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[G.R. No. 180643, September 04, 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.

R E S O L U T I O N

LEONARDO-DE CASTRO, J.:

Executive privilege is not a personal privilege, but one that adheres to the Office of the President. It exists to protect public interest, not to benefit a particular public official. Its purpose, among others, is to assure that the nation will receive the benefit of candid, objective and untrammeled communication and exchange of information between the President and his/her advisers in the process of shaping or forming policies and arriving at decisions in the exercise of the functions of the Presidency under the Constitution. The confidentiality of the President's conversations and correspondence is not unique. It is akin to the confidentiality of judicial deliberations. It possesses the same value as the right to privacy of all citizens and more, because it is dictated by public interest and the constitutionally ordained separation of governmental powers.

In these proceedings, this Court has been called upon to exercise its power of review and arbitrate a hotly, even acrimoniously, debated dispute between the Court's co-equal branches of government. In this task, this Court should neither curb the legitimate powers of any of the co-equal and coordinate branches of government nor allow any of them to overstep the boundaries set for it by our Constitution. The competing interests in the case at bar are the claim of executive privilege by the President, on the one hand, and the respondent Senate Committees' assertion of their power to conduct legislative inquiries, on the other. The particular facts and circumstances of the present case, stripped of the politically and emotionally charged rhetoric from both sides and viewed in the light of settled constitutional and legal doctrines, plainly lead to the conclusion that the claim of executive privilege must be upheld.

Assailed in this motion for reconsideration is our Decision dated March 25, 2008 (the "Decision"), granting the petition for *certiorari* filed by petitioner Romulo L. Neri against the respondent Senate Committees on Accountability of Public Officers and Investigations,[1] Trade and Commerce,[2] and National Defense and Security (collectively the "respondent Committees").[3]

A brief review of the facts is imperative.

On September 26, 2007, petitioner appeared before respondent Committees and

testified for about eleven (11) hours on matters concerning the National Broadband Project (the "NBN Project"), a project awarded by the Department of Transportation and Communications ("DOTC") to Zhong Xing Telecommunications Equipment ("ZTE"). Petitioner 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 Gloria Macapagal Arroyo ("President Arroyo") of the bribery attempt and that she instructed him not to accept the bribe. However, when probed further on President Arroyo and petitioner's discussions relating to the NBN Project, petitioner refused to answer, invoking "executive privilege." To be specific, petitioner refused to answer questions on: **(a)** whether or not President Arroyo followed up the NBN Project,[4] **(b)** whether or not she directed him to prioritize it,[5] and **(c)** whether or not she directed him to approve it.[6]

Respondent Committees persisted in knowing petitioner's answers to these three questions by requiring him to appear and testify once more on November 20, 2007. On November 15, 2007, Executive Secretary Eduardo R. Ermita wrote to respondent Committees and requested them to dispense with petitioner's testimony on the ground of executive privilege.[7] The letter of Executive Secretary Ermita pertinently stated:

> 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 upon orders of the President invoking executive privilege. On November 22, 2007, the respondent Committees issued the show-cause letter requiring him to explain why he should not be cited in contempt. On November 29, 2007, in petitioner's reply to respondent Committees, he manifested 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. He also manifested his willingness to appear and testify should there be new matters to be taken up. He just requested that he be furnished "in advance as to what else" he "needs to clarify."

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; In Re: P.S. Res. Nos. 127,129,136 & 144; and privilege speeches of Senator Lacson and Santiago (all on the ZTE-NBN Project), citing petitioner 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.

On the same date, petitioner moved for the reconsideration of the above Order.[8] He insisted that he had not shown "any contemptible conduct worthy of contempt and arrest." He emphasized his willingness to testify on new matters, but respondent Committees did not respond to his request for advance notice of questions. He also mentioned the petition for *certiorari* he previously filed with this Court on December 7, 2007. According to him, this should restrain respondent Committees from enforcing the order dated January 30, 2008 which declared him in contempt and directed his arrest and detention.

Petitioner then filed his Supplemental Petition for Certiorari (with Urgent Application for TRO/Preliminary Injunction) on February 1, 2008. In the Court's Resolution dated February 4, 2008, the parties were required to observe the status quo prevailing prior to the Order dated January 30, 2008.

On March 25, 2008, the Court granted his petition for *certiorari* on two grounds: ***first***, the communications elicited by the three (3) questions were covered by executive privilege; and ***second,*** respondent Committees committed grave abuse of discretion in issuing the contempt order. Anent the first ground, we considered the subject communications as falling under the **presidential communications privilege** because **(a)** they related to a quintessential and non-delegable power of the President, **(b)** they were received by a close advisor of the President, and **(c)** respondent Committees failed to adequately show a compelling need that would justify the limitation of the privilege and the unavailability of the information elsewhere by an appropriate investigating authority. As to the second ground, we found that respondent Committees committed grave abuse of discretion in issuing the contempt order because **(a)** there was a valid claim of executive privilege, **(b)** their invitations to petitioner did not contain the questions relevant to the inquiry, **(c)** there was a cloud of doubt as to the regularity of the proceeding that led to their issuance of the contempt order, **(d)** they violated Section 21, Article VI of the Constitution because their inquiry was not in accordance with the "duly published

rules of procedure," and **(e)** they issued the contempt order arbitrarily and precipitately.

On April 8, 2008, respondent Committees filed the present motion for reconsideration, anchored on the following grounds:

I

CONTRARY TO THIS HON ORABLE COURT'S DECISION, THERE IS NO DOUBT THAT THE ASSAILED ORDERS WERE ISSUED BY RESPONDENT COMMITTEES PURSUANT TO THE EXERCISE OF THEIR LEGISLATIVE POWER, AND NOT MERELY THEIR OVERSIGHT FUNCTIONS.

II

CONTRARY TO THIS HON ORABLE COURT'S DECISION, THERE CAN BE NO PRESUMPTION THAT THE INFO RMATION WITHHELD IN THE INSTANT CASE IS PRIVILEGED.

III

CONTRARY TO THIS HON ORABLE COURT'S DECISION, THERE IS NO FACT UAL OR LEGAL BASIS TO HOLD THAT THE COMMUNICATIONS ELICITED BY THE SUBJECT THREE (3) QUESTIONS ARE COVERED BY EXECUTIVE PRIVILEGE, CONSIDERING THAT:

A. **THERE IS NO SHOWING THAT THE MATTERS FOR WHICH EXECUTIVE PRIVILEGE IS CLAIMED CONSTITUTE STATE SECRETS.**

B. **EVEN IF THE TESTS ADO PTED BY THIS HON ORABLE COURT IN THE DECISION IS A PPL IED, THERE IS NO SHOWING THAT THE ELEMENTS OF PRESIDENTIAL COMMUNICATIONS PRIVILEGE ARE PRESENT.**

C. **ON THE CONTRARY, THERE IS ADEQUATE SHOW ING OF A COMPELLING NEED TO JUSTIFY THE DISCLOSURE OF THE INFORMATION SOUGHT.**

D. **TO UPHOLD THE CLAIM OF EXECUTIVE PRIVILEGE IN THE INSTANT CASE WOULD SERIOUSLY IMPAIR THE RESPONDENTS' PERFORMANCE OF THEIR PRIMARY FUNCTION TO ENACT LAWS.**

E. **FINALLY, THE CONSTITUTIONAL RIGHT OF THE PEOPLE TO INFORMATION, AND THE CONSTITUTIONAL POLICIES ON PUBLIC ACCOUNTABILITY AND TRANSPARENCY OUTWEIGH THE CLAIM OF EXECUTIVE PRIVILEGE.**

IV

CONTRARY TO THIS HON ORABLE COURT'S DECISION, RESPONDENTS DID NOT COMM IT G RAVE ABUSE OF DISCRETION IN ISSUING THE ASSAILED CONTEMPT ORDER, CONSIDERING THAT:

A. **THERE IS NO LEG IT IMAT E CLAIM OF EXECUTIVE PR IVIL EGE IN THE INSTANT CASE.**

B. **RESPONDENTS DID NOT VIOLATE THE SUPPOSED REQUIREMENTS LAID DOWN IN *SENATE V. ERMITA*.**

C. **RESPONDENTS DULY ISSUED THE CONTEMPT ORDER IN ACCORDANCE WITH THEIR INTERNAL RULES.**

D. **RESPONDENTS DID NOT VIOLATE THE REQUIREMENTS UNDER ARTICLE VI, SECTION 21 OF THE CONSTITUTION REQUIRING THAT ITS RULES OF PROCEDURE BE DULY PUBLISHED, AND WERE DENIED DUE PROCESS WHEN THE COURT CONSIDERED THE OSG'S INTERVENTION ON THIS ISSUE WITHOUT GIVING RESPONDENTS THE OPPORTUNITY TO COMMENT.**

E. **RESPONDENTS' ISSUANCE OF THE CONTEMPT ORDER IS NOT ARBITRARY OR PRECIPITATE.**

In his Comment, petitioner charges respondent Committees with exaggerating and distorting the Decision of this Court. He avers that there is nothing in it that prohibits respondent Committees from investigating the NBN Project or asking him additional questions. According to petitioner, the Court merely applied the rule on executive privilege to the facts of the case. He further submits the following contentions: ***first,*** the assailed Decision did not reverse the presumption against executive secrecy laid down in *Senate v. Ermita;* ***second,*** respondent Committees failed to overcome the presumption of executive privilege because it appears that they could legislate even without the communications elicited by the three (3) questions, and they admitted that they could dispense with petitioner's testimony if certain NEDA documents would be given to them; ***third,*** the requirement of specificity applies only to the privilege for State, military and diplomatic secrets, not to the necessarily broad and all-encompassing presidential communications privilege; ***fourth,*** there is no right to pry into the President's thought processes or exploratory exchanges; ***fifth,*** petitioner is not covering up or hiding anything illegal; ***sixth,*** the Court has the power and duty to annul the Senate Rules; ***seventh,*** the Senate is not a continuing body, thus the failure of the present Senate to publish its *Rules of Procedure Governing Inquiries in Aid of Legislation (Rules)* has a vitiating effect on them; ***eighth,*** the requirement for a witness to be furnished advance copy of questions comports with due process and the constitutional mandate that the rights of witnesses be respected; and ***ninth,*** neither petitioner nor respondent has the final say on the matter of executive privilege, only the Court.

For its part, the Office of the Solicitor General maintains that: **(1)** there is no categorical pronouncement from the Court that the assailed Orders were issued by respondent Committees pursuant to their oversight function; hence, there is no