



Republic of the Philippines

Supreme Court

Manila

FIRST DIVISION

MARIO JOSE E. SERENO,
EXECUTIVE DIRECTOR OF
THE ASSOCIATION OF
PETROCHEMICAL
MANUFACTURERS OF THE
PHILIPPINES, INC. (APMP),
Petitioner,

G.R. No. 175210

Present:

- versus -

LEONARDO-DE CASTRO,
Acting Chairman,
*PERALTA
BERSAMIN,
PERLAS-BERNABE,
JARDELEZA, JJ.

COMMITTEE ON TRADE AND
RELATED MATTERS (CTRM) OF
THE NATIONAL ECONOMIC AND
DEVELOPMENT AUTHORITY
(NEDA), COMPOSED OF THE
DIRECTOR-GENERAL OF THE
NEDA SECRETARIAT, THE
EXECUTIVE SECRETARY, THE
SECRETARIES OF TRADE AND
INDUSTRY, FINANCE, FOREIGN
AFFAIRS, AGRICULTURE,
ENVIRONMENT AND NATURAL
RESOURCES, BUDGET AND
MANAGEMENT,
TRANSPORTATION AND
COMMUNICATION, LABOR
AND EMPLOYMENT, AGRARIAN
REFORM, THE GOVERNOR OF
THE BANGKO SENTRAL NG
PILIPINAS AND THE CHAIRMAN
OF THE TARIFF COMMISSION,
AND BRENDA R. MENDOZA IN
HER CAPACITY AS DIRECTOR
OF THE TRADE, INDUSTRY &
UTILITIES STAFF,

Promulgated:

FEB 01 2016

Respondents.

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* Vice Chief Justice Ma. Lourdes P.A. Sereno, per the raffle dated November 7, 2012.

DECISION

BERSAMIN, J.:

The constitutional guarantee to information does not open every door to any and all information, but is rather confined to matters of public concern. It is subject to such limitations as may be provided by law. The State's policy of full public disclosure is restricted to transactions involving public interest, and is tempered by reasonable conditions prescribed by law.

The Case

The petitioner appeals the decision rendered on October 16, 2006 by the Regional Trial Court (RTC), Branch 268, in Pasig City¹ dismissing the petition for *mandamus* he had filed in his capacity as a citizen and as a stakeholder in the Philippine petrochemical industry to compel respondent Committee on Tariff and Related Matters (CTRM) to provide him a copy of the minutes of its May 23, 2005 meeting; as well as to provide copies of all official records, documents, papers and government research data used as basis for the issuance of Executive Order No. 486.²

Antecedents

On May 23, 2005, the CTRM, an office under the National Economic Development Authority (NEDA), held a meeting in which it resolved to recommend to President Gloria Macapagal-Arroyo the lifting of the suspension of the tariff reduction schedule on petrochemicals and certain plastic products, thereby reducing the Common Effective Preferential Tariff (CEPT) rates on products covered by Executive Order (E.O.) No. 161 from 7% or 10% to 5% starting July 2005.³

On June 9, 2005, Wilfredo A. Paras (Paras), then the Chairman of the Association of Petrochemical Manufacturers of the Philippines (APMP), the main industry association in the petrochemical sector, wrote to the CTRM Secretariat, through its Director Brenda Mendoza (Director Mendoza), to request a copy of the minutes of the meeting held on May 23, 2005.

Director Mendoza denied the request through her letter of June 20, 2005,⁴ to wit:

¹ *Rollo*, pp. 37-39; penned by Judge Amelia C. Manalastas.

² *Id.* at 34.

³ *Id.* at 18.

⁴ *Id.* at 95.

With reference to your request for a copy of the minutes and resolution of the Committee on Tariff and Related Matters (CTRM) meeting held on 23 May 2005, our Legal Staff advised that we cannot provide the minutes of the meeting detailing the position and views of different CTRM member agencies. We may, however, provide you with the action taken of the CTRM as follows:

“The CTRM agreed to reduce the CEPT rates on petrochemical resins and plastic products covered under EO 161 from 7%/ 10% to 5% starting July 2005, and to revert the CEPT rates on these products to EO 161 levels once the proposed naphtha cracker plant is in commercial operation.”

The CTRM has yet to confirm the minutes including the action taken during the said meeting since it has not met after 23 May 2005.

The CTRM, again through Director Mendoza, sent a second letter dated August 31, 2005 as a response to the series of letter-requests from the APMP, stating:

The CTRM during its meeting on 14 July 2005 noted that Section 3, Rule IV of the Implementing Rules and Regulations of Republic Act 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees provides that every department, office or agency shall provide official information, records or documents to any requesting public (sic). However, the section also provides exceptions to the rules, such as if ‘...(c) such information, record or document south (sic) falls within the concepts of established privileged or recognized exceptions as may be provided by law or settled policy or jurisprudence...’ The acknowledged limitations to information access under Section 3 (c) include diplomatic correspondence, closed-door Cabinet meetings and executive sessions of either House of Congress, as well as internal deliberations of the Supreme Court (Chavez vs. Presidential Commission on Good Government, 299 SCRA 744)

The CTRM is of the view that the limitation pertaining to closed-door cabinet meetings under Section 3 (c) of the IRR applies to the minutes of the meeting requested by APMP. In view thereof, the CTRM is constrained [not] to provide the said minutes to the APMP.⁵

The APMP sent another letter-request dated October 27, 2005 to the CTRM through Director Mendoza reminding about the legal implications of the refusal to furnish copies of the minutes as in violation of the petitioner’s Constitutional right of access to information on matters of public concern. However, the CTRM continued to refuse access to the documents sought by the APMP.⁶

⁵ Id. at 20-21.

⁶ Id. at 21.

The attitude of the CTRM prompted the petitioner and the APMP to bring the petition for *mandamus* in the RTC to compel the CTRM to provide the copy of the minutes and to grant access to the minutes. The case was docketed as SCA No. 2903.

The APMP, through Paras and Concepcion I. Tanglao, respectively its Chairman and President at the time, sent letters dated December 12, 2005⁷ and January 10, 2006⁸ to the Office of the President (OP), stating the reasons why the recommendation of the CTRM should be rejected, but the OP did not respond to the letters.

Thereafter, the petitioner filed an *Urgent Motion for the Issuance of a Writ of Preliminary Mandatory Injunction* dated January 3, 2006, to which the respondent filed its *Opposition* dated January 26, 2006 and *Motion to Dismiss* dated February 16, 2006.⁹

Meanwhile, President Arroyo signed Executive Order No. 486,¹⁰ dated January 12, 2006, to lift the suspension of the tariff reduction on petrochemical resins and other plastic products under the ASEAN Free Trade Area – Common Effective Preferential Tariff (AFTA-CEPT) Scheme. The relevant portions of E.O. No. 486 read:

WHEREAS, Executive Order 234 dated 27 April 2000, which implemented the 2000-2003 Philippine schedule of tariff reduction of products transferred from the Temporary Exclusion List and the Sensitive List to the Inclusion List of the accelerated CEPT Scheme for the AFTA, provided that the CEPT rates on petrochemicals and certain plastic products will be reduced to 5% on 01 January 2003;

WHEREAS, Executive Order 161 issued on 9 January 2003 provides for the suspension of the application of the tariff reduction schedule on petrochemicals and certain products in 2003 and 2004 only;

WHEREAS, the government recognizes the need to provide an enabling environment for the naphtha cracker plant to attain international competitiveness;

WHEREAS, the NEDA Board approved the lifting of the suspension of the aforesaid tariff reduction schedule on petrochemicals and certain plastic products and the reversion of the CEPT rates on these products to EO 161 (s.2003) levels once the naphtha cracker plant is in commercial operation;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, pursuant to the powers vested

⁷ Id. at 40-51.

⁸ Id. at 52-54.

⁹ Id. at 79.

¹⁰ Id. at 55-59.

in me under Section 402 of the Tariff and Customs Code of 1978 (Presidential Decree No. 1464), as amended, do hereby order:

SECTION 1. The articles specifically listed in *Annex "A"* (Articles Granted Concession under the CEPT Scheme for the AFTA) hereof, as classified under Section 104 of the Tariff and Customs Code of 1978, as amended shall be subject to the ASEAN CEPT rates in accordance with the schedule indicated in Column 4 of *Annex "A"*. The ASEAN CEPT rates so indicated shall be accorded to imports coming from ASEAN Member States applying CEPT concession to the same product pursuant to Article 4 of the CEPT Agreement and its Interpretative Notes.

In its order of May 9, 2006, the RTC denied the *Urgent Motion for the Issuance of a Writ of Preliminary Mandatory Injunction* but directed the parties to file their respective memorandums after noting that the controversy involved a pure question of law.¹¹

Subsequently, the RTC rendered its assailed decision on October 16, 2006¹² dismissing the petition for *mandamus* for lack of merit. It relied on the relevant portions of Section 3 of Rule IV of the Implementing Rules and Regulations of R.A. No. 6713 (*Code of Conduct and Ethical Standards for Public Officials and Employees*), to wit:

Sec 3. Every department, office or agency shall provide official information, records and documents to any requesting public except if:

x x x x

(c) the information, record or document sought falls within the concepts of established privilege or recognized exceptions as may be provided by law or settled policy or jurisprudence;

(d) such information, record or document comprises drafts or decisions, orders, rulings, policies, memoranda, etc.

and relevant portions of Section 7 (c) of the same law, *viz.:*

Section 7. Prohibited Acts and Transactions. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared unlawful:

x x x x

(c) Disclosure and/or misuse of confidential information – Public officials and employees shall not use or divulge confidential or

¹¹ Id. at 79.

¹² Id. at 37-39.

classified information officially known to them by reason of their office and not made available to the public either:

x x x x

(2) To the prejudice of public interest.¹³

The RTC declared that the “CTRM is an advisory body composed of various department heads or secretaries and is classified as cabinet meetings and inter-agency communications;”¹⁴ and that the record of the communications of such body “falls under the category of privileged information because of the sensitive subject matter which could seriously affect public interest.”¹⁵

Hence, this appeal directly to the Court on questions of law.¹⁶

Issues

The petitioner submits the following issues for resolution, namely:

- I. Are meetings of the CTRM and the minutes thereof exempt from the Constitutional right of access to information?
- II. Assuming *arguendo* that the minutes of CTRM meetings are privileged or confidential, is such privilege or confidentiality absolute?
- III. Can privilege or confidentiality be invoked to evade public accountability, or worse, to cover up incompetence and malice?¹⁷

In short, the issue is whether or not the CTRM may be compelled by *mandamus* to furnish the petitioner with a copy of the minutes of the May 23, 2005 meeting based on the constitutional right to information on matters of public concern and the State’s policy of full public disclosure. The request for information was motivated by his desire to understand the basis for the CTRM’s recommendation that allegedly caused tremendous losses to the petrochemical industry through the issuance of E.O. No. 486.

In seeking the nullification of the assailed decision of the RTC, and the consequent release of the minutes and the disclosure of all official records, documents, papers and government research data used as the basis for the issuance of E.O. No. 486, the petitioner invokes the following provisions of the 1987 Constitution and R.A. No. 6713, thusly:

¹³ Id. at 38-39.

¹⁴ Id. at 38.

¹⁵ Id.

¹⁶ Id. at 9-34.

¹⁷ Id. at 24

Section 28 of Article II of the 1987 Constitution:

Section 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.

Section 7 of Article III of the 1987 Constitution:

Section 7. 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.

Section 1 of Article XI of the 1987 Constitution:

Section 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.

Section 5 of R.A. No. 6713:

Section 5. Duties of Public Officials and Employees. – In the performance of their duties, all public officials and employees are under obligation to:

x x x x

(e) Make documents accessible to the public. – All public documents must be made accessible to, and readily available for inspection by, the public within reasonable working hours.

Ruling of the Court

The dismissal of the petition for *mandamus* by the RTC is affirmed.

The constitutional guarantee of the right to information on matters of public concern enunciated in Section 7 of Article III of the 1987 Constitution complements the State's policy of full public disclosure in all transactions involving public interest expressed in Section 28 of Article II of the 1987 Constitution. These provisions are aimed at ensuring transparency in policy-making as well as in the operations of the Government, and at safeguarding the exercise by the people of the freedom of expression. In a

democratic society like ours, the free exchange of information is necessary, and can be possible only if the people are provided the proper information on matters that affect them. But the people's right to information is not absolute. According to *Legaspi v. Civil Service Commission*,¹⁸ the constitutional guarantee to information "does not open every door to any and all information."¹⁹ It is limited to matters of public concern, and is subject to such limitations as may be provided by law.²⁰ Likewise, the State's policy of full public disclosure is restricted to transactions involving public interest, and is further subject to reasonable conditions prescribed by law.²¹

Two requisites must concur before the right to information may be compelled by writ of *mandamus*. Firstly, the information sought must be in relation to matters of public concern or public interest. And, secondly, it must not be exempt by law from the operation of the constitutional guarantee.

As to the first requisite, there is no rigid test in determining whether or not a particular information is of public concern or public interest.²² Both terms cover a wide-range of issues that the public may want to be familiar with either because the issues have a direct effect on them or because the issues "naturally arouse the interest of an ordinary citizen."²³ As such, whether or not the information sought is of public interest or public concern is left to the proper determination of the courts on a case to case basis.

In his capacity as a citizen and as the Executive Director of the APMP, the petitioner has sought to obtain official information dealing with the policy recommendation of the CTRM with respect to the reduction of tariffs on petrochemical resins and plastic products. He has asserted that the recommendation, which would be effected through E.O. No. 486, not only brought significant losses to the petrochemical industry that undermined the industry's long-term viability and survival, but also conflicted with official government pronouncements, policy directives, and enactments designed to support and develop an integrated petrochemical industry. He has claimed that the implementation of E.O. No. 486 effectively deprived the industry of tariff support and market share, thereby jeopardizing large investments without due process of law.²⁴

The Philippine petrochemical industry centers on the manufacture of plastic and other related materials, and provides essential input requirements for the agricultural and industrial sectors of the country. Thus, the position

¹⁸ No. L-72119, May 29, 1987, 150 SCRA 530.

¹⁹ Id. at 540.

²⁰ Section 7 of Article III, 1987 Constitution.

²¹ Section 28 of Article II, 1987 Constitution.

²² *Legaspi v. Civil Service Commission*, supra note 18.

²³ Id. at 541.

²⁴ *Rollo*, p. 128.

of the petrochemical industry as an essential contributor to the overall growth of our country's economy easily makes the information sought a matter of public concern or interest.

The second requisite is that the information requested must not be excluded by law from the constitutional guarantee. In that regard, the Court has already declared that the constitutional guarantee of the people's right to information does not cover national security matters and intelligence information, trade secrets and banking transactions and criminal matters.²⁵ Equally excluded from coverage of the constitutional guarantee are diplomatic correspondence, closed-door Cabinet meeting and executive sessions of either house of Congress, as well as the internal deliberations of the Supreme Court.²⁶ In *Chavez v. Public Estates Authority*,²⁷ the Court has ruled that the right to information does not extend to matters acknowledged as "privileged information under the separation of powers," which include "Presidential conversations, correspondences, or discussions during closed-door Cabinet meetings."²⁸ Likewise exempted from the right to information are "information on military and diplomatic secrets, information affecting national security, and information on investigations of crimes by law enforcement agencies before the prosecution of the accused."²⁹

The respondents claim exemption on the ground that the May 23, 2005 meeting was classified as a closed-door Cabinet meeting by virtue of the committee's composition and the nature of its mandate dealing with matters of foreign affairs, trade and policy-making. They assert that the information withheld was within the scope of the exemption from disclosure because the CTRM meetings were directly related to the exercise of the sovereign prerogative of the President as the Head of State in the conduct of foreign affairs and the regulation of trade, as provided in Section 3 (a) of Rule IV of the Rules Implementing R.A. No. 6713.³⁰

The authority of the CTRM as the advisory body of the President and the NEDA is set forth in E.O. No. 230, series of 1987 (*Reorganization Act of the National Economic and Development Authority*), to wit:

SECTION 6. National Economic and Development Authority
Inter-agency Committees. – To assist the NEDA Board in the performance
of its functions, there are hereby created the following committees which

²⁵ *Chavez v. Presidential Commission on Good Government*, G.R. No. 130716, December 9, 1998, 299 SCRA 744, 763.

²⁶ *Id.* at 765.

²⁷ G.R. No. 133250, July 9, 2002, 384 SCRA 152.

²⁸ *Id.* at 188.

²⁹ *Id.*

³⁰ Section 3. Every department, office or agency shall provide official information, records or documents to any requesting public, except if:

(a) such information, record or document must be kept secret in the interest of national defense or security or the conduct of foreign affairs

shall hereafter be under the direct control of the NEDA Board and shall submit all their recommendations to the President for approval on matters involving their respective concerns. The Chairman of these committees shall be designated by the President. The NEDA Board shall likewise determine where the technical staff of the said committees shall be based.

X X X X

(e) Committee on Tariff and Related Matters (TRM) – The TRM to be composed of the Director-General of the National Economic and Development Authority Secretariat, the Executive Secretary, the Secretaries of Trade and Industry, Foreign Affairs, Agriculture, Environment and Natural Resources and of Budget and Management, the Governor of the Central Bank and the Chairman of the Tariff Commission shall have the following functions:

- (i) Advise the President and the NEDA Board on tariff and related matters, and on the effects on the country of various international developments;
- (ii) Coordinate agency positions and recommend national positions for international economic negotiations;
- (iii) Recommend to the President a continuous rationalization program for the country's tariff structure. (underlining supplied)

The respondents are correct. It is always necessary, given the highly important and complex powers to fix tariff rates vested in the President,³¹ that the recommendations submitted for the President's consideration be well-thought out and well-deliberated. The Court has expressly recognized in *Chavez v. Public Estates Authority*³² that "a frank exchange of exploratory ideas and assessments, free from the glare of publicity and pressure by interested parties, is essential to protect the independence of decision-making of those tasked to exercise Presidential, Legislative and Judicial power." In *Almonte v. Vasquez*,³³ the Court has stressed the need for confidentiality and privacy, stating thusly: "A President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately."³⁴ Without doubt, therefore, ensuring and promoting the free exchange of ideas among the members of the committee tasked to give tariff recommendations to the President were truly imperative.

Every claim of exemption, being a limitation on a right constitutionally granted to the people, is liberally construed in favor of disclosure and strictly against the claim of confidentiality. However, the claim of privilege as a cause for exemption from the obligation to disclose

³¹ Section 28 (2) of Article VI of the 1987 Constitution.

³² *Supra* note 28, at 189.

³³ G.R. No. 95367, May 23, 1995, 244 SCRA 286.

³⁴ *Id.* at 295.

information must be clearly asserted by specifying the grounds for the exemption.³⁵ In case of denial of access to the information, it is the government agency concerned that has the burden of showing that the information sought to be obtained is not a matter of public concern, or that the same is exempted from the coverage of the constitutional guarantee.³⁶ We reiterate, therefore, that the burden has been well discharged herein.

The respondents further assert that the information sought fell within the concept of established privilege provided by jurisprudence under Section 3 (c) of Rule IV of the Rules Implementing R.A. No. 6713, the May 23, 2005 meeting being regarded as a closed-door Cabinet meeting.³⁷ The petitioner, disagreeing, posits that R.A. No. 6713, by itself, neither provides exceptions to the constitutional right to information nor specifies limitations on the State policy of full public disclosure; that the Implementing Rules and Regulations went beyond the scope of R.A. No. 6713 in providing exceptions not covered by the law; that the alleged closed-door Cabinet meeting exception, so as to fall within the ambit of Section 3(c) of the Rules Implementing R.A. No. 6713, was not established under settled policy or jurisprudence; that the reliance on the rulings in *Chavez v. PCGG* and *Chavez v. PEA-Amari* that declared the closed-door Cabinet meeting as an exception to the right to information was misplaced considering that the exception was not squarely in issue in those cases; that the pronouncement could only be regarded as *obiter dicta*; that the closed-door Cabinet meeting exception, assuming though not admitting the same to have been established by law or settled jurisprudence, could not be automatically applied to all the CTRM meetings because the CTRM was different from the Cabinet inasmuch as two of its members, namely, the Governor of the Bangko Sentral ng Pilipinas and the Chairman of the Tariff Commission, were not members of the President's Cabinet; and that the deliberations of the CTRM as a body merely akin to the Cabinet could not be given the privilege and confidentiality not expressly provided for by law or jurisprudence, most especially considering that only by legislative enactment could the constitutional guarantee to the right to information be restricted.

We cannot side with the petitioner.

In *Senate of the Philippines v. Ermita*,³⁸ we have said that executive privilege is properly invoked in relation to specific categories of information, not to categories of persons. As such, the fact that some members of the committee were not part of the President's Cabinet was of no moment. What should determine whether or not information was within the ambit of the exception from the people's right to access to information was not the composition of the body, but the nature of the information

³⁵ *Senate of the Philippines v. Ermita*, G.R. No. 169777, April 20, 2006, 488 SCRA 1, 51.

³⁶ *Supra* note 18, at 541.

³⁷ *Rollo*, p. 180.

³⁸ *Supra* note 31, at 60.

sought to be accessed. A different holding would only result to the unwanted situation wherein any concerned citizen, like the petitioner, invoking the right to information on a matter of public concern and the State's policy of full public disclosure, could demand information from any government agency under all conditions whenever he felt aggrieved by the decision or recommendation of the latter.

In case of conflict, there is a need to strike a balance between the right of the people and the interest of the Government to be protected. Here, the need to ensure the protection of the privilege of non-disclosure is necessary to allow the free exchange of ideas among Government officials as well as to guarantee the well-considered recommendation free from interference of the inquisitive public.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; and **AFFIRMS** the decision of the Regional Trial Court in Special Civil Action No. 2903, without pronouncement on costs of suit.

SO ORDERED.



LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:



TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairman



DIOSDADO M. PERALTA
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



FRANCIS II JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice