

MA. CARMEN G. AQUINO-SARMIENTO, PETITIONER, VS. MANUEL L. MORATO (IN HIS CAPACITY AS CHAIRMAN OF THE MTRCB) AND THE MOVIE & TELEVISION REVIEW AND CLASSIFICATION BOARD, RESPONDENTS.

G.R. No. 92541. November 13, 1991

Ponente: BIDIN, J.

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BIDIN, J.:

At issue in this petition is the citizen's right of access to official records as guaranteed by the constitution.

In February 1989, petitioner, herself a member of respondent Movie and Television Review and Classification Board (MTRCB), wrote its records officer requesting that she be allowed to examine the board's records pertaining to the voting slips accomplished by the individual board members after a review of the movies and television productions. It is on the basis of said slips that films are either banned, cut or classified accordingly.

Acting on the said request, the records officer informed petitioner that she has to secure prior clearance from respondent Manuel Morato, as chairman of MTRCB, to gain access to the records sought to be examined.

Petitioner's request was eventually denied by respondent Morato on the ground that whenever the members of the board sit in judgment over a film, their decisions as reflected in the individual voting slips partake the nature of conscience votes and as such, are purely and completely private and personal. It is the submission of respondents that the individual voting slips is the exclusive property of the member concerned and anybody who wants access thereto must first secure his (the member's) consent, otherwise, a request therefor may be legally denied.

Petitioner argues, on the other hand, that the records she wishes to examine are public in character and other than providing for reasonable conditions regulating the manner and hours of examination, respondents Morato and the classification board have no authority to deny any citizen seeking examination of the board's records.

On February 27, 1989, respondent Morato called an executive meeting of the MTRCB to discuss, among others, the issue raised by petitioner. In said meeting, seventeen (17) members of the board voted to declare their individual voting records as classified documents which rendered the same inaccessible to the public without clearance from the chairman. Thereafter, respondent Morato denied petitioner's request to examine the voting slips. However, it was only much later, i.e., on July 27, 1989, that respondent Board issued Resolution No. 10-89 which declared as confidential, private and personal, the decision of the reviewing committee and the voting slips of the members.

Petitioner brought the matter to the attention of the Executive Secretary, which in turn, referred the same to respondent Morato for appropriate comment.

Another incident which gave rise to this petition occurred in a board meeting held on June 22, 1989. In that meeting, respondent Morato told the board that he has ordered some deletions on the movie "Mahirap ang

Magmahal" notwithstanding the fact that said movie was earlier approved for screening by the Board with classification "R-18 without cuts". He explained that his power to unilaterally change the decision of the Review Committee is authorized by virtue of MTRCB Resolution No. 88-1-25 (dated June 22, 1988) which allows the chairman of the board "to downgrade a film (already) reviewed especially those which are controversial."

Petitioner informed the Board, however, that respondent Morato possesses no authority to unilaterally reverse a decision of the review committee under PD 1986 (Creating the Movie and Television Review and Classification Board).

After the matter was referred by the Deputy Executive Secretary to the Justice Secretary, the latter opined that PD 1896 does not vest respondent Morato any authority to unilaterally reverse the decision of the review committee but declined to comment on the constitutionality of Res. No. 10-89 on the ground that the resolution thereof is a judicial prerogative (Rollo, pp. 38-42).

The Justice Secretary's opinion to the contrary notwithstanding, respondent Morato opted to ignore it.

Hence, this petition anchored on the following:

"A. MORATO AND THE MTRCB BY APPROVING AND ENFORCING RESOLUTION NO. 10-89 ACTED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF JURISDICTION BECAUSE THE SAME VIOLATES ARTICLE III SECTION 7 OF THE 1987 CONSTITUTION.

"B. MTRCB RESOLUTION NO. 88-1-25 HAS NO LEGAL BASIS AND CONSTITUTES AN UNLAWFUL DELEGATION OF DISCRETIONARY POWERS

"C. MORATO AND THE MTRCB BY REFUSING TO ABIDE BY OPINION NO. 1 SERIES OF 1990 OF THE SECRETARY OF JUSTICE AND BY INSISTING ON THE VALIDITY OF RESOLUTION NO. 88-1-25 ACTED CAPRICIOUSLY, ARBITRARILY, IN BAD FAITH, IN EXCESS OF THEIR JURISDICTION, AND WITH GRAVE ABUSE OF DISCRETION."

Petitioner therefore seeks the nullification of 1) MTRCB Resolution No. 88-1-25 which allows the Chairman of the Board to unilaterally downgrade a film (already) reviewed especially those which are controversial and 2) MTRCB RESOLUTION No. 10-89 (dated July 27, 1989) declaring as strictly confidential, private and personal a) the decision of a reviewing committee which previously reviewed a certain film and b) the individual voting slips of the members of the committee that reviewed the film.

Respondents argue at the outset that the instant petition should be dismissed outright for having failed to comply with the doctrine of exhaustion of administrative remedies.

We disagree. The doctrine of exhaustion of administrative remedies simply provides that before a party litigant is allowed resort to the courts, he is required to comply with all administrative remedies available under the law (Rosales v. Court of Appeals, 165 SCRA 344 [1988]). The rationale behind this salutary principle is that for reasons of practical considerations, comity and convenience, the courts of law will not entertain a case until all the available administrative remedies provided by law have been resorted to and the appropriate authorities have been given ample opportunity to act and to correct the errors committed in the administrative level. If the error is rectified, judicial intervention would then be unnecessary.

Nonetheless, the doctrine of exhaustion of administrative remedies is not absolute. The applicability of the principle admits of certain exceptions, such as: 1) when no administrative review is provided by law; 2) when the only question involved is one of law (Valmonte v. Valmonte, 170 SCRA 256 [1989], citing Aguilar v. Valencia, 40 SCRA 210 [1971]; Malabanan v. Ramento, 129 SCRA 359 [1984]; Bagatsing v. Ramirez, 74 SCRA 306; Del Mar v. Philippine Veterans Administration, 51 SCRA 340 [1973]; Pascual v. Provincial Board, 106 Phil. 466

[1959]; 3) where the party invoking the doctrine is guilty of estoppel (*Vda. de Tan v. Veterans' Backpay Commission* [1969]; ; 4) where the challenged administrative action is patently illegal, arbitrary and oppressive (*Azur v. Provincial Board*, 27 SCRA 50 [1969]; *National Development Co. v. Collector of Customs of Manila*, 9 SCRA 429 [1963]; 5) where there is unreasonable delay or official inaction that would greatly prejudice the complainant (*Gravador v. Mamigo*, 20 SCRA 742 [1967]; *Azuelo v. Arnaldo*, 108 Phil. 293 [1960]; 6) where to exhaust administrative review is impractical and unreasonable (*Cipriano v. Marcelino*, 43 SCRA 291); and 7) where the rule of qualified political agency applies (*Demaisip v. Court of Appeals*, 106 Phil. 237 [1906]).

The issue raised in the instant petition is one of law, hence, the doctrine of non-exhaustion of administrative remedy relied upon by respondents is inapplicable and cannot be given any effect. At any rate, records are replete with events pointing to the fact that petitioner adhered to the administrative processes in the disposition of the assailed resolutions of public respondents prior to filing the instant petition by, among others, writing the Executive Secretary and bringing the matter to the attention of the Office of the President (Rollo, pp. 145-147). Respondents' claim that petitioner failed to exhaust administrative remedies must therefore fail.

Having disposed of the procedural objection raised by respondents, We now proceed to resolve the issues raised by petitioner. In this regard, We find respondents' refusal to allow petitioner to examine the records of respondent MTRCB, pertaining to the decisions of the review committee as well as the individual voting slips of its members, as violative of petitioner's constitutional right of access to public records. More specifically, Sec. 7, Art. III of the Constitution provides that:

"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." (underscoring supplied)

As We held in *Legaspi v. Civil Service Commission* (150 SCRA 530 [1987]), this constitutional provision is self-executory and supplies "the rules by means of which the right to information may be enjoyed (*Cooley*, A Treatise on Constitutional Limitations 167 [1927]) by guaranteeing the right and mandating the duty to afford access to sources of information. Hence, the fundamental right therein recognized may be asserted by the people upon the ratification of the constitution without need for any ancillary Act of the Legislature (*Id.* at p. 165). What may be provided for by the Legislature are reasonable conditions and limitations upon the access to be afforded which must, of necessity, be consistent with the declared State policy of full public disclosure of all transactions involving public interest (Constitution, Art. II, Sec. 28)." (See also *Tañada v. Tuvera*, 136 SCRA 27 [1985]; *Valmonte v. Belmonte, Jr.*, 170 SCRA 256 [1989]).

Respondents contend, however, that what is rendered by the members of the board in reviewing films and reflected in their individual voting slip is their individual vote of conscience on the motion picture or television program and as such, makes the individual voting slip purely private and personal; an exclusive property of the member concerned.

The term private has been defined as "belonging to or concerning, an individual person, company, or interest"; whereas, public means "pertaining to, or belonging to, or affecting a nation, state, or community at large" (*People v. Powell*, 274 NW 372 [1937]). May the decisions of respondent Board and the individual members concerned, arrived at in an official capacity, be considered private? Certainly not. As may be gleaned from the decree (PD 1986) creating the respondent classification board, there is no doubt that its very existence is public in character; it is an office created to serve public interest. It being the case, respondents can lay no valid claim to privacy. The right to privacy belongs to the individual acting in his private capacity and not to a governmental agency or officers tasked with, and acting in, the discharge of public duties (See *Valmonte v. Belmonte, Jr.*, *supra.*) There

can be no invasion of privacy in the case at bar since what is sought to be divulged is a product of action undertaken in the course of performing official functions. To declare otherwise would be to clothe every public official with an impregnable mantle of protection against public scrutiny for their official acts.

Further, the decisions of the Board and the individual voting slips accomplished by the members concerned are acts made pursuant to their official functions, and as such, are neither personal nor private in nature but rather public in character. They are, therefore, public records access to which is guaranteed to the citizenry by no less than the fundamental law of the land. Being a public right, the exercise thereof cannot be made contingent on the discretion, nay, whim and caprice, of the agency charged with the custody of the official records sought to be examined. The constitutional recognition of the citizen's right of access to official records cannot be made dependent upon the consent of the members of the board concerned, otherwise, the said right would be rendered nugatory. As stated by this Court in *Subido v. Ozaeta* (80 Phil. 383 [1948]):

"Except, perhaps when it is clear that the purpose of the examination is unlawful, or sheer, idle curiosity, we do not believe it is the duty under the law of registration officers to concern themselves with the motives, reasons, and objects of the person seeking access to the records. It is not their prerogative to see that the information which the records contain is not flaunted before public gaze, or that scandal is not made of it. If it be wrong to publish the contents of the records, it is the legislature and not the officials having custody thereof which is called upon to devise a remedy." (underscoring supplied)

It is significant to point out that this Court in the 1948 case of *Subido v. Ozaeta*, supra, upheld the right to information based on the statutory right then provided in Sec. 56 of the Land Registration Act (Act 496, as amended). Consequently, We see no cogent reason why said right, now constitutionalized, should be given less efficacy and primacy than what the fundamental law mandates.

The Court is not unaware of RA 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees) which provides, among others, certain exceptions as regards the availability of official records or documents to the requesting public, e.g., closed door Cabinet sessions and deliberations of this Court. Suffice it to state, however, that the exceptions therein enumerated find no application in the case at bar. Petitioner's request is not concerned with the deliberations of respondent Board but with its documents or records made after a decision or order has been rendered. Neither will the examination involve disclosure of trade secrets or matters pertaining to national security which would otherwise limit the right of access to official records (See *Legaspi v. Civil Service Commission*, supra).

We are likewise not impressed with the proposition advanced by respondents that respondent Morato is empowered by PD 1986 to unilaterally downgrade or upgrade a film reviewed especially those which are controversial. The pertinent provisions of said decree provides:

"SECTION 4. Decision. - The decision of the BOARD either approving or disapproving for exhibition in the Philippines a motion picture, television program, still and other pictorial advertisement submitted to it for examination and preview must be rendered within a period of ten (10) days which shall be counted from the date of receipt by the BOARD of an application for the purpose x x x.

"For each review session, the Chairman of the Board shall designate a sub-committee composed of at least three BOARD members to undertake the work of review. Any disapproval or deletion must be approved by a majority of the sub-committee members so designated. After receipt of the written decision of the sub-committee, a motion for reconsideration in writing may be made, upon which the Chairman of the Board shall designate a sub-committee of five BOARD members to undertake a second review session, whose decision on behalf of the Board shall be rendered through a majority of the sub-committee members so designated and present at the second review session. This second review session shall be presided over by the

Chairman, or the Vice-Chairman. The decision of the BOARD in the second review session shall be rendered within five (5) days from the date of receipt of the motion for reconsideration.

"Every decision of the BOARD disapproving a motion picture, television program or publicity material for exhibition in the Philippines must be in writing, and shall state the reasons or grounds for such disapproval. No film or motion picture intended for exhibition at the moviehouses or theaters or on television shall be disapproved by reason of its topic, theme or subject matter, but upon the merits of each picture or program considered in its entirety.

"The second decision of the BOARD shall be final, with the exception of a decision disapproving or prohibiting a motion picture or television program in its entirety which shall be appealable to the President of the Philippines, who may himself decide the appeal, or be assisted either by an ad hoc committee he may create or by the Appeals Committee herein created.

"An Appeals Committee in the Office of the President of the Philippines is hereby created composed of a Chairman and four (4) members to be appointed by the President of the Philippines, which shall submit its recommendation to the President. The Office of the Presidential Assistant for Legal Affairs shall serve as the Secretariat of the Appeals Committee.

"The decision of the President of the Philippines on any appealed matter shall be final."

Implementing Rules and Regulations

"SECTION 11. Review by Sub-Committee of Three. - a) A proper application having been filed, the Chairman of the Board shall, as the exigencies of the service may permit, designate a Sub-Committee of at least three Board Members who shall meet, with notice to the applicant, within ten days from receipt of the completed application. The Sub-Committee shall then preview the motion picture subject of the application.

"b). Immediately after the preview, the applicant or his representative shall withdraw to await the results of the deliberation of the Sub-Committee. After reaching a decision, the Sub-Committee shall summon the applicant or his representative and inform him of its decision giving him an opportunity either to request reconsideration or to offer certain cuts or deletions in exchange for a better classification. The decision shall be in writing, stating, in case of disapproval of the film or denial of the classification rating desired or both, the reason or reasons for such disapproval or denial and the classification considered by the Sub-Committee member dissenting from the majority opinion may express his dissent in writing.

"c) The decision including the dissenting opinion, if any, shall immediately be submitted to the Chairman of the Board for transmission to the applicant.

"SECTION 12. Review by Sub-Committee of Five. - Within five days from receipt of a copy of the decision of the Sub-Committee referred to in the preceding section, the applicant may file a motion for reconsideration in writing of that decision. On receipt of the motion, the Chairman of the Board shall designate a Sub-Committee of Five Board Members which shall consider the motion and, within five days of receipt of such motion, conduct a second preview of the film. The review shall; to the extent applicable, follow the same procedure provided in the preceding section.

"SECTION 13. Reclassification. - An applicant desiring a change in the classification rating given his film by either the Sub-Committee of Three or Committee of Five mentioned in the immediately preceding two sections may re-edit such film and apply anew with the Board for its review and reclassification.

"SECTION 14. Appeal. - The decision of the Committee of Five Board Members in the second review shall be final, with the exception of a decision disapproving or prohibiting a motion picture in its entirety which shall be appealable to the President of the Philippines who may himself decide the appeal or refer it to the Appeals Committee in the Office of the President for adjudication.

On the other hand, the powers and functions of the MTRCB Chairman are found in Section 5 of the same decree as follows:

"SEC. 5. Executive Officer. - "The Chairman of the BOARD shall be the Chief Executive Officer of the BOARD. He shall exercise the following functions, powers and duties:

“(a) Execute, implement and enforce the decisions, orders, awards, rules and regulations issued by the BOARD;

“(b) Direct and supervise the operations and the internal affairs of the BOARD;

“(c) Establish the internal organization and administrative procedures of the BOARD, and recommend to the BOARD the appointment of the necessary administrative and subordinate personnel; and

"(d) Exercise such other powers and functions and perform such duties as are not specifically lodged in the BOARD."

It is at once apparent from a reading of the above provisions of PD 1986 that respondent Morato, as Chairman of the MTRCB, is not vested with any authority to reverse or overrule by himself alone a decision rendered by a committee which conducted a review of motion pictures or television programs.

The power to classify motion pictures into categories such as "General Patronage" or "For Adults Only" is vested with the respondent Board itself and not with the Chairman thereof (Sec. 3 [e], PD 1986). As Chief Executive Officer, respondent Morato's function as Chairman of the Board calls for the implementation and execution, not modification or reversal, of the decisions or orders of the latter (Sec. 5 [a], Ibid.). The power of classification having been reposed by law exclusively with the respondent Board, it has no choice but to exercise the same as mandated by law, i.e., as a collegial body, and not transfer it elsewhere or discharge said power through the intervening mind of another. *Delegata potestas non potest delegari* - a delegated power cannot be delegated. And since the act of classification involves an exercise of the Board's discretionary power with more reason the Board cannot, by way of the assailed resolution, delegate said power for it is an established rule in administrative law that discretionary authority cannot be a subject of delegation.

WHEREFORE, the instant petition is GRANTED. Resolution Nos. 10-89 and 88-1-25 issued by the respondent Board are hereby declared null and void.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Griño-Aquino, J., no part.

Romero, J., did not take part in the deliberations.

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