

**ARIEL NON, REX MAGANA, ALVIN AGURA, NORMANDY OCCIANO,
JORGE DAYAON, LOURDES BANARES, BARTOLOME IBASCO,
EMMANUEL BARBA, SONNY MORENO, GIOVANI PALMA, JOSELITO
VILLALON, LUIS SANTO...**

G.R. No. 89317. May 20, 1990

Ponente: CORTES, J.

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CORTES, J.:

Petitioners urge the Court en banc to review and reverse the doctrine laid down in *Alcuaz, et al. v. Philippine School of Business Administration, et al.*, G.R. No. 76353, May 2, 1988, 161 SCRA 7, to the effect that a college student, once admitted by the school, is considered enrolled only for one semester and, hence, may be refused readmission after the semester is over, as the contract between the student and the school is deemed terminated.

Petitioners, students in private respondent Mabini Colleges, Inc. in Daet, Camarines Norte, were not allowed to re-enroll by the school for the academic year 1988-1989 for leading or participating in student mass actions against the school in the preceding semester. The subject of the protests is not, however, made clear in the pleadings.

Petitioners filed a petition in the court a quo seeking their readmission or re-enrollment to the school, but the trial court dismissed the petition in an order dated August 8, 1988, the dispositive portion of which reads:

WHEREFORE, premises considered, and the fact that the ruling in the *Alcuaz vs. PSBA* is exactly on the point at issue in this case but affirming the authority of the school regarding admission of students, save as a matter of compassionate equity - when any of the petitioners would, at the least, qualify for re-enrolment, this petition is hereby DISMISSED.

SO ORDERED. [Rollo, p. 12-A.]

A motion for reconsideration was filed, but this was denied by the trial court on February 24, 1989 in this wise:

Perhaps many will agree with the critical comment of Joaquin G. Bernas, S.J., and that really there must be a better way of treating students and teachers than the manner ruled (not suggested) by the Supreme Court, the Termination of Contract at the end of the semester, that is.

But the applicable rule in this case is that enunciated by the Supreme Court in the case of *Sophia Alcuaz, et al. vs. Philippine School of Business Administration, Quezon City Branch (PSBA), et al.*, G.R. No. 76353, May 2, 1988; that of the termination at the end of the semester, reason for the critical comments of Joaquin G. Bernas, and Doods Santos, who both do not agree with the ruling.

Petitioners' claim of lack of due process cannot prosper in view of their failure to specifically deny respondent's affirmative defenses that "they were given all the chances to air their grievances on February 9, 10, 16, and 18, 1988, and also on February 22, 1988 during which they were represented by Atty. Jose L. Lapak" and that on February 22, 1988, the date of the resumption of classes at Mabini College, petitioners

continued their rally picketing, even though without any renewal permit, physically coercing students not to attend their classes, thereby disrupting the scheduled classes and depriving a great majority of students of their right to be present in their classes.

Against this backdrop, it must be noted that the petitioners waived their privilege to be admitted for re-enrollment with respondent college when they adopted, signed, and used its enrollment form for the first semester of school year 1988-89. Said form specifically states that:

The Mabini College reserves the right to deny admission of students whose scholarship and attendance are unsatisfactory and to require withdrawal of students whose conduct discredits the institution and/or whose activities unduly disrupts or interfere with the efficient operation of the college. Students, therefore, are required to behave in accord with the Mabini College code of conduct and discipline.

In addition, for the same semester, petitioners duly signed pledges which among others uniformly reads:

In consideration of my admission to the Mabini College and of my privileges as student of this institution, I hereby pledge/promise under oath to abide and comply with all the rules and regulations laid down by competent authorities in the College Department or School in which I am enrolled. Specifically:

* * *

3. I will respect my Alma Mater, the Mabini College, which I represent and see to it that I conduct myself in such a manner that the college will not be put to a bad light;

* * *

9. I will not release false or authorized announcement which tend to cause confusion or disrupt the normal appreciation of the college.

Moreover, a clear legal right must first be established for a petition for mandamus to prosper (Sec. 3, Rule 65). It being a mere privilege and not a legal right for a student to be enrolled or re-enrolled, respondent Mabini College is free to admit or not admit the petitioners for re-enrollment in view of the academic freedom enjoyed by the school in accordance with the Supreme Court rulings in the cases of *Garcia vs. Faculty [Admission Committee]* (G.R. No. 40779, November 28, 1975) and *Tangonon vs. Pano, et al.* (L-45157, June 27, 1985).

WHEREFORE, premises and jurisprudence considered, and for lack of merit, the motion for reconsideration of the order of this Court dated August 8, 1988 is hereby DENIED.

SO ORDERED. [Rollo, pp. 15-16.]

Hence, petitioners filed the instant petition for certiorari with prayer for preliminary mandatory injunction.

The case was originally assigned to the Second Division of the Court, which resolved on April 10, 1989 to refer the case to the Court of Appeals for proper determination and disposition. The Court of Appeals ordered respondents to comment on the petition and set the application for issuance of a writ of preliminary mandatory injunction for hearing. After considering the comment and hearing the injunction application, the Court of Appeals resolved on May 22, 1989 to certify the case back to the Supreme Court considering that only pure questions of law were raised.

The case was assigned to the Third Division of the Court, which then transferred it to the Court en banc on August 21, 1989 considering that the issues raised are jurisdictional. On September 14, 1989, the Court en banc accepted the case and required respondents to comment.

Respondents filed their comment on November 13, 1989. Petitioners were required to reply. As reply, they filed a

pleading entitled "Counter-Comment," to which respondents filed a rejoinder entitled "Reply to Counter-Comment." To this, petitioners filed a "Rejoinder to Reply."

The issues having been joined, the case was deemed submitted.

At the heart of the controversy is the doctrine encapsulated in the following excerpt from *Alcuaz*:

It is beyond dispute that a student once admitted by the school is considered enrolled for one semester. It is provided in Paragraph 137 Manual of Regulations for Private Schools, that when a college student registers in a school, it is understood that he is enrolling for the entire semester. Likewise, it is provided in the Manual, that the "written contracts" required for college teachers are for "one semester." It is thus evident that after the close of the first semester, the PSBA-QC no longer has any existing contract either with the students or with the intervening teachers. Such being the case, the charge of denial of due process is untenable. It is a time-honored principle that contracts are respected as the law between the contracting parties (*Henson vs. Intermediate Appellate Court, et al.*, G.R. No. 72456, February 19, 1987, citing: *Castro vs. Court of Appeals*, 99 SCRA 722; *Escano vs. Court of Appeals*, 100 SCRA 197). The contract having been terminated, there is no more contract to speak of. The school cannot be compelled to enter into another contract with said students and teachers. "The courts, be they the original trial court or the appellate court, have no power to make contracts for the parties." (*Henson vs. Intermediate Appellate Court, et al.*, supra). [At 161 SCRA 17-18; underscoring supplied.]

In *Alcuaz*, the Second Division of the Court dismissed the petition filed by the students, who were barred from re-enrolling after they led mass assemblies and put up barricades, but it added that "in the light of compassionate equity, students who were, in view of the absence of academic deficiencies, scheduled to graduate during the school year when this petition was filed, should be allowed to re-enroll and to graduate in due time." [At 161 SCRA 22.] Mr. Justice Sarmiento dissented from the majority opinion.

A motion for reconsideration was filed by the dismissed teachers in *Alcuaz*. The students did not move for reconsideration. The Court en banc, to which the case had been transferred, denied the motion for reconsideration in a Resolution dated September 29, 1989, but added as an obiter dictum:

In conclusion, We wish to reiterate that while We value the right of students to complete their education in the school or university of their choice, and while We fully respect their right to resort to rallies and demonstrations for the redress of their grievances and as part of their freedom of speech and their right to assemble, still such rallies, demonstrations, and assemblies must always be conducted peacefully, and without resort to intimidation, coercion, or violence. Academic freedom in all its forms, demands the full display of discipline. To hold otherwise would be to subvert freedom into degenerate license.

The majority's failure to expressly repudiate the "termination of contract" doctrine enunciated in the decision provoked several dissents on that issue. Although seven (7) members of the Court* disagreed with the Second Division's dismissal of the students' petition, a definitive ruling on the issue could not have been made because no timely motion for reconsideration was filed by the students. (As stated above, the motion for reconsideration was filed by the dismissed teachers.)

Be that as it may, the reassessment of the doctrine laid down in *Alcuaz*, insofar as it allowed schools to bar the readmission or re-enrollment of students on the ground of termination of contract, shall be made in this case where the issue is squarely raised by petitioners [Petition, p. 4; Rollo, p. 5.]

Initially, the case at bar must be put in the proper perspective. This is not a simple case of a school refusing readmission or re-enrollment of returning students. Undisputed is the fact that the refusal to readmit or re-enroll petitioners was decided upon and implemented by school authorities as a reaction to student mass actions directed against the school. Petitioners are students of respondent school who, after leading and participating in student

protests, were denied readmission or re-enrollment for the next semester. This is a case that focuses on the right to speech and assembly as exercised by students vis-a-vis the right of school officials to discipline them.

Thus, although respondent judge believed himself bound by the ruling in *Alcuaz* [Order dated August 8, 1988; Rollo, pp. 12-12-A], he actually viewed the issue as a conflict between students' rights and the school's power to discipline them, to wit:

Students should not be denied their constitutional and statutory right to education, and there is such denial when students are expelled or barred from enrollment for the exercise of their right to free speech and peaceable assembly and/or subjected to disciplinary action without abiding with the requirements of due process. Also, it is understandable for student leaders to let loose extremely critical and, at times, vitriolic language against school authorities during a student rally.

But the right of students is no license and not without limit . . . [Order of February 24, 1989; Rollo, p. 13.]

1. The Student Does Not Shed His Constitutionally Protected Rights at the Schoolgate.

Central to the democratic tradition which we cherish is the recognition and protection of the rights of free speech and assembly. Thus, our Constitution provides:

Sec. 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances. [Art. III.]

This guarantee is not peculiar to the 1987 Constitution. A similar provision was found in the 1973 Constitution, as amended [Art. VI, sec. 9], the 1935 Constitution, as amended [Art. III, sec. 8], the Philippine Autonomy Act (Jones Law) [Sec. 3, para. 13], and the Philippine Bill of 1902 [Sec. 15, para. 13.] Thus, as early as 1907, the Court in *People v. Apurado*, 7 Phil. 422, upheld the right to speech and assembly to overturn a conviction for sedition. It said:

Section 5 of Act No. 292 is as follows:

All persons who rise publicly and tumultuously in order to attain by force or outside of legal methods any of the following objects are guilty of sedition:

* * *

2. To prevent the Insular Government, or any provincial or municipal government or any public official, from freely exercising its or his duties or the due execution of any judicial or administrative order.

But this law must not be interpreted so as to abridge "the freedom of speech" or "the right of the people peaceably to assemble and petition the Government for redress of grievances" guaranteed by the express provisions of section 5 of "the Philippine Bill."

* * *

It is rather to be expected that more or less disorder will mark the public assembly of the people to protest against grievances whether real or imaginary, because on such occasions feeling is always wrought to a high pitch of excitement, and the greater the grievance and the more intense the feeling, the less perfect, as a rule, will be the disciplinary control of the leaders over their irresponsible followers. 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 a snare and the attempt to exercise it on the most righteous occasion and in the most peaceable manner would expose all those who took part therein to the severest 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, but the utmost discretion must be exercised in drawing the line between disorderly and seditious conduct and between an essentially peaceable assembly and a tumultuous uprising. [At pp. 424, 426.]

That the protection to the cognate rights of speech and assembly guaranteed by the Constitution is similarly available to students is well-settled in our jurisdiction. In the leading case of *Malabanan v. Ramento*, G.R. No. 62270, May 21, 1984, 129 SCRA 359, the Court, speaking through Mr. Chief Justice Fernando in an en banc decision, declared:

* * *

4. Petitioners invoke their rights to peaceable assembly and free speech. They are entitled to do so. They enjoy like the rest of the citizens the freedom to express their views and communicate their thoughts to those disposed to listen in gatherings such as was held in this case. They do not, to borrow from the opinion of Justice Fortas in *Tinker v. Des Moines Community School District*, "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." While, therefore, the authority of educational institutions over the conduct of students must be recognized, it cannot go so far as to be violative of constitutional safeguards. [At pp. 367-368.]

The facts in *Malabanan* are only too familiar in the genre of cases involving student mass actions:

... Petitioners were officers of the Supreme Student Council of respondent (Gregorio Araneta) University. They sought and were granted by the school authorities a permit to hold a meeting from 8:00 A.M. to 12:00 P.M. on August 27, 1982. Pursuant to such permit, along with other students, they held a general assembly at the Veterinary Medicine and Animal Science (VMAS), the place indicated in such permit, not in the basketball court as therein stated but at the second floor lobby. At such gathering they manifested in vehement and vigorous language their opposition to the proposed merger of the Institute of Animal Science with the Institute of Agriculture. At 10:30 A.M., the same day, they marched toward the Life Science building and continued their rally. It was outside the area covered by their permit. They continued their demonstration, giving utterance to language severely critical of the University authorities and using megaphones in the process. There was, as a result, disturbance of the classes being held. Also, the non-academic employees, within hearing distance, stopped their work because of the noise created. They were asked to explain on the same day why they should not be held liable for holding an illegal assembly. Then on September 9, 1982, they were informed through a memorandum that they were under preventive suspension for their failure to explain the holding of an illegal assembly in front of the Life Science Building. The validity thereof was challenged by petitioners both before the Court of First Instance of Rizal in a petition for mandamus with damages against private respondents and before the Ministry of Education, Culture, and Sports. On October 20, 1982, respondent Ramento, as Director of the National Capital Region, found petitioners guilty of the charge of having violated par. 146(c) of the Manual for Private Schools more specifically their holding of an illegal assembly which was characterized by the violation of the permit granted resulting in the disturbance of classes and oral defamation. The penalty was suspension for one academic year . . . [At pp. 363-364.]

The Court found the penalty imposed on the students too severe and reduced it to a one-week suspension.

The rule laid down in *Malabanan* was applied with equal force in three other en banc decisions of the Court.

In *Villar v. Technological Institute of the Philippines*, G.R. No. 69198, April 17, 1985, 135 SCRA 706, the Court reiterated that the exercise of the freedom of assembly could not be a basis for barring students from enrolling. It enjoined the school and its officials from acts of surveillance, blacklisting, suspension and refusal to re-enroll. But the Court allowed the non-enrollment of students who clearly incurred marked academic deficiency, with the following caveat:

* * *

4. The academic freedom enjoyed by "institutions of higher learning" includes the right to set academic standards to determine under what circumstances failing grades suffice for the expulsion of students. Once it has done so, however, that standard should be followed meticulously. It cannot be utilized to discriminate against those students who exercise their constitutional rights to peaceable assembly and free speech. If it does so, then there is a legitimate grievance by the students thus prejudiced, their right to the equal protection clause being disregarded. [At p. 711.]

In *Arreza v. Gregorio Araneta University Foundation*, G.R. No. 62297, June 19, 1985, 137 SCRA 94, a case arising from almost the same facts as those in *Malabanan*, the Court rejected "the infliction of the highly-disproportionate penalty of denial of enrollment and the consequent failure of senior students to graduate, if in the exercise of the cognate rights of free speech and peaceable assembly, improper conduct could be attributed to them." [At p. 98.]

In *Guzman v. National University*, G.R. No. 68288, July 11, 1986, 142 SCRA 699, respondent school was directed to allow the petitioning students to re-enroll or otherwise continue with their respective courses, without prejudice to any disciplinary proceedings that may be conducted in connection with their participation in the protests that led to the stoppage of classes.

2. Permissible Limitations on Student Exercise of Constitutional Rights Within the School.

While the highest regard must be afforded the exercise of the rights to free speech and assembly, this should not be taken to mean that school authorities are virtually powerless to discipline students. This was made clear by the Court in *Malabanan*, when it echoed *Tinker v. Des Moines Community School District*, 393 US 503, 514: "But conduct by the student, in class or out of it, which for any reason - whether it stems from time, place, or type of behavior - materially disrupts classwork or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech."

Thus, in *Malabanan*, the Court said:

* * *

8. It does not follow, however, that petitioners can be totally absolved for the events that transpired. Admittedly, there was a violation of the terms of the permit. The rally was held at a place other than that specified, in the second floor lobby, rather than the basketball court, of the VMAS building of the University. Moreover, it was continued longer than the period allowed. According to the decision of respondent Ramento, the "concerted activity [referring to such assembly] went on until 5:30 p.m." Private respondents could thus, take disciplinary action. . . . [At pp. 370-371.]

But, as stated in *Guzman*, the imposition of disciplinary sanctions requires observance of procedural due process. Thus:

. . . There are withal minimum standards which must be met to satisfy the demands of procedural due process; and these are, that (1) the students must be informed in writing of the nature and cause of any accusation against them; (2) they shall have the right to answer the charges against them, with the assistance of counsel, if desired; (3) they shall be informed of the evidence against them; (4) they shall have the right to adduce evidence in their own behalf; and (5) the evidence must be duly considered by the investigating committee or official designated by the school authorities to hear and decide the case. [At pp. 706-707.]

Moreover, the penalty imposed must be proportionate to the offense committed. As stated in *Malabanan*, "[i]f the concept of proportionality between the offense committed and sanction imposed is not followed, an element of

arbitrariness intrudes." [At p. 371.]

3. Circumventing Established Doctrine.

Malabanan was decided by the Court in 1984. Since then, student mass actions have escalated not only because of political events that unfurled but also because of the constantly raging controversy over increases in tuition fees. But the over-eager hands of some school authorities were not effectively tied down by the ruling in Malabanan. Instead of suspending or expelling student leaders who fell into disfavor with school authorities, a new variation of the same stratagem was adopted by the latter: refusing the students readmission or re-enrollment on grounds not related to their alleged "misconduct" of "illegal assembly" in leading or participating in student mass actions directed against the school. Thus, the spate of expulsions or exclusions due to "academic deficiency."

4. The Nature of the Contract Between a School and its Student.

The Court, in Alcuaz, anchored its decision on the "termination of contract" theory. But it must be repeatedly emphasized that the contract between the school and the student is not an ordinary contract. It is imbued with public interest, considering the high priority given by the Constitution to education and the grant to the State of supervisory and regulatory powers over all educational institutions [See Art. XIV, secs. 1-2, 4(1).]

Respondent school cannot justify its actions by relying on Paragraph 137 of the Manual of Regulations for Private Schools, which provides that "[w]hen a student registers in a school, it is understood that he is enrolling . . . for the entire semester for collegiate courses," which the Court in Alcuaz construed as authority for schools to refuse enrollment to a student on the ground that his contract, which has a term of one semester, has already expired.

The "termination of contract" theory does not even find support in the Manual. Paragraph 137 merely clarifies that a college student enrolls for the entire semester. It serves to protect schools wherein tuition fees are collected and paid on an installment basis, i.e. collection and payment of the downpayment upon enrollment and the balance before examinations. Thus, even if a student does not complete the semester for which he was enrolled, but has stayed on for more than two weeks, he may be required to pay his tuition fees for the whole semester before he is given his credentials for transfer. This is the import of Paragraph 137, subsumed under Section VII on Tuition and Other Fees, which in its totality provides:

137. When a student registers in a school, it is understood that he is enrolling for the entire school year for elementary and secondary courses, and for the entire semester for collegiate courses. A student who transfers or otherwise withdraws, in writing, within two weeks after the beginning of classes and who has already paid the pertinent tuition and other school fees in full or for any length of time longer than one month may be charged ten per cent of the total amount due for the term if he withdraws within the first week of classes, or twenty per cent if within the second week of classes, regardless of whether or not he has actually attended classes. The student may be charged all the school fees in full if he withdraws anytime after the second week of classes. However, if the transfer or withdrawal is due to a justifiable reason, the student shall be charged the pertinent fees only up to and including the last month of attendance.

Clearly, in no way may Paragraph 137 be construed to mean that the student shall be enrolled for only one semester, and that after that semester is over his re-enrollment is dependent solely on the sound discretion of the school. On the contrary, the Manual recognizes the right of the student to be enrolled in his course for the entire period he is expected to complete it. Thus, Paragraph 107 states:

Every student has the right to enroll in any school, college or university upon meeting its specific requirement and reasonable regulation: Provided, that except in the case of academic delinquency and violation of disciplinary regulation, the student is presumed to be qualified for enrolment for the entire period he is expected to complete his course without prejudice to his right to transfer.

This "presumption" has been translated into a right in Batas Pambansa Blg. 232, the "Education Act of 1982." Section 9 of this act provides:

SEC. 9. Rights of Students in School. - In addition to other rights, and subject to the limitations prescribed by law and regulations, students and pupils in all schools shall enjoy the following rights:

* * *

2. The right to freely choose their field of study subject to existing curricula and to continue their course therein up to graduation, except in cases of academic deficiency, or violation of disciplinary regulations.

* * *

5. Academic Freedom Not a Ground for Denying Students' Rights.

Respondent judge, in his order dated February 24, 1989, stated that "respondent Mabini College is free to admit or not admit the petitioners for re-enrollment in view of the academic freedom enjoyed by the school" [Rollo, p. 16.] To support this conclusion, he cited the cases of *Garcia v. The Faculty Admission Committee, Loyola School of Theology*, G.R. No. L-40779, November 28, 1975, 68 SCRA 277, and *Tangonan v. Pano*, G.R. No. L-45157, June 27, 1985, 137 SCRA 245, where the Court emphasized the institutions' discretion on the admission and enrollment of students as a major component of the academic freedom guaranteed to institutions of higher learning.

These cases involve different facts and issues. In *Garcia*, the issue was whether a female lay student has a clear legal right to compel a seminary for the priesthood to admit her for theological studies leading to a degree. In *Tangonan*, the issue was whether a nursing student, who was admitted on probation and who has failed in her nursing subjects, may compel her school to readmit her for enrollment.

Moreover, respondent judge loses sight of the Court's unequivocal statement in *Villar* that the right of an institution of higher learning to set academic standards cannot be utilized to discriminate against students who exercise their constitutional rights to speech and assembly, for otherwise there will be a violation of their right to equal protection [At p. 711.]

6. Capitol Medical Center and Licup.

In support of the action taken by respondent judge, private respondents cite the recent cases of *Capitol Medical Center, Inc. v. Court of Appeals*, G.R. No. 82499, October 13, 1989, and *Licup v. University of San Carlos*, G.R. No. 85839, October 19, 1989, both decided by the First Division of the Court.

We find the issues raised and resolved in these two decisions dissimilar from the issues in the present case.

In *Capitol Medical Center*, the Court upheld the decision of the school authorities to close down the school because of problems emanating from a labor dispute between the school and its faculty. The Court ruled that the students had no clear legal right to demand the reopening of the school.

On the other hand, in *Licup* the issue resolved was whether or not the students were afforded procedural due process before disciplinary action was taken against them. Thus, the Court stated:

The Court finds no cogent basis for the protestations of petitioners that they were deprived of due process of law and that the investigation conducted was far from impartial and fair. On the contrary, what appears from the record is that the charges against petitioners were adequately established in an appropriate investigation. The imputation of bias and partiality is not supported by the record.

Moreover, *Licup*, far from adopting the "termination of contract" theory in *Alcuaz*, impliedly rejected it, to wit:

While it is true that the students are entitled to the right to pursue their education, the USC as an educational institution is also entitled to pursue its academic freedom and in the process has the concomitant right to see to it that this freedom is not jeopardized.

True, an institution of learning has a contractual obligation to afford its students a fair opportunity to complete the course they seek to pursue. However, when a student commits a serious breach of discipline or fails to maintain the required academic standard, he forfeits his contractual right; and the court should not review the discretion of university authorities. [Underscoring supplied.]

7. The Instant Case.

To justify the school's action, respondents, in their Comment dated November 12, 1989, quoting from their answer filed in the trial court, allege that of the thirteen (13) petitioners eight (8) have incurred failing grades, to wit:

- a) Ariel Non has not only failed in four (4) subjects but also failed to cause the submission of Form 137 which is a pre--requisite to his re-enrollment and to his continuing as a student of Mabini;
- b) Rex Magana not only has failed in one (1) subject but also has incomplete grades in four (4) subjects as well as no grades in two (2) subjects;
- c) Elvin Agura failed in two (2) subjects and has three (3) incomplete grades;
- d) Emmanuel Barba has failed in one (1) subject, and has to still take CMT 11 to 22. He is already enrolled at Ago Foundation;
- e) Joselito Villalon has incomplete grades in nine (9) subjects;
- f) Luis Santos has failed in one (1) subject;
- g) George Dayaon has failed in four (4) subjects and has to remove the incomplete grade in one (1) subject;
- h) Daniel Torres has failed in five (5) subjects, has to remove incomplete grades in five (5) more subjects, and has no grade in one (1) subject. [Rollo, p. 79.]

Petitioners have not denied this, but have countered this allegation as follows:

* * *

(11) Petitioners were and are prepared to show, among others, that:

- a) Three of the 13 of them were graduating. (Admitted in the Answer.)
- b) Their academic deficiencies, if any, do not warrant non-readmission. (The Answer indicates only 8 of the 13 as with deficiencies.)
- c) Their breach of discipline, if any, was not serious.
- d) The improper conduct attributed to them was during the exercise of the cognate rights of free speech and peaceable assembly, particularly a February 1988 student rally. (The crux of the matter, as shown even in the Answer.)
- e) There was no due investigation that could serve as basis for disciplinary action. (In effect, admitted in the Answer; even Alcuaz required due process.)
- f) Respondents admit students with worse deficiencies - a clear case of discrimination against petitioners for their role in the student rally. (An equal protection question.)

g) Respondent school is their choice institution near their places of residence which they can afford to pay for tertiary education, of which they have already lost one-and-a-half schoolyears - in itself punishment enough. [Rollo, p. 86.]

Clearly, the five (5) students who did not incur failing marks, namely, Normandy Occiano, Lourdes Banares, Bartolome Ibasco, Sonny Moreno and Giovani Palma, were refused re-enrollment without just cause and, hence, should be allowed to re-enroll.

On the other hand, it does not appear that the petitioners were afforded due process, in the manner expressed in *Guzman*, before they were refused re-enrollment. In fact, it would appear from the pleadings that the decision to refuse them re-enrollment because of failing grades was a mere afterthought. It is not denied that what incurred the ire of the school authorities was the student mass actions conducted in February 1988 and which were led and/or participated in by petitioners. Certainly, excluding students because of failing grades when the cause for the action taken against them undeniably related to possible breaches of discipline not only is a denial of due process but also constitutes a violation of the basic tenets of fair play.

Moreover, of the eight (8) students with failing grades, some have only one or two failures, namely, Rex Magana, Elvin Agura, Emmanuel Barba, and Luis Santos. Certainly, their failures cannot be considered marked academic deficiency within the context of the Court's decision in *Villar*.

Then, as to the students who incurred several failing grades, namely, Ariel Non, Joselito Villalon, George (Jorge) Dayaon, and Daniel Torres, it is not clear from respondents' enumeration whether the failures were incurred in only one semester or through the course of several semesters of study in the school. Neither are the academic standards of respondent school, from which we can gauge whether or not these students are academically deficient, alleged by respondents. Thus, while the prerogative of schools to set academic standards is recognized, we cannot affirm respondent school's action as to petitioners Non, Villalon, Dayaon and Torres because of insufficient information.

With regard to petitioner Emmanuel Barba who respondents claim has enrolled in Ago Foundation, such fact alone, if true, will not bar him from seeking readmission in respondent school.

However, these should not be taken to mean that no disciplinary action could have been taken against petitioners for breach of discipline if the facts had so warranted. In line with the Court's ruling in *Malabanan*, petitioners could have been subjected to disciplinary proceedings in connection with the February 1988 mass actions. But the penalty that could have been imposed must be commensurate to the offense committed and, as set forth in *Guzman*, it must be imposed only after the requirements of procedural due process have been complied with. This is explicit from the Manual of Regulations for Private Schools, which provides in Paragraph 145 that "[n]o penalty shall be imposed upon any student, except for cause as defined in this Manual and/or in the school's rules and regulations duly promulgated and only after due investigation shall have been conducted."

But this matter of disciplinary proceedings and the imposition of administrative sanctions have become moot and academic. Petitioners, who have been refused readmission or re-enrollment and who have been effectively excluded from respondent school for four (4) semesters, have already been more than sufficiently penalized for any breach of discipline they might have committed when they led and participated in the mass actions that, according to respondents, resulted in the disruption of classes. To still subject them to disciplinary proceedings would serve no useful purpose and would only further aggravate the strained relations between petitioners and the officials of respondent school which necessarily resulted from the heated legal battle here, in the Court of Appeals and before the trial court.

WHEREFORE, the petition is GRANTED. The orders of respondent judge dated August 8, 1988 and February

24, 1989 are hereby ANNULLED. Respondent Mabini College is ORDERED to readmit and to allow the re-enrollment of petitioners, if they are still so minded, without prejudice to its taking the appropriate action as to petitioners Ariel Non, Joselito Villalon, George (Jorge) Dayaon and Daniel Torres, if it is shown by their records (Form 137) that they have failed to satisfy the school's prescribed academic standards.

SO ORDERED.

Fernan, C.J., Narvasa, Gutierrez, Jr., Cruz, Feliciano, Paras, Gancayco, Bidin, Medialdea, and Regalado, JJ., concur.

Melencio-Herrera, Padilla, and Sarmiento, JJ., see concurring opinion.

Grino-Aquino, J., on leave.

* Mr. Chief Justice Fernan, Mr. Justice Narvasa, Mme. Justice Herrera, Mr. Justice Cruz, Mr. Justice Feliciano, Mr. Justice Sarmiento, and Mme. Justice Cortes.

Non vs Hon. Dames II : 89317 : May 20, 1990 : J. Melencio-Herrera : En Banc : Concurring Opinion Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

CONCURRING OPINION

MELENCIO-HERRERA, J.:

Like Mr. Justice Teodoro R. Padilla, I had concurred in the majority opinion in *Alcuaz, et al., vs. Philippine School of Business Administration, et al.*, G. R. No. 76353, 2 May 1988, 161 SCRA 7.

But, as I had expressed in my vote on the Motion for Reconsideration in the said *Alcuaz* case "Except for the general statement that students' enrollment is limited to per semester, I concur."

In other words, I agree with Mme. Justice Cortes that the "termination of contract doctrine" should be overturned for being a doctrinal error. It is now clear (it was quoted out of context before) that paragraph 137 of the Manual of Regulations for Public Schools falls under Section VII on Tuition and Other Fees and is intended merely to protect schools wherein tuition fees are collected and paid on installment basis. It cannot be construed to mean that a student shall be enrolled for only one semester.

As to the power of discipline, my view still is that schools should retain that prerogative, with the caveat that the penalty they impose be proportionate to the offense committed.

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CONCURRING OPINION

PADILLA, J.:

I concurred in the majority opinion in *Alcuaz, et al. vs. Philippine School of Business Administration, et al.*, G.R. No. 76353, 2 May 1988, 161 SCRA 7 including therefore that portion of the opinion which held that under par. 137, Manual of Regulations for Private Schools, a college student in a private school is enrolled only for one (1) semester and that after each semester “the school cannot be compelled to enter into another contract with said students x x x.”

However, after carefully considering the decision penned by Madame Justice Cortes in the case at bar, I am inclined to agree with her that “the contract between the school and the students is not an ordinary contract. It is imbued with public interest, considering the high priority given by the Constitution to education x x x” (p. 15, Decision).

It would indeed appear that, consistent with this constitutional priority given to education, par. 107 of the Manual of Regulations for Private Schools should be underscored. It provides that every student has the right to enroll in any school college or university upon meeting its specific requirements and reasonable regulations; x x x and that “the student is presumed to be qualified for enrollment for the entire period he is expected to complete the course, without prejudice to his right to transfer.”

It should be stressed, however, that this right of students to enroll is not designed to leave schools completely helpless to deny enrollment or re-enrollment. For, par. 107 itself of the Manual of Regulations for Private Schools still recognizes the right of the school to refuse enrollment in case of academic deficiency or violation of disciplinary regulations of the school.

Non vs Hon. Dames II : 89317 : May 20, 1990 : J. Sarmiento : En Banc : Concurring Opinion Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:.*{behavior:url(#ieooui) } /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

CONCURRING OPINION

SARMIENTO, J.:

I have always held that schools are not free to penalize, by administrative sanction or outright expulsion, students on account alone of the fact that they had taken part in mass actions or assemblies.[1]

Students, as all persons, enjoy freedom of speech and assembly, a right granted by the Constitution, and one nobody may abridge. The opinion of the majority reaffirms this fundamental principle.

This case also clarifies the true import of Paragraph 137 of the Manual of Regulations for Private Schools, i.e., that it is intended merely to enable schools to collect fees for the entire semester although the student may not have completed the semester. But in no way may learning institutions use the provision as an excuse to dismiss students after one semester on the ground of termination of contract.

The "termination of contract" theory espoused by *Alcuaz v. Philippine School of Business Administration*[2] has indeed allowed schools to circumvent the guarantees of the Constitution by denying "erring" students of their right to enroll, when the single "error" committed by the students was to participate in political activities. As I

said, our students have as much right to disagree--whether against school policies or government programs, and whether in or out of the school compound--and no prior or subsequent penalty may be inflicted on account of such acts alone.

To be sure, the school may punish students for breach of discipline, as, say, for breaking chairs or window panes or for disrupting classes in the course of a demonstration, but they may be penalized for those actions alone and not because of the content of their speech or the vociferousness with which it was said.[3] Moreover, violations of school discipline must be judged on a case to case basis and measured depending on gravity before school authorities may legitimately act. I do not think that the fact that a demonstration has disrupted ongoing classes is a ground for penalizing students taking part therein because a demonstration, from its very nature, is likely to disrupt classes.[4] The school must convincingly show that the demonstrators had deliberately turned to lawlessness, say, by barricading the schoolgate or the classroom entrances or otherwise prevented non-demonstrating students or members of the faculty from attending a class or finishing one by threats or intimidation. Only in that sense may school heads validly invoke "disruption of classes."

As far as discipline is concerned, this Court has laid down guidelines for proper school action. In *Malabanan v. Ramento*, as in the present case, we held that the punishment must fit the crime, and in *Guzman v. National University*,[5] we ruled that before any penalty may be imposed, the students concerned should be allowed to be heard by themselves or representatives. In all cases, the courts should be wary--and the school authorities must themselves convince the judge--that punishment meted out is due to a real injury done to the school and not for the fact that the students had simply expressed their constitutional right to disagree.

As to failing grades, I agree that, as we held in *Villar v. Technological Institute of the Philippines*,[6] academic deficiency is a legal basis for, among other things, expulsion. However, as Villar warned, educational institutions must set standards "to determine under what circumstances failing grades suffice for the expulsion of students,"[7] and that such standards "should be followed meticulously,"[8] and that they "cannot be utilized to discriminate against those students who exercise their constitutional rights to peaceable assembly and free speech." [9] What this decision makes plain is that the school must pre-set the ground rules for either suspension or expulsion of students by reason of failing marks which must be observed with reasonable uniformity. The school can not use it to spring surprises on students with failing grades, who also happen to be politically active in the campus, after the authorities had long tolerated their poor performance. In this case, our courts must also exercise caution that, as "disruption of classes", resort to "failing grades" is not done to evade the constitutional mandates.

I take note of the increasing practice by school heads to simply bar students from enrollment for a host of excuses as a result of their exercise of constitutional rights. I am gratified that the majority has put an end to this practice.

I concur fully with Mme. Justice Irene Cortes' ponencia.

[1] See *Alcuaz v. Philippine School of Business Administration*, No. 76353, May 2, 1988, 161 SCRA 7, Sarmiento, J. Dissenting.

[2] *Supra*.

[3] *Malabanan v. Ramento*, No. 62270, May 21, 1984, 129 SCRA 359.

[4] See *US v. Apurado*, 7 Phil. 422 (1907).

[5] No. 68288, July 11, 1986, 142 SCRA 699.

[6] No. 69198, April 17, 1985, 135 SCRA 706.

[7] Supra, 711.

[8] Supra.

[9] Supra.

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