

**RICARDO VALMONTE, OSWALDO CARBONELL, DOY DEL CASTILLO,
ROLANDO BARTOLOME, LEO OBLIGAR, JUN GUTIERREZ,
REYNALDO BAGATSING, JUN &NINYOY; ALBA, PERCY
LAPID, ROMMEL CORRO AND ROLANDO...**

G.R. No. 74930. February 13, 1989

Ponente: CORTES, J.

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CORTES, J.:

Petitioners in this special civil action for mandamus with preliminary injunction invoke their right to information and pray that respondent be directed:

(a) to furnish petitioners the list of the names of the Batasang Pambansa members belonging to the UNIDO and PDP-Laban who were able to secure clean loans immediately before the February 7 election thru the intercession/marginal note of the then First Lady Imelda Marcos; and/or

(b) to furnish petitioners with certified true copies of the documents evidencing their respective loans; and/or

(c) to allow petitioners access to the public records for the subject information. (Petition, pp. 4-5; paragraphing supplied.)

The controversy arose when petitioner Valmonte wrote respondent Belmonte the following letter:

June 4, 1986

Hon. Feliciano Belmonte
GSIS General Manager
Arroceros, Manila

Sir:

As a lawyer, member of the media and plain citizen of our Republic, I am requesting that I be furnished with the list of names of the opposition members of (the) Batasang Pambansa who were able to secure a clean loan of P2 million each on guaranty (sic) of Mrs. Imelda Marcos. We understand that OIC Mel Lopez of Manila was one of those aforesaid MPs. Likewise, may we be furnished with the certified true copies of the documents evidencing their loan. Expenses connection herewith shall be borne by us.

If we could not secure the above documents could we have access to them?

We are premising the above request on the following provision of the Freedom Constitution of the present regime:

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions or decisions, shall be afforded the citizen subject to such limitation as may be provided, by law. (Art. IV, Sec. 6)

We trust that within five (5) days from receipt hereof we will receive your favorable response on the matter.

Very truly yours,

(Sgd.) RICARDO C. VALMONTE

[Rollo, p. 7.]

To the aforesaid letter, the Deputy General Counsel of the GSIS replied:

June 17, 1986

Atty. Ricardo C. Valmonte

108 E. Benin Street

Caloocan City

Dear Companero:

Possibly because he must have thought that it contained serious legal implications, President & General Manager Feliciano Belmonte, Jr. referred to me for study and reply your letter to him of June 4, 1986 requesting a list of "the opposition members of Batasang Pambansa who were able to secure a clean loan of P2 million each on guaranty of Mrs. Imelda Marcos."

My opinion in this regard is that a confidential relationship exists between the GSIS and all those who borrow from it, whoever they may be; that the GSIS has a duty to its customers to preserve this confidentiality; and that it would not be proper for the GSIS to breach this confidentiality unless so ordered by the courts.

As a violation of this confidentiality may mar the image of the GSIS as a reputable financial institution. I regret very much that at this time we cannot respond positively to your request.

Very truly yours,

(Sgd.) MEYNARDO A. TIRO

Deputy General Counsel

[Rollo, p. 40.]

On June 20, 1986, apparently not having yet received the reply of the Government Service and Insurance System (GSIS) Deputy General Counsel, petitioner Valmonte wrote respondent another letter, saying that for failure to receive a reply, "(W)e are now considering ourselves free to do whatever action necessary within the premises to pursue our desired objective in pursuance of public interest." [Rollo, p. 8.]

On June 26, 1986, Valmonte, joined by the other petitioners, filed the instant suit.

On July 19, 1986, the Daily Express carried a news item reporting that 137 former members of the defunct interim and regular Batasang Pambansa, including ten (10) opposition members, were granted housing loans by the GSIS [Rollo, p. 41]

Separate comments were filed by respondent Belmonte and the Solicitor General. After petitioners filed a consolidated reply, the petition was given due course and the parties were required to file their memoranda. The parties having complied, the case was deemed submitted for decision.

In his comment respondent raises procedural objections to the issuance of a writ of mandamus, among which is

that petitioners have failed to exhaust administrative remedies.

Respondent claims that actions of the GSIS General Manager are reviewable by the Board of Trustees of the GSIS. Petitioners, however, did not seek relief from the GSIS Board of Trustees. It is therefore asserted that since administrative remedies were not exhausted, then petitioners have no cause of action.

To this objection, petitioners claim that they have raised a purely legal issue, viz., whether or not they are entitled to the documents sought, by virtue of their constitutional right to information. Hence, it is argued that this case falls under one of the exceptions to the principle of exhaustion of administrative remedies.

Among the settled principles in administrative law is that before a party can be allowed to resort to the courts, he is expected to have exhausted all means of administrative redress available under the law. The courts for reasons of law, comity and convenience will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given opportunity to act and correct the errors committed in the administrative forum. However, the principle of exhaustion of administrative remedies is subject to settled exceptions, among which is when only a question of law is involved [*Pascual v. Provincial Board*, 106 Phil. 466 (1959); *Aguilar v. Valencia, et al.*, G.R. No. L-30396, July 30, 1971, 40 SCRA 210; *Malabanan v. Ramento*, G.R. No. L-2270, May 21, 1984, 129 SCRA 359.] The issue raised by petitioners, which requires the interpretation of the scope of the constitutional right to information, is one which can be passed upon by the regular courts more competently than the GSIS or its Board of Trustees, involving as it does a purely legal question. Thus, the exception of this case from the application of the general rule on exhaustion of administrative remedies is warranted. Having disposed of this procedural issue, We now address ourselves to the issue of whether or not mandamus lies to compel respondent to perform the acts sought by petitioners to be done, in pursuance of their right to information.

We shall deal first with the second and third alternative acts sought to be done, both of which involve the issue of whether or not petitioners are entitled to access to the documents evidencing loans granted by the GSIS.

This is not the first time that the Court is confronted with a controversy directly involving the constitutional right to information. In *Tanada v. Tuvera*, G.R. No. 63915, April 24, 1985, 136 SCRA 27 and in the recent case of *Legaspi v. Civil Service Commission*, G.R. No. 72119, May 29, 1987, 150 SCRA 530, the Court upheld the people's constitutional right to be informed of matters of public interest and ordered the government agencies concerned to act as prayed for by the petitioners.

The pertinent provision under the 1987 Constitution is Art. III, Sec. 7 which states:

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents, and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

The right of access to information was also recognized in the 1973 Constitution, Art. IV Sec. 6 of which provided:

The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, shall be afforded the citizen subject to such limitations as may be provided by law.

An informed citizenry with access to the diverse currents in political, moral and artistic thought and data relative to them, and the free exchange of ideas and discussion of issues thereon, is vital to the democratic government envisioned under our Constitution. The cornerstone of this republican system of government is delegation of

power by the people to the State. In this system, governmental agencies and institutions operate within the limits of the authority conferred by the people. Denied access to information on the inner workings of government, the citizenry can become prey to the whims and caprices of those to whom the power had been delegated. The postulate of public office as a public trust, institutionalized in the Constitution (in Art. XI, Sec. 1) to protect the people from abuse of governmental power, would certainly be mere empty words if access to such information of public concern is denied, except under limitations prescribed by implementing legislation adopted pursuant to the Constitution.

Petitioners are practitioners in media. As such, they have both the right to gather and the obligation to check the accuracy of information they disseminate. For them, the freedom of the press and of speech is not only critical, but vital to the exercise of their professions. The right of access to information ensures that these freedoms are not rendered nugatory by the government's monopolizing pertinent information. For an essential element of these freedoms is to keep open a continuing dialogue or process of communication between the government and the people. It is in the interest of the State that the channels for free political discussion be maintained to the end that the government may perceive and be responsive to the people's will. Yet, this open dialogue can be effective only to the extent that the citizenry is informed and thus able to formulate its will intelligently. Only when the participants in the discussion are aware of the issues and have access to information relating thereto can such bear fruit.

The right to information is an essential premise of a meaningful right to speech and expression. But this is not to say that the right to information is merely an adjunct of and therefore restricted in application by the exercise of the freedoms of speech, and of the press. Far from it. The right to information goes hand-in-hand with the constitutional policies of full public disclosure[*] and honesty in the public service.[**] It is meant to enhance the widening role of the citizenry in governmental decision-making as well as in checking abuse in government.

Yet, like all the constitutional guarantees, the right to information is not absolute. As stated in *Legaspi*, the people's right to information is limited to "matters of public concern", and is further "subject to such limitations as may be provided by law." Similarly, the State's policy of full disclosure is limited to "transactions involving public interest", and is "subject to reasonable conditions prescribed by law."

Hence, before mandamus may issue, it must be clear that the information sought is of "public interest" or "public concern", and is not exempted by law from the operation of the constitutional guarantee [*Legaspi v. Civil Service Commission*, *supra*, at p. 542.]

The Court has always grappled with the meanings of the terms "public interest" and "public concern." As observed in *Legaspi*:

In determining whether or not a particular information is of public concern there is no rigid test which can be applied. "Public concern" like "public interest" is a term that eludes exact definition. Both terms embrace a broad spectrum of subjects which the public may want to know, either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen. In the final analysis, it is for the courts to determine on a case by case basis whether the matter at issue is of interest or importance as it relates to or affects the public. [*Ibid.* at p. 541.]

In the *Tanada* case the public concern deemed covered by the constitutional right to information was the need for adequate notice to the public of the various laws which are to regulate the actions and conduct of citizens. In *Legaspi*, it was the "legitimate concern of citizens to ensure that government positions requiring civil service eligibility occupied only by persons who are eligibles" [*Supra* at p. 539.]

The information sought by petitioners in this case is the truth of reports that certain Members of the Batasang Pambansa belonging to the opposition were able to secure "clean" loans from the GSIS immediately before the February 7, 1986 election through the intercession of the former First Lady, Mrs. Imelda R. Marcos.

The GSIS is a trustee of contributions from the government and its employees and the administrator of various insurance programs for the benefit of the latter. Undeniably, its funds assume a public character. More particularly, Secs. 5(b) and 46 of P.D. 1146, as amended (the Revised Government Service Insurance Act of 1977), provide for annual appropriations to pay the contributions, premiums, interest and other amounts payable to GSIS by the government, as employer, as well as the obligations which the Republic of the Philippines assumes or guarantees to pay. Considering the nature of its funds, the GSIS is expected to manage its resources with utmost prudence and in strict compliance with the pertinent laws or rules and regulations. Thus, one of the reasons that prompted the revision of the old GSIS law (C.A. No. 186, as amended) was the necessity "to preserve at all times the actuarial solvency of the funds administered by the System" (Second Whereas Clause, P.D. No. 1146.) Consequently, as respondent himself admits, the GSIS "is not supposed to grant 'clean loans'." [Comment, p. 8.) It is therefore the legitimate concern of the public to ensure that these funds are managed properly with the end in view of maximizing the benefits that accrue to the insured government employees. Moreover, the supposed borrowers were Members of the defunct Batasang Pambansa who themselves appropriated funds for GSIS and were therefore expected to be the first to see to it that the GSIS performed its tasks with the greatest degree of fidelity and that all transactions were above board.

In sum, the public nature of the loanable funds of the GSIS and the public office held by the alleged borrowers make the information sought clearly a matter of public interest and concern.

A second requisite must be met before the right to information may be enforced through mandamus proceedings, viz., that the information sought must not be among those excluded by law.

Respondent maintains that a confidential relationship exists between the GSIS and its borrowers. It is argued that a policy of confidentiality restricts the indiscriminate dissemination of information.

Yet, respondent has failed to cite any law granting the GSIS the privilege of confidentiality as regards the documents subject of this petition. His position is apparently based merely on considerations of policy. The judiciary does not settle policy issues. The Court can only declare what the law is, and not what the law should be. Under our system of government, policy issues are within the domain of the political branches of the government, and of the people themselves as the repository of all State power.

Respondent however contends that in view of the right to privacy which is equally protected by the Constitution and by existing laws, the documents evidencing loan transactions of the GSIS must be deemed outside the ambit of the right to information.

There can be no doubt that right to privacy is constitutionally protected. In the landmark case of *Morfe v. Mutuc* [130 Phil. 415 (1968), 22 SCRA 424] this Court, speaking through then Mr. Justice Fernando, stated:

. . . The right to privacy as such is accorded recognition independently of its identification with liberty; in itself, it is fully deserving of constitutional protection. The language of Prof. Emerson is particularly apt: "The concept of limited government has always included the idea that governmental powers stop short of certain intrusions into the personal life of the citizen. This is indeed one of the basic distinctions between absolute and limited government. Ultimate and pervasive control of the individual, in all aspects of his life, is the hallmark of the absolute state. In contrast, a system of limited government safeguards a private sector, which belongs to the individual, firmly distinguishing it from the public sector, which the state can control. Protection of this private

sector -- protection, in other words, of the dignity and integrity of the individual -- has become increasingly important as modern society has developed. All the forces of technological age -- industrialization/urbanization, and organization -- operate to narrow the area of privacy and facilitate intrusion into it. In modern terms, the capacity to maintain and support this enclave of private life marks difference between a democratic and totalitarian society." [at pp. 444-445.]

When the information requested from the government intrudes into the privacy of a citizen, a potential conflict between the rights to information and to privacy may arise. However, the competing interests of these rights need not be resolved in this case. Apparent from the above-quoted statement of the Court in *Morfe* is that the right to privacy belongs to the individual in his private capacity, and not to public and governmental agencies, like the GSIS. Moreover, the right cannot be invoked by juridical entities like the GSIS. As held in the case of *Vassar College v. Loose Wills Biscuit Co.* [197 F. 982 (1912)], a corporation has no right of privacy in its name since the entire basis of the right to privacy is an injury to the feelings and sensibilities of the party and a corporation would have no such ground for relief.

Neither can the GSIS through its General Manager, the respondent, invoke the right to privacy of its borrowers. The right is purely personal in nature [Cf. *Atkinson v. John Doherty & Co.*, 121 Mich 372, 80 N.W. 285, 46 L.R.A. 219 (1899); *Schuyler v. Curtis*, 147 N.Y. 434, 42 N.E. 22, 31 L.R.A. 286 (1895)], and hence may be invoked only by the person whose privacy is claimed to be violated.

It may be observed, however, that in the instant case, the concerned borrowers themselves may not succeed if they choose to invoke their right to privacy, considering the public offices they were holding at the time the loans were alleged to have been granted. It cannot be denied that because of the interest they generate and their newsworthiness, public figures, most especially those holding responsible positions in government, enjoy a more limited right to privacy as compared to ordinary individuals, their actions being subject to closer public scrutiny (cf. *Ayer Productions Pty. Ltd. v. Capulong*, G.R. Nos. 82380 and 82398, April 29, 1988; See also *Cohen v. Marx*, 211 P. 2d 321 (1949).]

Respondent next asserts that the documents evidencing the loan transactions of the GSIS are private in nature and hence, are not covered by the Constitutional right to information on matters of public concern which guarantees "(a)ccess to official records, and to documents, and papers pertaining to official acts, transactions, or decisions" only.

It is argued that the records of the GSIS, a government corporation performing proprietary functions, are outside the coverage of the people's right of access to official records.

It is further contended that since the loan function of the GSIS is merely incidental to its insurance function, then its loan transactions are not covered by the constitutional policy of full public disclosure and the right to information which is applicable only to "official" transactions.

First of all, the "constituent - ministrant" dichotomy characterizing government function has long been repudiated. In *ACCFA v. Confederation of Unions and Government Corporations and Offices* [G.R. Nos. L-21484 and L-23605, November 29, 1969, 30 SCRA 644], the Court said that the government, whether carrying out its sovereign attributes or running some business, discharges the same function of service to the people.

Consequently, that the GSIS, in granting the loans, was exercising a proprietary function would not justify the exclusion of the transactions from the coverage and scope of the right to information.

Moreover, the intent of the members of the Constitutional Commission of 1986, to include government-owned and controlled corporations and transactions entered into by them within the coverage of the State policy of full

public disclosure is manifest from the records of the proceedings:

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THE PRESIDING OFFICER (Mr. Colayco). Commissioner Suarez is recognized.

MR. SUAREZ. Thank you. May I ask the Gentleman a few questions?

MR. OPLE. Very gladly.

MR. SUAREZ. Thank you.

When we declare "a policy of full public disclosure of all its transactions" - referring to the transactions of the State -and when we say the "State" which I suppose would include all of the various agencies, departments, ministries and instrumentalities of the government

MR. OPLE. Yes, and individual public officers, Mr. Presiding Officer.

MR. SUAREZ. Including government-owned and controlled corporations.

MR. OPLE. That is correct, Mr. Presiding Officer.

MR. SUAREZ. And when we say "transactions" which should be distinguished from contracts, agreements, or treaties or whatever, does the Gentleman refer to the steps leading to the consummation of the contract, or does he refer to the contract itself?

MR. OPLE. The "transactions" used here, I suppose, is generic and, therefore, it can cover both steps leading to a contract, and already a consummated contract, Mr. Presiding Officer.

MR. SUAREZ. This contemplates inclusion of negotiations leading to the consummation of the transaction.

MR. OPLE. Yes, subject only to reasonable safeguards on the national interest.

MR. SUAREZ. Thank you. [V Record of the Constitutional Commission 24-25.] (Underscoring supplied.)

Considering the intent of the framers of the Constitution which, though not binding upon the Court, are nevertheless persuasive, and considering further that government-owned and controlled corporations, whether performing proprietary or governmental functions are accountable to the people, the Court is convinced that transactions entered into by the GSIS, a government-controlled corporation created by special legislation are within the ambit of the people's right to be informed pursuant to the constitutional policy of transparency in government dealings.

In fine, petitioners are entitled to access to the documents evidencing loans granted by the GSIS, subject to reasonable regulations that the latter may promulgate relating to the manner and hours of examination, to the end that damage to or loss of the records may be avoided, that undue interference with the duties of the custodian of the records may be prevented and that the right of other persons entitled to inspect the records may be insured [Legaspi v. Civil Service Commission, *supra* at p. 538, quoting Subido v. Ozaeta, 80 Phil. 383, 387.] The petition, as to the second and third alternative acts sought to be done by petitioners, is meritorious.

However, the same cannot be said with regard to the first act sought by petitioners, i.e., "to furnish petitioners the list of the names of the Batasang Pambansa members belonging to the UNIDO and PDP-Laban who were able to secure clean loans immediately before the February 7 election thru the intercession/marginal note of the then First Lady Imelda Marcos."

Although citizens are afforded the right to information and, pursuant thereto, are entitled to "access to official

records," the Constitution does not accord them a right to compel custodians of official records to prepare lists, abstracts, summaries and the like in their desire to acquire information on matters of public concern.

It must be stressed that it is essential for a writ of mandamus to issue that the applicant has a well-defined, clear and certain legal right to the thing demanded and that it is the imperative duty of defendant to perform the act required. The corresponding duty of the respondent to perform the required act must be clear and specific [*Lemi v. Valencia*, G.R. No. L-20768, November 29, 1968, 126 SCRA 203; *Ocampo v. Subido*, G.R. No. L-28344, August 27, 1976, 72 SCRA 443.] The request of the petitioners fails to meet this standard, there being no duty on the part of respondent to prepare the list requested.

WHEREFORE, the instant petition is hereby granted and respondent General Manager of the Government Service Insurance System is ORDERED to allow petitioners access to documents and records evidencing loans granted to Members of the former Batasang Pambansa, as petitioners may specify, subject to reasonable regulations as to the time and manner of inspection, not incompatible with this decision, as the GSIS may deem necessary.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortez, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Cruz, J., see concurrence.

[*] Art. II, Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full public disclosure of all its transactions involving public interest.

[**] Art XI. Sec. 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

The following provisions of the 1987 Constitution are further indicative of the policy of transparency:

Art. VII, Sec. 12. In case of serious illness of the President, the public shall be informed of the state of his health. The members of the Cabinet in charge of national security and foreign relations and the Chief of Staff of the Armed Forces of the Philippines, shall not be denied access to the President during such illness.

Art. XI, Sec. 17. A public officer or employee shall, upon assumption of office and as often thereafter as maybe required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

Art. XII, Sec. 21. Foreign loans may only be incurred in accordance with law and the regulation of the monetary authority. Information on foreign loans obtained or guaranteed by the Government shall be made available to the public.

CONCURRING

CRUZ, J.,

Instead of merely affixing my signature to signify my concurrence, I write this separate opinion simply to say I have nothing to add to Justice Irene R. Cortes' exceptionally eloquent celebration of the right to information on matters of public concern.

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