

## FIRST DIVISION

[ G.R. No. 175210, February 01, 2016 ]

**MARIO JOSE E. SERENO, EXECUTIVE DIRECTOR OF THE ASSOCIATION OF PETROCHEMICAL MANUFACTURERS OF THE PHILIPPINES, INC. (APMP), PETITIONER, VS. 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, RESPONDENTS.**

### 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 City<sup>[1]</sup> 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.<sup>[2]</sup>

#### **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.<sup>[3]</sup>

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,<sup>[4]</sup> to wit:

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.<sup>[5]</sup>

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.<sup>[6]</sup>

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, 2005<sup>[7]</sup> and January 10, 2006<sup>[8]</sup> 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.<sup>[9]</sup>

Meanwhile, President Arroyo signed Executive Order No. 486,<sup>[10]</sup> 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 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.<sup>[11]</sup>

Subsequently, the RTC rendered its assailed decision on October 16, 2006<sup>[12]</sup> 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 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.<sup>[13]</sup>

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;"<sup>[14]</sup> 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."<sup>[15]</sup>

Hence, this appeal directly to the Court on questions of law.<sup>[16]</sup>

### **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?<sup>[17]</sup>

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:

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.