

EM TRANSPORT, INC., PETITIONER, VS. THE HONORABLE JACOBO C. CLAVE, PRESIDENTIAL EXECUTIVE ASSISTANT, AND THE HONORABLE RONALDO B. ZAMORA, PRESIDENTIAL ASSISTANT FOR LEGAL AFFAIR...*G.R. Nos. L-48736-37. April 19, 1984*

Ponente: FERNANDO, C.J.

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The award in favor of the private respondents taxi-drivers Romelto Zagado, Anastacio Marfil, Dioscoro Dimpal and other drivers of the taxis of the EM Transport, Inc. who later joined them there being a total of sixty-six (66) in all of the emergency cost of living allowance pursuant to Presidential Decree No. 525 by respondent Jacobo C. Clave, the Presidential Executive Assistant of the Office of the President sustaining a decision of the respondent Presidential Assistant for Legal Affairs of the Office of the President, Ronaldo B. Zamora, now incumbent Assemblyman, is assailed in this certiorari proceeding.[1] The principal reliance for the reversal sought is on the due process,[2] both in its procedural and substantive aspects. The claim of the denial of procedural due process arose in the opinion of petitioner from the fact that the order of the Officer-in-Charge of Regional Office No. IV of the then Department of Labor was issued without the benefit of any hearing. The assertion of lack of substantive due process was based on what petitioner considered to be the oppressive and unjust character of the application to the respondent taxi-drivers of the Presidential Decree working as they do under the "boundary system". As will be shown, the arguments adduced do not suffice to call for a reversal. The petition is not impressed with merit.

The decision of respondent Zamora, now under review states the case and the facts with clarity and right of respondent taxi-drivers to the emergency cost-of-living allowance under Presidential Decree No. 525 with persuasiveness. Thus: "This is an appeal filed by respondent-appellant (company), through counsel, from the order dated December 27, 1977, of the Secretary of Labor (Secretary for short) affirming the order of the Officer-in-Charge of Regional Office No. 4 and dismissing the partial appeal of both parties. Records reveal that complainants-appellees are taxi drivers of the company who were then paid on commission basis which was subsequently changed to boundary system pursuant to the collective bargaining agreement entered into by and between the herein company and the Samahan ng mga Tsupper sa E.M. Transport, Inc. and Trade Unions of the Philippines and Allied Services (TUPAS) of which the former are members. On April 19, 1976, complainants-appellees filed a complaint against the company for non-payment of emergency cost of living allowance pursuant to Presidential Decree No. 525 and non-payment of the 13th month pay under Presidential Decree No. 851. On February 28, 1977, the Regional Office No. 4 issued an order granting payment of emergency cost of living allowance to complainants-appellees and dismissing their claim for payment of the 13th month pay. Thereafter, both parties filed their partial appeal from this order, complainants-appellees reiterating their claim for payment of the 13th month pay and respondent-appellant contending that the former are not entitled to the emergency cost of living allowance, considering that they work under the boundary system and, therefore, have

no fixed salary. On June 30, 1977, the Officer-in-Charge of Regional Office No. 4 issued an order affirming said order of February 28, 1977, and denying both parties' partial appeal, treated as motions for reconsideration, for lack of merit. Dissatisfied, both parties filed their partial appeal to the Secretary who issued the appealed order. On February 20, 1978, respondent-appellant filed the instant appeal. * * * The main issue to be resolved as this Office sees it is whether or not complainants-appellees are entitled to emergency cost of living allowance under PD 525. Respondent-appellant anchors its defense on the fact that since complainants-appellees are paid on commission basis which was later on changed to boundary system and, further, are not covered by the minimum wage law, they, therefore, are not entitled to emergency cost of living allowance under said Decree. This contention is rendered untenable by Section 2 of the Rules and Regulations Implementing PD 525, which pertinently states: 'Section 2. Employees Covered. (a) The Decree shall apply to all employees of covered employers, regardless of their position, designation or employment status, and irrespective of the method by which their wages are paid, including temporary, casual, probationary, and seasonal employees and workers.' It is therefore clear that 'irrespective of the method by which their wages are paid,' whether on commission basis and later on converted to boundary system as in the case at bar, the complainants-appellees are covered by the provisions of said Decree. The aforequoted provision is indubitable and needs no further explanation. However, this Office is at a loss as to the basis of the computation of the total amount of the award and the listing of the deserving drivers, it appearing that no evidence from respondent was received on this point by the department. The elementary rules of justice and fair play dictate that a fair determination of the amount of the individual awards be made on the basis of material evidence and pertinent records submitted by the parties herein. In view of all the foregoing, the decision of the Secretary of Labor upholding the entitlement of complainants-appellees to the cost of living allowance should be, as hereby it is, affirmed. Accordingly, the Department of Labor is hereby directed to receive the necessary evidence to determine the listing of the deserving drivers and the amount of individual awards." [3]

To repeat, the petition lacks merit and must be dismissed.

1. Presidential Decree No. 525 is quite clear. It is free from ambiguity. Its very title "Making Mandatory the Payment of Emergency Allowance Under Letter of Instructions No. 174" speaks categorically. The payment of emergency allowance is mandatory. It applies to all employers. The only exemption is "a severely distressed industry or branch thereof, or enterprise therein, as defined by the Department of Labor in accordance with established standard methods of determining the same." [4] Petitioner does not belong to such category. There is no escaping the conclusion then that compliance is required from the petitioner. Absent any valid ground for non-applicability as to it under the due process objection, it cannot evade its liability. There was in the recent case of *National Federation of Labor v. Eisma* [5] a reiteration of the *Lizarraga Hermanos* doctrine: "The first and fundamental duty of courts, in our judgment, is to apply the law. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate without them." [6]

2. There is no merit to the contention that there was lack of procedural due process. Even if it be assumed that the Order of the Officer-in-Charge was issued without any hearing, the subsequent developments revealed that the claim of the petitioner was accorded the fullest consideration. So it is apparent from his own petition. He filed a motion for reconsideration which was denied by the same Officer-in-Charge. [7] He appealed to the then Secretary of Labor, now Minister, Blas Ople, raising the same question. Again, he was unsuccessful, the order of such Officer-in-Charge being affirmed in toto. [8] After which, the matter was elevated to the Office of the President resulting in the decision of the Presidential Assistant for Legal Affairs, now Assemblyman Ronaldo B. Zamora. [9] There was, thereafter, a motion for reconsideration, but, again, no merit could be discerned therein as evidenced by the denial of then Presidential Executive Assistant Jacobo C. Clave. [10] According to *Dormitorio v. Fernandez*: [11] "The order * * * was the subject of a motion for reconsideration. The motion for reconsideration was thereafter denied. Under the circumstances, the failure to give notice to petitioners had been cured. That is a well-settled doctrine." [12]

3. There is no merit either to the argument that there was a denial of substantive due process. What is involved is a police power measure, regulatory in character. It is a well-settled doctrine that to nullify it on substantive due process ground, there must be a factual foundation of invalidity.[13] The need for such support is all the more exigent considering that Presidential Decree No. 525 was inspired by the constitutional mandates of social justice[14] and protection to labor.[15] The petition is thus devoid of any reason to justify the petitioner from being exempted, on a plea of unconstitutional application because of the alleged arbitrariness. Moreover, when it is noted how careful then Presidential Legal Assistant Zamora was in his decision to avoid any injustice to petitioner, there will be a greater realization of how flimsy and insubstantial is such due process argument. As therein stated: "However, this office is at a loss as to the basis of the computation of the total amount of the award and the listing of the deserving drivers, it appearing that no evidence from respondent was received on this point by the department. The elementary rules of justice and fair play dictate that a fair determination of the amount of the individual awards be made on the basis of material evidence and pertinent records submitted by the parties herein."

WHEREFORE, the petition for certiorari is dismissed for lack of merit. The restraining order issued in this case is hereby lifted. This decision is immediately executory. Costs against petitioner EM Transport, Inc.

Makasiar, Concepcion, Jr., Guerrero, and Abad Santos, JJ., concur.

Aquino, J., concurs. Taxi drivers under the boundary system were held to be employees (National Labor Union vs. Dirglasan, 98 Phil. 649).

Escolin and De Castro, JJ., did not take part.

[1] The decision of respondent Zamora sustained an Order of the Officer-in-Charge of Regional Office No. IV of the then Department of Labor granting such emergency cost of living allowance retroactive August 1, 1974 provided all income does not amount to P400.00 or more a month which order in turn was affirmed by the then Secretary of Labor, now Minister Blas Ople resulting in the appeal to the Office of the President.

[2] Article IV, Section 1 of the Constitution provides: "No person shall be deprived of life or property without due process of law, nor shall any person be denied the equal protection of the laws."

[3] Decision of Presidential Assistant for Legal Affairs Ronaldo B. Zamora dated June 6, 1978, Annex A to Petition.

[4] P.D. 525, Section 1.

[5] G. R. No. 61236, January 31, 1984.

[6] 24 Phil. 513 (1913). It cited the following cases: In Asuncion, Jr. v. Segundo, G.R. No. 59593, promulgated on September 24, 1983, reference was made to *Kapisanan ng mga Manggagawa v. Manila Railroad Co.*, L-25316, February 28, 1979, 88 SCRA 616. The opinion cited 13 cases starting from *People v. Mapa*, L-22301, August 30, 1967, 20 SCRA 1164 to *Gonzaga v. Court of Appeals*, L-27455, June 28, 1973, 51 SCRA 381. After the *Manggagawa* decision came two later cases of the same tenor: *Banawa v. Mirano*, L-24750, May 16, 1980, 97 SCRA 517; *Insular Lumber Co. v. Court of Tax Appeals*, L-31057, May 29, 1981, 104 SCRA 710. All in all, since the 1967 decision in *Mapa*, seventeen cases have applied the ruling in *Lizarraga Hermanos*.

[7] Petition, par. 4.

[8] *Ibid*.

[9] *Ibid*, par. 7.

[10] Ibid, par. 8.

[11] L-25897, August 21, 1976, 72 SCRA 388.

[12] The following cases were cited: *Borja v. Flores*, 62 Phil. 106 (1935); *De Borja v. Tan*, 93 Phil. 167 (1953); *Flash Taxicab Co., Inc. v. Cruz*, L-15464, March 30, 1963, 7 SCRA 518; *Caltex (Phil.), Inc. v. Castillo*, L-24657, Nov. 27, 1967, 21 SCRA 1071; *Demaronsing v. Tandayag*, L-27057, Aug. 21, 1974, 58 SCRA 484; *Maglasang v. Ople*, L-38813, April 29, 1975, 63 SCRA 508; *Nation Multi Service Labor Union v. Agcaoili*, L-39741, May 30, 1975, 64 SCRA 274. After *Dormitorio*, such a doctrine was reiterated in *Tan Beng v. City Sheriff of Manila*, L-24375, May 18, 1978, 83 SCRA 229.

[13] Cf. *Ermita-Malate Hotel and Motel Operators Association v. City Mayor*, L-24693, 20 SCRA 849, July 31, 1967 cited with approval in *De la Cruz v. Paras*, L-42571-72, July 25, 1983, 123 SCRA 569.

[14] Article II, Section 6 of the Constitution provides: "The State shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits."

[15] Article II, Section 9 of the Constitution provides: "The State shall afford protection to labor, promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work. The State may provide for compulsory arbitration."

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