

## EN BANC

[ G.R. No. 180643, March 25, 2008 ]

**ROMULO L. NERI, PETITIONER, vs. SENATE COMMITTEE ON ACCOUNTABILITY OF PUBLIC OFFICERS AND INVESTIGATIONS, SENATE COMMITTEE ON TRADE AND COMMERCE, AND SENATE COMMITTEE ON NATIONAL DEFENSE AND SECURITY, RESPONDENTS.**

### DECISION

**LEONARDO-DE CASTRO, J.:**

At bar is a petition for *certiorari* under Rule 65 of the Rules of Court assailing the show cause **Letter**<sup>[1]</sup> dated November 22, 2007 and contempt **Order**<sup>[2]</sup> dated January 30, 2008 concurrently issued by respondent Senate Committees on Accountability of Public Officers and Investigations,<sup>[3]</sup> Trade and Commerce,<sup>[4]</sup> and National Defense and Security<sup>[5]</sup> against petitioner Romulo L. Neri, former Director General of the National Economic and Development Authority (NEDA).

The facts, as culled from the pleadings, are as follows:

On April 21, 2007, the Department of Transportation and Communication (DOTC) entered into a contract with Zhong Xing Telecommunications Equipment (ZTE) for the supply of equipment and services for the National Broadband Network (NBN) Project in the amount of U.S. \$ 329,481,290 (approximately P16 Billion Pesos). The Project was to be financed by the People's Republic of China.

In connection with this NBN Project, various Resolutions were introduced in the Senate, as follows:

**(1) P.S. Res. No. 127**, introduced by Senator Aquilino Q. Pimentel, Jr., entitled RESOLUTION DIRECTING THE BLUE RIBBON COMMITTEE AND THE COMMITTEE ON TRADE AND INDUSTRY TO INVESTIGATE, IN AID OF LEGISLATION, THE CIRCUMSTANCES LEADING TO THE APPROVAL OF THE BROADBAND CONTRACT WITH ZTE AND THE ROLE PLAYED BY THE OFFICIALS CONCERNED IN GETTING IT CONSUMMATED AND TO MAKE RECOMMENDATIONS TO HALE TO THE COURTS OF LAW THE PERSONS RESPONSIBLE FOR ANY ANOMALY IN CONNECTION THEREWITH AND TO PLUG THE LOOPHOLES, IF ANY IN THE BOT LAW AND OTHER PERTINENT LEGISLATIONS.

**(2) P.S. Res. No. 144**, introduced by Senator Mar Roxas, entitled A RESOLUTION URGING PRESIDENT GLORIA MACAPAGAL ARROYO TO DIRECT THE CANCELLATION OF THE ZTE CONTRACT

**(3) P.S. Res. No. 129**, introduced by Senator Panfilo M. Lacson, entitled

RESOLUTION DIRECTING THE COMMITTEE ON NATIONAL DEFENSE AND SECURITY TO CONDUCT AN INQUIRY IN AID OF LEGISLATION INTO THE NATIONAL SECURITY IMPLICATIONS OF AWARDING THE NATIONAL BROADBAND NETWORK CONTRACT TO THE CHINESE FIRM ZHONG XING TELECOMMUNICATIONS EQUIPMENT COMPANY LIMITED (ZTE CORPORATION) WITH THE END IN VIEW OF PROVIDING REMEDIAL LEGISLATION THAT WILL PROTECT OUR NATIONAL SOVEREIGNTY, SECURITY AND TERRITORIAL INTEGRITY.

**(4) P.S. Res. No. 136**, introduced by Senator Miriam Defensor Santiago, entitled RESOLUTION DIRECTING THE PROPER SENATE COMMITTEE TO CONDUCT AN INQUIRY, IN AID OF LEGISLATION, ON THE LEGAL AND ECONOMIC JUSTIFICATION OF THE NATIONAL BROADBAND NETWORK (NBN) PROJECT OF THE NATIONAL GOVERNMENT.

At the same time, the investigation was claimed to be relevant to the consideration of three (3) pending bills in the Senate, to wit:

1. **Senate Bill No. 1793**, introduced by Senator Mar Roxas, entitled AN ACT SUBJECTING TREATIES, INTERNATIONAL OR EXECUTIVE AGREEMENTS INVOLVING FUNDING IN THE PROCUREMENT OF INFRASTRUCTURE PROJECTS, GOODS, AND CONSULTING SERVICES TO BE INCLUDED IN THE SCOPE AND APPLICATION OF PHILIPPINE PROCUREMENT LAWS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE GOVERNMENT PROCUREMENT REFORM ACT, AND FOR OTHER PURPOSES;
2. **Senate Bill No. 1794**, introduced by Senator Mar Roxas, entitled AN ACT IMPOSING SAFEGUARDS IN CONTRACTING LOANS CLASSIFIED AS OFFICIAL DEVELOPMENT ASSISTANCE, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 8182, AS AMENDED BY REPUBLIC ACT NO. 8555, OTHERWISE KNOWN AS THE OFFICIAL DEVELOPMENT ASSISTANCE ACT OF 1996, AND FOR OTHER PURPOSES; and
3. **Senate Bill No. 1317**, introduced by Senator Miriam Defensor Santiago, entitled AN ACT MANDATING CONCURRENCE TO INTERNATIONAL AGREEMENTS AND EXECUTIVE AGREEMENTS.

Respondent Committees initiated the investigation by sending invitations to certain personalities and cabinet officials involved in the NBN Project. Petitioner was among those invited. He was summoned to appear and testify on September 18, 20, and 26 and October 25, 2007. However, he attended only the September 26 hearing, claiming he was "out of town" during the other dates.

In the September 18, 2007 hearing, businessman Jose de Venecia III testified that several high executive officials and power brokers were using their influence to push the approval of the NBN Project by the NEDA. It appeared that the Project was initially approved as a Build-Operate-Transfer (BOT) project but, on March 29, 2007, the NEDA acquiesced to convert it into a government-to-government project, to be financed through a loan from the Chinese Government.

On September 26, 2007, petitioner testified before respondent Committees for eleven (11) hours. He disclosed that then Commission on Elections (COMELEC) Chairman Benjamin Abalos offered him P200 Million in exchange for his approval of the NBN Project. He further narrated that he informed President Arroyo about the bribery attempt and that she instructed him not to accept the bribe. However, when probed further on what they discussed about the NBN Project, petitioner refused to answer, invoking "executive privilege". In particular, he refused to answer the questions on **(a)** whether or not President Arroyo followed up the NBN Project,<sup>[6]</sup> **(b)** whether or not she directed him to prioritize it,<sup>[7]</sup> and **(c)** whether or not she directed him to approve.<sup>[8]</sup>

Unrelenting, respondent Committees issued a *Subpoena Ad Testificandum* to petitioner, requiring him to appear and testify on November 20, 2007.

However, in the Letter dated November 15, 2007, Executive Secretary Eduardo R. Ermita requested respondent Committees to dispense with petitioner's testimony on the ground of executive privilege. The pertinent portion of the letter reads:

With reference to the *subpoena ad testificandum* issued to Secretary Romulo Neri to appear and testify again on 20 November 2007 before the Joint Committees you chair, it will be recalled that Sec. Neri had already testified and exhaustively discussed the ZTE / NBN project, including his conversation with the President thereon last 26 September 2007.

Asked to elaborate further on his conversation with the President, Sec. Neri asked for time to consult with his superiors in line with the ruling of the Supreme Court in *Senate v. Ermita*, 488 SCRA 1 (2006).

Specifically, Sec. Neri sought guidance on the possible invocation of executive privilege on the following questions, to wit:

- a) Whether the President followed up the (NBN) project?**
- b) Were you dictated to prioritize the ZTE?**
- c) Whether the President said to go ahead and approve the project after being told about the alleged bribe?**

Following the ruling in *Senate v. Ermita*, the foregoing questions fall under conversations and correspondence between the President and public officials which are considered executive privilege (*Almonte v. Vasquez*, G.R. 95637, 23 May 1995; *Chavez v. PEA*, G.R. 133250, July 9, 2002). Maintaining the confidentiality of conversations of the President is necessary in the exercise of her executive and policy decision making process. The expectation of a President to the confidentiality of her conversations and correspondences, like the value which we accord deference for the privacy of all citizens, is the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decision-making. Disclosure of conversations of the President will have a chilling effect on the President, and will hamper her in the effective discharge of her duties and responsibilities, if she is not protected by the confidentiality of her conversations.

The context in which executive privilege is being invoked is that the

information sought to be disclosed might impair our diplomatic as well as economic relations with the People's Republic of China. Given the confidential nature in which these information were conveyed to the President, he cannot provide the Committee any further details of these conversations, without disclosing the very thing the privilege is designed to protect.

In light of the above considerations, this Office is constrained to invoke the settled doctrine of executive privilege as refined in *Senate v. Ermita*, and has advised Secretary Neri accordingly.

Considering that Sec. Neri has been lengthily interrogated on the subject in an unprecedented 11-hour hearing, wherein he has answered all questions propounded to him except the foregoing questions involving executive privilege, we therefore request that his testimony on 20 November 2007 on the ZTE / NBN project be dispensed with.

On November 20, 2007, petitioner did not appear before respondent Committees. Thus, on November 22, 2007, the latter issued the show cause **Letter** requiring him to explain why he should not be cited in contempt. The Letter reads:

Since you have failed to appear in the said hearing, the Committees on Accountability of Public Officers and Investigations (Blue Ribbon), Trade and Commerce and National Defense and Security require you to show cause why you should not be cited in contempt under Section 6, Article 6 of the Rules of the Committee on Accountability of Public Officers and Investigations (Blue Ribbon).

The Senate expects your explanation on or before 2 December 2007.

On November 29, 2007, petitioner replied to respondent Committees, manifesting that it was not his intention to ignore the Senate hearing and that he thought the only remaining questions were those he claimed to be covered by executive privilege, thus:

It was not my intention to snub the last Senate hearing. In fact, I have cooperated with the task of the Senate in its inquiry in aid of legislation as shown by my almost 11 hours stay during the hearing on 26 September 2007. During said hearing, I answered all the questions that were asked of me, save for those which I thought was covered by executive privilege, and which was confirmed by the Executive Secretary in his Letter 15 November 2007. In good faith, after that exhaustive testimony, I thought that what remained were only the three questions, where the Executive Secretary claimed executive privilege. Hence, his request that my presence be dispensed with.

Be that as it may, should there be new matters that were not yet taken up during the 26 September 2007 hearing, may I be furnished in advance as to what else I need to clarify, so that as a resource person, I may adequately prepare myself.

In addition, petitioner submitted a letter prepared by his counsel, Atty. Antonio R. Bautista, stating, among others that: **(1)** his (petitioner) non-appearance was upon

the order of the President; and **(2)** his conversation with President Arroyo dealt with delicate and sensitive national security and diplomatic matters relating to the impact of the bribery scandal involving high government officials and the possible loss of confidence of foreign investors and lenders in the Philippines. The letter ended with a reiteration of petitioner's request that he "be furnished in advance" as to what else he needs to clarify so that he may adequately prepare for the hearing.

In the interim, on December 7, 2007, petitioner filed with this Court the present petition for *certiorari* assailing the show cause **Letter** dated November 22, 2007.

Respondent Committees found petitioner's explanations unsatisfactory. Without responding to his request for advance notice of the matters that he should still clarify, they issued the **Order** dated January 30, 2008, citing him in contempt of respondent Committees and ordering his arrest and detention at the Office of the Senate Sergeant-At-Arms until such time that he would appear and give his testimony. The said Order states:

### **ORDER**

For failure to appear and testify in the Committee's hearing on Tuesday, September 18, 2007; Thursday, September 20, 2007; Thursday, October 25, 2007; and Tuesday, November 20, 2007, despite personal notice and Subpoenas Ad Testificandum sent to and received by him, which thereby delays, impedes and obstructs, as it has in fact delayed, impeded and obstructed the inquiry into the subject reported irregularities, AND for failure to explain satisfactorily why he should not be cited for contempt (Neri letter of 29 November 2007), herein attached) **ROMULO L. NERI is hereby cited in contempt of this (sic) Committees and ordered arrested and detained in the Office of the Senate Sergeant-At-Arms until such time that he will appear and give his testimony.**

The Sergeant-At-Arms is hereby directed to carry out and implement this Order and make a return hereof within twenty four (24) hours from its enforcement.

### **SO ORDERED.**

On the same date, petitioner moved for the reconsideration of the above Order.<sup>[9]</sup> He insisted that he has not shown "any contemptible conduct worthy of contempt and arrest." He emphasized his willingness to testify on new matters, however, respondent Committees did not respond to his request for advance notice of questions. He also mentioned the petition for *certiorari* he filed on December 7, 2007. According to him, this should restrain respondent Committees from enforcing the show cause **Letter** "through the issuance of declaration of contempt" and arrest.

In view of respondent Committees' issuance of the contempt **Order**, petitioner filed on February 1, 2008 a *Supplemental Petition for Certiorari (With Urgent Application for TRO/Preliminary Injunction)*, seeking to restrain the implementation of the said contempt **Order**.

On February 5, 2008, the Court issued a *Status Quo Ante Order* **(a)** enjoining respondent Committees from implementing their *contempt Order*, **(b)** requiring the