said church. They maintain, however, that petitioners' intention was not really to perform an act of religious worship, but to conduct an anti-government demonstration at a place close to the very residence and offices of the President of the Republic. Respondents further lament petitioners' attempt to disguise their true motive with a ritual as sacred and solemn as the Holy Sacrifice of the Mass. Undoubtedly, the yellow T-shirts worn by some of the marchers, their raised clenched fists, and chants of anti-government slogans strongly tend to substantiate respondents allegation. Thus, J.P. Fenix, commenting on the motive of petitioners' mass action of October 2, 1984, wrote the following in his article entitled "Mission Impossible", published in the October 12-18, 1984 issue of the "Mr. & Mrs." magazine:

"They couldn't go through Mendiola Bridge, and so they dared to get even closer to the heart of the matter. But as in Mendiola, the barbed wire barricades and the array of sheet metal shields got in the way of the members of the August Twenty-One Movement (ATOM) as they tried last October 2 to get to the pearly gates of power

via the St. Jude Chapel on Laurel St. St. Jude happens to be a neighbor of President Marcos, his (sic) chapel being adjacent to Malacañang. x x x"

The foregoing cannot but cast serious doubts on the sincerity and good faith of petitioners in invoking the constitutional guarantee of freedom of religious worship and of locomotion. While it is beyond debate that every citizen has the undeniable and inviolable right to religious freedom, the exercise thereof, and of all fundamental rights for that matter, must be done in good faith. As Article 19 of the Civil Code admonishes: "Every person must, in the exercise of his rights and in the performance of his duties x x x observe honesty and good faith."

Even assuming that petitioners' claim to the free exercise of religion is genuine and valid, still respondents reaction to the October 2, 1984 mass action may not be characterized as violative of the freedom of religious worship. Since 1972, when mobs of demonstrators crashed through the Malacañang gates and scaled its perimeter fence, the use by the public of J.P. Laurel Street and the streets approaching it have been restricted. While travel to and from the affected thoroughfares has not been absolutely prohibited, passersby have been subjected to courteous, unobtrusive security checks. The reasonableness of this restriction is readily perceived and appreciated if it is considered that the same is designed to protect the lives of the President and his family, as well as other government officials, diplomats and foreign guests transacting business with Malacañang. The need to secure the safety of heads of state and other government officials cannot be overemphasized. The threat to their lives and safety is constant, real and felt throughout the world. Vivid illustrations of this grave and serious problem are the gruesome assassinations, kidnappings and other acts of violence and terrorism that have been perpetrated against heads of state and other public officers of foreign nations.

Said restriction is moreover intended to secure the several executive offices within the Malacañang grounds from possible external attacks and disturbances. These offices include communications facilities that link the central government to all places in the land. Unquestionably, the restriction imposed is necessary to maintain the smooth functioning of the executive branch of the government, which petitioners' mass action would certainly disrupt.

Freedom of religious worship is guaranteed under Section 8, Article IV of the 1973 Constitution, thus:

"No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."

Elucidating on the meaning and scope of freedom of religion, the U.S. Supreme Court in *Cantwell v. Connecticut*[2] said:

"The constitutional inhibition on legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion. Thus the amendment embraces two concepts, - freedom to believe and freedom to act. The first is absolute, but in the nature of things, the second cannot be."

In the case at bar, petitioners are not denied or restrained of their freedom of belief or choice of their religion, but only in the manner by which they had attempted to translate the same into action. This curtailment is in accord with the pronouncement of this Court in *Gerona v. Secretary of Education*,[3] thus:

"The realm of belief and creed is infinite and limitless bounded only by one's imagination and thought. So is the freedom of belief, including religious belief, limitless and without bounds. One may believe in most anything, however strange, bizarre and unreasonable the same may appear to others, even heretical when weighed in the scales of orthodoxy or doctrinal standards. But between the freedom of belief and the exercise

of said belief, there is quite a stretch of road to travel. If the exercise of said religious belief clashes with the established institutions of society and with the law, then the former must yield and give way to the latter. The government steps in and either restrains said exercise or even prosecutes the one exercising it." (Underscoring supplied)

Petitioners likewise invoke their freedom of locomotion under Section 5, Article IV of the Constitution, which provides:

"The liberty of abode and of travel shall not be impaired except upon lawful order of the court, or when necessary in the interest of national security, public safety, or public health."

Suffice it to say that the restriction imposed on the use of J.P. Laurel Street, the wisdom and reasonableness of which have already been discussed, is allowed under the fundamental law, the same having been established in the interest of national security.

WHEREFORE, the instant petition is hereby dismissed. No costs.

SO ORDERED.

Concepcion, Jr., Plana, Dela Fuente, and Cuevas, JJ., concur.

Fernando, C.J., concurs in the result as to (1) the moot and academic aspect of the prayer "to enter and pray at the St. Judge Church on Friday, October 12, 1984," and (2) the validity of the measure taken "to protect the lives of the President and his family," and expresses in a separate opinion his view that the free exercise and enjoyment of religious profession and worship, while not absolute unlike freedom of belief, may be restricted only to the extent allowable by the clear and present danger doctrine. To that extent, he dissents from the opinion which fails to state the limits of such allowable restriction. There is, for him, a need for such clarification for the guidance of interested parties.

Gutierrez, Jr., J., concurs, also adding some observations in a separate opinion.

Aquino, J., in the result. Petitioners have no cause of action for mandamus.

Teehankee, Makasiar, Abad Santos, Melencio-Herrera, and Relova, JJ., dissent in a separate opinion.

Alampay, J., no part.

Fernando, C.J., see separate dissenting opinion.

[1] See pictures attached to respondents' comment.

[2] 310 U.S. 296.

[3] 106 Phil. 2

DISSENTING OPINION

ABAD SANTOS, J.:

The Court took a big step forward in the WE FORUM case (G.R. No. 64261, Dec. 26, 1984). It has taken another step but this time in the other direction. In martial law jargon it is a back-slider.

We are asked to give meaning to the constitutional guarantee that, "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed." (Art. IV, Sec. 8.)

We have here a group of people. It may be conceded that Reli German, Ramon Pedrosa and company are "opposition minded." They wanted to go on foot to St. Jude Chapel adjacent to the Malacañang compound and there to pray and hear mass. It may be assumed that they intended to pray for the full restoration of the civil rights of the Filipino people. But they were prevented by the respondents who contended that their real purpose was to demonstrate against the President of the Republic. In my opinion it is highly presumptuous for both the respondents and this Court to attribute unstated and unadmitted motives to the petitioners. The petitioners said that they wanted to pray and hear mass. Why can't good faith be accorded to them in the light of the constitutional provision that the free exercise and enjoyment of religious profession and worship shall forever be allowed? It is unthinkable that they would conduct an anti-government demonstration in the hallowed premises of St. Jude Chapel and thereby defile it. If they raised their fists in protest and shouted invectives it was only after they had been arbitrarily barred from going to the chapel. So the petitioners said during the hearing and I believe them.

True it is that the free exercise of religion can be restrained under the clear and present danger principle. But I fail to perceive the presence of any clear danger to the security of Malacañang due to the action of the petitioners. The danger existed only in the fertile minds of the overzealous guardians of the complex which is protected by a stout steel fence.

I vote to grant the petition.

CONCURRING AND DISSENTING OPINION

FERNANDO, C.J.:

concurring in the result and dissenting insofar as the opinion fails to declare that the freedom of exercise of religious profession and worship can only be limited by the existence of a clear and present danger of a substantive evil. There is, for him, a need for such a statement for the guidance of the parties as well as of the general public.

1. The prayer of this petition reads as follows: "After hearing, a writ of mandamus/injunction issue against respondents commanding them (i) to allow herein petitioners to enter and pray at the St. Jude Church on Friday, October 12, 1984 at or about 6:00. P.M. or on any date and time thereafter and (ii) to refrain from preventing herein petitioners from [so] entering and praying inside the St. Jude Church." [1] Clearly, the plea to enter and pray at such church on Friday, October 12, 1984 is moot and academic. There is in addition, however, a plea for the injunctive relief to prevent respondents from interfering with petitioners exercising their constitutional right to attend mass at such church in the future. That is to invoke freedom of religion as a preferred right of undoubted primacy. [2] Specifically prior restraint is ruled out except under a clear showing that its exercise would be attended by a clear and present danger of substantive evil. That is settled law for rights embraced in freedom of expression and belief, whether secular and religious —and much more so in the case of the latter. Our unanimous ruling in *J.B.L. Reyes v. Bagatsing* [3] stands for such a proposition.

2. Why a concurrence in the result then? I am led to do so in view of the clear manifestation by the Solicitor General that such a right would be accorded the fullest respect with due regard to the countervailing consideration of avoiding danger to the lives of the President and his family. It is likewise in keeping with the letter and spirit of the Constitution when, as noted in the separate opinion of Justice Teehankee, "petitioners have given full assurance of their peaceful intentions. They were walking and would walk along the sidewalks. They did not and will not hold any demonstrations. They were and are unarmed, and were and are willing to be

searched and have pledged peaceful and orderly behavior." [4] There being such assurances, a more categorical pronouncement on the full scope of the right to free exercise and enjoyment of religious profession and worship will have to wait another day.

3. It may not be amiss to state that at the hearing of this petition, while counsel for petitioners, admittedly with fluency and even with eloquence, was discoursing with denunciatory fervor on the flagrant disregard of this constitutional right, the suggestion was made that the Court will welcome an analysis of pertinent constitutional law decisions both from the Philippines and the United States. It hardly elicited, however, a response that could be considered as adequate. At the very least, there could have been reference to the well-known distinction between religious belief, which is absolute, and its expression which, while subject to restriction, does not lose its fundamental character. [5] It is worth recalling that in one of the latest of such American cases, *Wisconsin v. Yoder*, [6] a 1972 decision, the opinion of Chief Justice Burger referred to the non-establishment clause of the First Amendment of the American Constitution — the source of our constitutional provision — as "buttressing this fundamental right" [7] to the free exercise of religious profession and worship. It is precisely to avoid any discrimination or preference in favor of any other religion that there is such a prohibition. Parenthetically, it may be observed that the non-establishment clause in the Philippines which in the United States is the basis for the concept of separation of church and state is made much more explicit by this constitutional command: "The separation of church and state shall be inviolable." [8] The point, I wish to make, however, is that had there been no clear manifestation by both petitioners and respondents that the right to attend mass at St. Jude's Church would be respected, even if it is located in a security area but with due precautionary measures taken to avoid infiltration by subversive elements, this Court would have been called upon to rule and, if possible, to delineate with some degree of precision the scope of such a right to free exercise and enjoyment of religious profession and worship.

4. Suffice it then for the present to rely on the standard of the clear and present danger principle as the controlling doctrine to justify any restriction on the freedom of the exercise of religious profession and worship without discrimination or preference. I am freed from the necessity of referring to specific paragraphs of the *J.B.L. Reyes* decision, where I was singularly fortunate in obtaining the unanimous approval of my brethren in my ponencia. The dissent of Justice Teehankee in this case quotes its relevant portions. May I just add that there is an impermissible restriction unless the evil apprehended, according to Justice Brandeis, outside of its being serious — it is so in this case — must likewise be imminent. [9] From the very wording of the clear and present danger principle, the question, to follow Holmes, who was the author of this concept, is "one of proximity and degree." [10] Necessarily in each and every instance where it is invoked, there must be the most careful scrutiny of the environmental facts and conditions. Absent that element, this Court cannot give the imprimatur of its approval.

5. It would be an unwarranted departure then from what has been unanimously held in the *J.B.L. Reyes* decision if on such a basic right as religious freedom — clearly the most fundamental and thus entitled to the highest priority among human rights, involving as it does the relationship of man to his Creator — this Court will be less vigilant in upholding any rightful claim. More than ever, in times of stress — and much more so in times of crisis — it is that deeply-held faith that affords solace and comfort if not for everyone at least for the majority of mankind. Without that faith, man's very existence is devoid of meaning, bereft of significance.

6. My vote, therefore, in concurring in the result is to be viewed in that light. I feel I could do so because of this excerpt from the opinion of Justice Escolin: "Petitioners' alleged purpose in converging at J.P. Laurel Street was to pray and hear mass at St. Jude Church. At the hearing of this petition, respondents assured petitioners and the Court that they have never restricted, and will never restrict any person or persons from entering and worshipping at said church." [11] Independently of any judgment of the past conduct of respondents, it bears repeating that the promise made by the respondents of not restricting petitioners from entering and worshipping at St. Jude Church is a guarantee that no such impermissible restraint of religious freedom would thereafter be attempted. I am prepared to accord good faith to both parties even if on the

occasion that presented itself on October 2, 1984 there could be a mistake of judgment on the part of respondents.

7. It is my reading then of the main opinion as well as of the separate opinions in this case that the Court is united in the view that the free exercise of religious profession and worship is to be accorded the amplest protection. The dismissal of the petition, to my mind, is not a bar to the application hereafter of the clear and present danger principle. If no mention was made in the opinion of the Court of such controlling doctrine it is my perception that it is due, as has been pointed out, to the assurances made by the parties to the controversy that the right to the free exercise of religious profession and worship will be accorded the fullest respect. Hence the failure to make such explicit affirmation.

8. Nor is the dismissal of the petition a bar to such a conclusion. It is no longer unorthodox in this jurisdiction for this Court to make a pronouncement of controlling force even if a case were dismissed for being moot and academic. It can trace its origin to the landmark opinion of Justice Malcolm in *Alejandrino v. Quezon*.^[12] The latest manifestation of such well-accepted practice is the February, 1985 decision of *Salonga v. Paño*.^[13] Moreover, in the opinion of Justice Gutierrez, Jr.,^[14] reference was made to the three other cases of *Camara v. Enage*,^[15] *Aquino Jr. v. Enrile*,^[16] and *Gonzales v. Marcos*,^[17] where the Court enunciated doctrines that could govern future controversies. It is for me, a cause for regret that the Court has not done so in this case. Nonetheless, implicit in the plurality opinion of Justice Escolin and to a greater degree in the separate opinions of Justices Relova and Gutierrez is the deep concern for safeguarding the constitutional right to free exercise of religious profession and worship. As for the other separate opinions, its being a preferred right to be restricted only if there be satisfactory proof of a clear and present danger of a substantive evil is quite manifest.

[1] Petition, prayer, 7.

[2] According to Section 8, Article IV of the Constitution: "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."

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

[4] Separate Opinion of Justice Teehankee, 5.

[5] Cf. *Reynolds v. United States*, 98 US 145 (1878); *Cantwell v. Connecticut*, 310 US 296 (1940); *Prince v. Massachusetts*, 321 US 158 (1944); *Braudfeld v. Brown*, 366 US 599 (1960); *Sherbert v. Verner*, 374 US 398 (1963).

[6] 406 US 205. Incidentally, this is one of the 33 opinions chosen by Chief Justice Burger as among his most significant during his incumbency. Cf. *Significant Supreme Court Opinions of Chief Justice Warren E. Burger*.

[7] *Ibid*, 215.

[8] Section 15, Article XV of the Constitution.

[9] *Whitney v. California*, 274 US 357, 377 (1927).

[10] *Schenck v. United States*, 249 US 45, 52 (1919).

[11] Opinion of the Court, 2.

[12] 46 Phil. 83 (1924).

[13] G.R. 59524, February 18, 1985.

[14] Justice Abad Santos filed a separate opinion and Justices Aquino and De la Fuente did not take part.

[15] L-32951-2, September 17, 1971, 41 SCRA 1.

[16] L-35546, September 17, 1974, 59 SCRA 183.

[17] L-31685, July 31, 1975, 65 SCRA 624.

CONCURRING OPINION

GUTIERREZ, JR., J.:

While concurring in the Court's opinion penned by my distinguished colleague, Mr. Justice Venicio Escolin, I would like to add a few observations.

By its very nature, liberty of mind and conscience occupies a primacy or pre-eminent position in the hierarchy of values protected by the Constitution. Nothing can inflame the passions of a freedom loving people more than an attempt by civil or military authorities to restrict persons in their right to worship. A person who sincerely believes that Divine Providence determines not only his destiny in this life but also his eternal dwelling place after death will resist with all his might any effort to curb or prevent communion through worship with his Deity.

This petition, therefore, furnishes an auspicious occasion to reiterate our people's deep commitment to religious liberty. The unique phraseology of the religious freedom clause furnishes a textual basis for this commitment.

Section 8 of the Bill of Rights reads:

"No law shall be made respecting an establishment of religion or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights. (Italics supplied)."

Article 5 of the Malolos Constitution provided for freedom and equality of religious worship as well as the separation of church and state. President William McKinley's Instructions to the Second Philippine Commission directed "that no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof and that the free exercise and enjoyment of religious profession and worship without discrimination or preference shall forever be allowed." (Underlining supplied). The same statement of the eternal nature of the freedom is found in the Philippine Bill in 1902 and in the Philippine Autonomy Act of 1916, more popularly known as the Jones Law.

It is, of course, axiomatic that no provision of the Constitution is beyond repeal or amendment. The clause "shall forever be allowed" is simply an expression of the framers' faith that the Filipino people cherish religious freedom so much that they would never remove this freedom from the Constitution or water it down through a modification. I believe that this faith is justified.

This Court stated in *Aglipay v. Ruiz* (64 Phil. 201):

"x x x Religion as a profession of faith to an active power that binds and elevates man to his Creator is recognized. And, in so far as it instills into the minds the purest principles of morality, its influence is deeply felt and highly appreciated. When the Filipino people, in the preamble of their Constitution, implored 'the aid of Divine Providence, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty and democracy,' they thereby manifested their intense religious nature and placed unfaltering reliance upon Him who guides the destinies of men and nations.

The elevating influence of religion in human society is recognized here as elsewhere."

In *Victoriano v. Elizalde Rope Workers Union* (59 SCRA 54) we stated:

"The constitutional provision not only prohibits legislation for the support of any religious tenets or the modes of worship of any sect, thus forestalling compulsion by law of the acceptance of any creed or the practice of any form of worship, but also assures the free exercise of one's chosen form of religion within limits of utmost amplitude. It has been said that the religion clauses of the Constitution are all designed to protect the broadest possible liberty of conscience, to allow each man to believe as his conscience directs, to profess his beliefs, and to live as he believes he ought to live, consistent with the liberty of others and with the common good. Any legislation whose effect or purpose is to impede the observance of one or all religions, or to discriminate invidiously between the religions, is invalid, even though the burden may be characterized as being only indirect."

Thus, the free exercise of religious freedom is not only intended to last "forever" but the clause guaranteeing it is interpreted within limits of "utmost amplitude". If the presidential security forces or any other public functionaries try to impede any genuine and legitimate exercise of a person's religious profession or worship, there can be no doubt that this Court would rule against such an attempt.

At the same time, any claim to the free exercise of religion must be a genuine or valid one. This Court is keenly sensitive to problems arising from the freedom of religion clause. We examine allegations of its violation to check any infringement of this preferred freedom. A claim based on it should be rooted in genuine religious conviction, although as mentioned by Justice Ameurfina A. Melencio-Herrera we have to take into account the presumption of good faith.

The petition, standing by itself, was pregnant with implications. Somehow, it seemed unthinkable that in our country, at this time and age, citizens would be prevented from worshipping at a church of their choice. However, during the hearing, it was ascertained and the respondents gave concrete assurances that anyone wishing to worship at St. Jude Church near Malacañang has never been restricted nor will he ever be restricted from going to that church. The presidential security guards check political demonstrators who try to hold rallies before the presidential palace but not church goers, attending worship services in the vicinity. On the other hand, the petitioners informed the Court through counsel that they did not intend to hold any protest rally or political demonstration in front of Malacañang. Their only intent was to pray at St. Jude Church, the church dedicated to the patron saint of impossible causes. The facts as stated by contending counsel show that the problem is one of a failure of communications and not a denial of freedom of worship. If the respondents do not deny completely free access to church goers while the petitioners had absolutely no intention to hold a political demonstration, the petition belabors a non-existent issue.

I, therefore, concur in the dismissal of the petition since it belabors a non-existent issue.

DISSENTING OPINION

MAKASIAR, J.:

The petitioners gave the assurance that they are marching towards St. Jude's Church only for the purpose of praying or attending mass therein; that they were and are going to march in an orderly manner without blocking the traffic and with the marshals policing and identifying the marchers; that they are not armed and are not going to be armed with any kind of weapon; and that they are willing to be frisked. These are practically the same assurances made by the petitioners in the case of *Reyes vs. Bagatsing* (125 SCRA 553, November 9, 1983) and by

the petitioners who marched from España Rotonda to Liwasang Bonifacio sometime in September, 1984.

The petitioners likewise manifested that on October 2, 1984 after they entered the premises of the church, the parish priest invited them to prayer without allowing them to demonstrate in any manner or deliver any speeches.

On the other hand, respondents in charge of the security of Malacañang and its immediate environs, including J.P. Laurel Street, which is the only street going direct to St. Jude's Church which is so close to Malacañang, likewise assured that they are not going to block or stop petitioners as long as they march peacefully and their real purpose is just to hear mass inside St. Jude's Church. Respondents or their agents can frisk petitioners for any concealed weapon.

Their wearing yellow T-shirts and clothing and bearing yellow emblems or banners, are forms of expression which are also protected by the constitutional guarantees of freedom of expression in general, and religious freedom in particular. The fact that most, if not all, of them are not residents of Sampaloc or the neighborhood around St. Jude's Church, should not impair their credibility as to their true intentions because St. Jude's Church, to the believers or devotees, is the only church in Metro Manila especially dedicated to supplications for the realization of impossible hopes and dreams.

With the assurances aforesaid given by both petitioners and respondents, there is no clear and present danger to public peace and order or to the security of persons within the premises of Malacañang and the adjacent areas, as the respondents have adopted measures and are prepared to insure against any public disturbance or violence.

Hence, the petition should be granted.

DISSENTING OPINION

MELENCIO-HERRERA, J.:

I vote to accord to petitioners their right to freedom of worship.

One of the basic and fundamental rights guaranteed by our Constitution is the free exercise and enjoyment of religious profession and worship (Section 8, Art. IV, 1973 Constitution). "For freedom of religious expression, the Constitution assures generous immunity, unless it can be shown that there is a clear and present danger of a substantive evil which the State has the right to prevent" (E. M. Fernando on The Bill of Rights, Second Edition, p. 198).

The act of petitioners in converging at J.P. Laurel Street, majority of whom were wearing yellow T-shirts, marching towards St. Jude Chapel, there to hear Mass, shouting anti-Government invectives with clenched fists as they marched, did not in my opinion pose any clear and present danger. Petitioners were unarmed, marching peacefully, albeit noisily.

But neither can respondents be taken to task for impeding petitioners from proceeding along J.P. Laurel Street, which is within the perimeter of the Malacañang security area, since it was not by chance that petitioners were marching as a group, evidently also to hold a public demonstration. In other words, their objective cannot conclusively be said to have had a purely religious flavor. In fact, in his Comment, the Solicitor General has stated "those who come to worship in its true sense will not be stopped."

The location of the St. Jude Chapel within the perimeter of the Malacañang security area is not, to my mind, sufficient reason for a prior restraint on petitioners' right to freedom of religious worship. Proper security measures can always be taken. It is only when petitioners, in the exercise of their religious beliefs, exceed those

bounds and translate their freedoms into acts detrimental or inimical to the superior rights of public peace and order, that the test of a clear and present danger of a substantive evil is met and the acts having a religious significance may be infringed upon in the exercise of the police power of the State. "Freedom of worship is susceptible of restriction only to prevent grave and immediate danger to interests which the State may lawfully protect" (West Virginia State Board of Education vs. Barnette (319 U.S. 624 [1943])).

"When clear and present danger of riot, disorder, interference, with traffic upon public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to prevent or punish is obvious. Equally obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions. (Cantwell vs. Connecticut 310 U.S. 308)" (Emphasis ours).

Our country is faced with the profoundest problems confronting a democracy. In the clash of competing interests, sobriety, restraint, and a balanced regard not only for individual rights and liberties but also for the right of the State to survival, should be the guiding criteria. There is need for sustained efforts to achieve a solution to the dilemma phrased by Lincoln: "Must a government of necessity be too strong for the liberties of its people, or too weak to maintain its existence?"

SEPARATE VOTE AND STATEMENT

RELOVA, J.:

The majority opinion doubts the sincerity and good faith of the fifty (50) petitioners in invoking the constitutional guarantee of religious worship and of locomotion because they were wearing yellow T-shirts as they marched down J.P. Laurel Street with raised clenched fists on October 2, 1984, at about 5:00 in the afternoon, for the purpose of praying and/or hearing mass at the St. Jude Chapel which adjoins the Malacañang grounds.

It is known that devotees of St. Jude attend mass and novena at this chapel on Thursdays, just like those of Our Lady of Perpetual Help in Baclaran who pay homage to Her on Wednesdays, and worshippers of the Black Nazarene show religious reverence to Him at the Quiapo Church on Fridays. Whenever these devotees request a mass in these places of worships for their special intentions, they may also ask that the same be held on any day other than Thursdays, Wednesdays or Fridays.

October 2, 1984 was a Tuesday and was not a particular day of devotion to St. Jude, known as the Saint of the impossible. Thus, it cannot be said that petitioners' intention that afternoon was to conduct an anti-government demonstration because if the purpose was to stage one they would have gone to St. Jude Chapel on a Thursday and be favored with a crowd to hear them. Stated differently, Thursdays would be the best day to stage a march at the place and, after praying and/or hearing mass, deliver speeches outside the chapel before the many devotees. The fact that petitioners chose a Tuesday to hear mass and/or pray for their special intention negates the suspicion that they were out to stage a demonstration.

Petitioners claim that they were on their way to hear mass and/or pray. For respondents to say, even before petitioners have reached the place that they would be delivering speeches is pure speculation. Respondents should have allowed petitioners to hear mass and/or pray and, thereafter, see what they would do. Only then would We know what were really in their minds. What respondents did by acting before petitioners could display themselves was tantamount to prohibiting free exercise and enjoyment of religious worship. Demonstrations about or near the premises of St. Jude Chapel because of its proximity to the residence of the President may be restricted, but certainly, for petitioners or any group of men for that matter, to hear mass and/or pray at the chapel should be

tolerated.

The petition should be granted.

DISSENTING OPINION

TEEHANKEE, J.:

I vote to grant the petition on the ground that the right of free worship and movement is a preferred right that enjoys precedence and primacy and is not subject to prior restraint except where there exists the clear and present danger of a substantive evil sought to be prevented. There was and is manifestly no such danger in this case.

The majority judgment dismisses the petition of the forty (40) hereinabove-named petitioners (composed of "businessmen, bankers, professionals, students and office employees"[1]), who, invoking their constitutional freedom of worship and movement, have prayed that a writ of mandamus/injunction issue from this Court against respondents Chief of the Presidential Security Command and his subordinates at Malacañang, directing them "(1) to allow herein petitioners to enter and pray at the St. Jude Church on Friday, October 12, 1984 at or about 6:00 P. M. or on any date and time thereafter and (2) to refrain from preventing herein petitioners from [so] entering and praying inside St. Jude Church."

As aptly and concisely stated in the Solicitor General's comment, "(T)he issue petitioners present is whether respondent Presidential Security Command officers have, in preventing petitioners' group from proceeding down J. P. Laurel Street on October 2 violated their freedom of worship and movement. Given that there has been such a violation, petitioners want similar acts of respondents in the future enjoined."[2]

On October 2, 1984 at about 5:00 p.m., the petitioners and their companions totaling about fifty (50) to eighty (80) persons had walked along the sidewalk in small groups towards the St. Jude Church at J. P. Laurel Street, Manila to hear a special mass that they had sponsored "for the main purpose of praying to God through St. Jude to put an end to violence"[3] and for those who were injured during the September 22 and 27, 1984 rally dispersals and the lone fatality Osias Alcala. Petitioner Reli German, a leader of the ATOM (August 21 Movement), was wearing a yellow T-shirt and he and those lined up after him were physically prevented from proceeding farther on the ground that the church was located within the Malacañang security area. Earlier, another ATOM leader Ramon Pedrosa who was wearing a barong tagalog had gone through unnoticed to the church with some ten others.[4] Petitioners' pleas with respondent Lariosa to be allowed their right of worship and religion were unheeded. They then knelt on the pavement in front of the barricade and prayed the holy Rosary. Afterwards, they sang Bayan ko with clenched fists of protest against the violation of their rights and thereafter dispersed peacefully.[5] Having been then warned that any further attempts on their part to enter the church would be similarly barred, they filed the petition at bar, which was heard and submitted for resolution on October 16, 1984 (rendering moot their prayer to enter the church on October 12, 1984 but not as to any open subsequent date, as prayed for).

A brief restatement of the applicable constitutional principles as set forth in the landmark case of *J. B. L. Reyes vs. Bagatsing*[6] should guide us in resolving the issues.

1. The right to freely exercise one's religion is guaranteed in Section 8 of our Bill of Rights.[7] Freedom of worship, alongside with freedom of expression and 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. "[8]

2. In the free exercise of such preferred rights, there is to be no prior restraint although there may be subsequent punishment of any illegal acts committed during the exercise of such basic rights. The sole justification for a prior restraint or limitation on the exercise of these basic rights is the existence of a grave and present 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, that the State has a right (and duty) to prevent.[9]

3. The burden to show the existence of grave and imminent danger that would justify prior restraint and bar a group of persons from entering the church of their choice for prayer and worship lies on the military or police officials who would so physically restrain them. Indeed, there is no precedent in this time and age where church-goers whose right of free exercise of their religion is recognized have been physically prevented from entering their church on grounds of national security. On the other hand, it does not lie within the competence nor authority of such officials to demand of churchgoers that they show and establish their "sincerity and good faith....in invoking the constitutional guarantee of freedom of religious worship and of locomotion" as a pre-condition, as seems to be the thrust of the majority decision.[10] Nor is there any burden on the churchgoer to make "a satisfactory showing of a claim deeply rooted in religious conviction" before he may worship at the church of his choice — as appears to be the basis of Justice Gutierrez' concurring opinion for dismissal of the petition. The exercise of such basic and sacred rights would be too tenuous if they were made to depend on the snap judgment and disposition of such officials as to one's good faith and his attire. In fact, Article 132 of the Revised Penal Code penalizes public officers and employees who "prevent or disturb the ceremonies or manifestations of any religion" while Article 32 of the Civil Code grants an independent cause of action for moral and exemplary damages and "for other relief" against such officials or (employees or private individuals "who directly or indirectly obstruct, defeat, violate or in any manner impede or impair (the) freedom of religion (and) freedom of speech" of any person.

4. Good faith on both sides is and must be presumed. Thus, petitioners' manifestations of their sincere intention as Christians to gather together in prayer at St. Jude Church who is known as the Patron of the Impossible should be taken in good faith. It would seem that no court petition should be necessary to enable a group of persons such as petitioners to freely proceed and enter a church of their religion and choice and therein hear mass and say their prayers. We are basically a people of peace who believe in the power of prayer and pray silently for God's guidance and compassion and that peace and justice may reign in the land. Many recall the Lord's promise to Solomon that "if my people who bear my name humble themselves and pray and seek my presence and turn from their wicked ways, I myself will hear from Heaven and forgive their sins and restore their land." [11] Respondents' acts of barring petitioners from the Malacañang security perimeter and thereby preventing their entering and praying at the St. Jude Church should likewise be taken as in good faith in their zeal to avoid any untoward disturbance or development in the area. 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." [12]

5. Over and above all, public officials should ever be guided by the testament over half a century ago of the late Justice Jose Abad Santos in his dissenting opinion in *People vs. Rubio* [13] that the "commendable zeal.. if allowed to override constitutional limitations would become 'obnoxious to fundamental principles of liberty.' And if we are to be saved from the sad experiences of some countries which have constitutions only in name, we must insist that governmental authority be exercised within constitutional limits; for, after all, what matters is not so much what the people write in their constitutions as the spirit in which they observe their provisions." To require the citizen at every step to assert his rights and to go to court is to render illusory his rights.

The late Chief Justice Ricardo Paras' injunction in his concurring opinion in *Primicias vs. Fuguso*, [14] citing the 1907 sedition case of *U. S. vs. Apurado* [15] that 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, mutatis mutandis, is fully applicable here, thus: "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." [16]

Applying the above settled standards and principles to the issue at bar, respondents' act of preventing petitioners from proceeding down J. P. Laurel Street on October 2, 1984 to attend their special mass at St. Jude Church was not justified and this Court must accordingly grant the petition and enjoin similar acts of respondents in the future. There was no call for such prior restraint. Respondents themselves in the Solicitor General's comment admit that "true, there were only about 80 persons in petitioners' group on October 2 and this number could hardly pose the danger feared," but expressed the fear that petitioners' ranks could within hours reach hundreds if not thousands and "peaceful dispersal becomes impossible as in recent demonstrations and rallies." [17] Respondents were in full control and there is no question as to the capability of the security forces to ward off and stop any untoward move. They had placed an advance checkpoint as far back as the Sta. Mesa Rotonda and could stop the flow of people in the church if they deemed it unmanageable. There definitely was no clear and present danger of any serious evil to public safety or the security of Malacañang. The majority decision and respondents have relied heavily on the October 12-18, 1984 issue of Mr. & Ms. magazine, particularly on an interpretive article written after the event by staff member J. P. Fenix for their conclusion that petitioners' objective on October 2, 1984 was not "innocently to worship at St. Jude" [18] but to "conduct an anti-government demonstration at a place close to the very residence and offices of the President." [19] These conjectures were categorically denied by petitioners at the hearing, *supra*, and were not rebutted. The said article itself cited in the decision as "casting serious doubts on the sincerity and good faith in invoking the constitutional guaranty of freedom of religious worship and locomotion" showed the government troops smiling and in good form and humor, and with truncheons raised, "ready and waiting for any untoward incident." At any rate, petitioners have given full assurance of their peaceful intentions. They were walking and would walk along the sidewalks. They did not and will not hold any demonstrations. They were and are unarmed, and were and are willing to be searched and have pledged peaceful and orderly behavior.

The majority's dismissal of the petition on the ground that the restriction imposed by respondents was "necessary to maintain the smooth functions of the executive branch of the government which petitioners' mass action would certainly disrupt" and that such prior restraint was not violative of petitioners' constitutional rights of freedom of religious worship and movement "having been established in the interest of national security," [20] manifestly is not in accord with the applicable established standards and principles.

[1] Petition, p. 2.

[2] At pp. 2-3.

[3] T.s.n. of hearing, p. 2.

[4] *Idem*, at p. 13.

[5] *Idem*, at p. 2.

[6] 125 SCRA 553 (1983).

[7] The text reads, as follows: "SEC. 8. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights."

[8] J.B.L. Reyes, 125 SCRA at pp. 569-570.

[9] *Idem*, at pp. 560-561.

[10] At page 3.

[11] 2 Chronicles 7, 14.

[12] See J.B.L. Reyes, 125 SCRA at p. 574.

[13] 57 Phil. 384 (1932).

[14] 80 Phil. 71 (1948).

[15] 7 Phil. 422, 426, per Carson, J.

[16] 125 SCRA at p. 574.

[17] Comment, at pp. 5-6.

[18] Solicitor General's Comment, p. 2

[19] Decision, at p. 2.

[20] *Idem*, at pp. 4-5.

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