

SKIPPERS UNITED PACIFIC, INC., PETITIONER, VS. THE HON. SECRETARY OF LABOR AND EMPLOYMENT AND NELSON PAGAYUNAN, RESPONDENTS.

SP No. 92615, April 23, 2007

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This is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure seeking to annul and set aside 1] the July 1, 2005 Order of the public respondent which affirmed the decision of the POEA Administrator adjudging petitioner liable for violating Section 2 (b), Rule V, Book II, in relation to Section 2 (a), Rule 1, Part VI of the 1991 POEA Rules and Regulations; and 2] the October 13, 2005 Order denying the motion for the reconsideration of the first order.

The dispositive portion of the October 13, 2005 Order reads as follows:

"WHEREFORE, premises considered, the Motion for Reconsideration filed by Skippers United Pacific, Inc. is hereby DENIED for lack of merit. Accordingly, our Order dated July 1, 2005, affirming the Order dated October 11, 2004 of the POEA Administrator, finding petitioner liable for violating Section 2 (b), Rule V, Book II in relation to Section 2 (a), Rule I, Part VI of the 1991 Rules and Regulations, thereby imposing upon it the penalty of suspension of its license for a period of two (2) months or, in lieu thereof, the payment of fine in the amount of Fifty Thousand Pesos (Php50,000.00), is AFFIRMED."[1]

The factual and procedural antecedents were succinctly stated in the decision of the public respondent, to wit:

"In his Sworn Statement, complainant alleged that sometime in January 2002, he applied with petitioner to work as a bosun on board a vessel. He was assured of placement and deployment by a certain 'Arsenia Villamor,' Crewing Manager of the petitioner, and in consideration for the same, he was required to pay the amount of Fifty Thousand Pesos (Php50,000.00), which he paid in three (3) installment, to wit:

- a. March 20, 2002 — Php20,000.00
- b. May 18, 2002 — Php20,000.00
- c. July 10, 2002 — Php10,000.00

Complainant made the said payments to Ms. Villamor in the office of the petitioner for which no receipts were issued. Complainant likewise averred that he constantly demanded for a receipt, but without valid reason therefor, Ms. Villamor always refused to issue the same. For failure of petitioner to issue the corresponding receipts, complainant filed a complaint with the POEA charging petitioner with violation of the Article 32 of the Labor Code, as amended, in relation to the POEA Rules and Regulations.

A Show-Cause Order was sent to the petitioner requiring the latter to file its Answer. Subsequently, hearing were held on November 6, 12, and 25, 2003, and April 26, 2004. During the November 6, 2003 hearing, petitioner failed to appear despite due notice, while complainant, on the other hand, affirmed the veracity of the allegations in his Sworn Statement. On November 12, 2003, petitioner filed its Answer, and both parties agreed to reset the said hearing. In the November 25, 2003 hearing, only the complainant appeared. Subsequently, the hearing

Officer moved the hearing to another date. In the April 26, 2004 hearing, again, petitioner failed to appear despite proper notice. Thereafter, upon request of the complainant, the case was submitted for resolution.

On October 11, 2004 the POEA Administrator issued the assailed Order, finding the petitioner liable for violating Section 2 (b), Rule V, Book II in relation to Section 2 (a), Rule 1, Part VI of the 1991 POEA Rules and Regulations, considering that it failed to issue the appropriate receipt. On October 25, 2004, petitioner received the assailed Order, and on November 4, 2004, the instant petition was timely filed."[2]

In sustaining the decision of the POEA Administrator, in its July 1, 2005 Order, the Secretary of the Department of Labor and Employment (DOLE) gave the following rationalization, to wit:

"The petition is without merit.

Section 2 (b), Rule V, Book II of the 1991 POEA Rules and Regulations provides that:

'Section 2. Fee/Costs Chargeable from Workers.—

* * * * *

(b) Manning agencies shall not charge any fee from seafarer-applicants for its recruitment and placement services.

In relation to the said provision, Section 2 (a), Rule I, Book VI of the same Rules explicitly states that:

'Section 2. Grounds for suspension/ cancellation of license.—

(a) Charging, imposing or accepting directly or indirectly any amount of money goods or services, or any fee or bound for any purpose whatsoever before employment is obtained for an applicant worker or where the fee charged is excessive or contrary to what is prescribed by the Secretary of labor and Employment.'

In our examination and evaluation of the record, the controversy involved in this case occurred in the year 2002, when the complainant applied for overseas employment on board the vessel with the petitioner. It was in the year 2002, when the petitioner committed certain violations of the POEA Rules, in the same manner that all the evidence presented as well as the testimony made by the complainant pertains to the said year. Petitioner presented as evidence the complainant's employment contract, notice of reprimand, minutes of hearings, (Rollo, pp. 34 38). However, this documents pertain to the previous employment of the complainant. In other words, these evidence, even if given probative value, will not substantially affect the determination of the instant case. Even by presenting such evidence, it would not deviate from the fact that complainant applied for overseas employment, which the complainant established in a very categorical and straightforward manner.

Likewise, the numerous photocopies of appointment slips (Rollo, pp. 24-31) prove that complainant relentlessly guarded his job application with the petitioner with a hope that he would be successfully deployed by the latter because there was already an initial payment of placement fee. Thus, the inability of the petitioner to refute and overturn such evidence of the complainant, despite the opportunity given, is sufficient to consider that the latter fully substantiated his claim. Therefore, the POEA is correct in finding petitioner liable for violating Section 2 (b), Rule V, Book II, in relation to Section 2 (a), Rule 1, Part VI of the 1991 POEA Rules and Regulations, when the latter collected a fee from the complainant as payment for its recruitment and placement services."

In this special civil action, petitioner is assailing the subject orders of the Secretary of DOLE and POEA Case No. RV 03-09-1914; OS-POEA 1214-2004-0365 presenting this lone.

GROUND RELIED UPON IN THIS PETITION

PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF

OR EXCESS OF JURISDICTION WHEN IT RENDERED THE ABOVE-ASSAILED ORDERS.

Elaborating, petitioner contends that the photocopies of the appointment slips it presented before the POEA were for the purpose of proving that private respondent was lying when he claimed to have made several payments to its Crewing Manager, Arsenia V. Villamor. The dates the private respondent stated in his pro forma complaint do not coincide with any of the dates in said photocopies of the appointment slips. In his Complaint, he alleged that petitioner's Crewing Manager, Arsenia Villamor, collected from him at Skippers' Office, a total amount of P50,000.00 paid by him on various dates, namely, March 20, 2002-P20,000.00; May 18, 2002-P20,000.00 and July 10, 2002-P10,000.00. The appointment slips, however, do not show that he reported to petitioner's office on such dates. He may have reported on several dates but they do not coincide with the dates when he claimed to have paid said amount to Ms. Villamor.

These evidence were instead used by public respondent as an indication that herein private respondent allegedly "relentlessly guarded his job application with a hope that he would be successfully deployed by the latter because there was already an initial payment of placement fee". These findings of public respondent does not find support in law.

The photocopies of the appointment slips should have been considered by public respondent in its favor and not for private respondent. Under Rule 130, Section 13 of the Rules on Evidence, it is stated that "for the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown, so that the judge may be placed in the position of those whose language he is to interpret."

Despite these submissions, the public respondent brushed aside its arguments. That the complainant allegedly testified "in a very categorical and straightforward manner" cannot be interpreted to cure the absence of proof and support of his allegations of illegal exaction. The record is bereft of any document or testimony taken during the supposed hearings wherein private respondent was placed under oath and testified on his complaint. Thus, the public respondent's conclusion was based on clear speculation.

PRIVATE RESPONDENT'S POSITION

Traversing the foregoing, private respondent claims that while he diligently attended the scheduled hearings and affirmed the allegations in his complaint, petitioner belatedly filed its responsive pleadings and never once presented testimony in the hearings. The petitioner should have appeared and affirmed the allegations contained in its belatedly filed pleadings "in order to merit a disturbance of the positive and categorical declarations made by private respondent that petitioner's crewing manager Arsenia Villamor collected the total amount of P50,000.00 from him." The circumstances of this case is no different from the case of *Ong v. Manalabe*, A.M. No. P-05-1931, Jan. 13, 2005 which held that:

"* * * Respondent's plain denial of the acts imputed to him cannot overcome the categorical and positive declarations made by complainant, her husband, and Garcia that he demanded money from complainant and her spouse with the promise that he would help them seek a favorable judgment for complainant's cousin Mario Tan. These declarations constitute substantial evidence required to administrative proceedings."

The petitioner cannot be allowed to present its evidence, the Affidavit of its Crewing Manager, Arsenia Villamor, on appeal. To do so would be to render nugatory and make a mockery of the proceedings that were conducted before the POEA. Petitioner cannot harp that it was denied due process because it was given every opportunity to refute and overturn private respondent's evidence. The fact is that petitioner failed to appear on the scheduled hearings for the reception of its evidence and to substantiate its allegations constraining the public respondent to

consider the case as submitted for decision.

PUBLIC RESPONDENT'S POSITION

In his Comment, the public respondent submits that petitioner was not able to prove the commission of a grave abuse of discretion. Contrary to the argument of the petitioner, he carefully examined and evaluated all the evidence at hand. The evidence substantially established that, in connection with the recruitment and placement of private respondent, petitioner collected placement fee, which is prohibited under the POEA Rules. Between the unwavering and consistent declaration of the private respondent and the bare denials and self-serving statements of the petitioner, the former should be given greater weight and must prevail.

On the appointment slips submitted by the petitioner, he did not say that they were considered as proof of payment of placement fees by the private respondent. The appointment slips were given due consideration to bolster the testimony of the private respondent that he went to follow-up his employment with the petitioner several times. The appointment slips did not, in any manner, disprove the fact that the petitioner exacted the amount of R50,000.00 from the private respondent as placement fee. The private respondent substantially established that upon payment of the placement fee, petitioner assured him overseas employment. If the averment of the petitioner that it was impossible for the private respondent to find employment by reason of his past poor performance were true, then it was strange for him to return to the office of petitioner, not twice, but fifteen (15) times over a short period of time to follow-up the promised employment. The numerous visits made by the private respondent to the office of the petitioner was indicative of his eagerness to pursue a promised deployment.

It was also established in the proceedings before the POEA that private respondent was already made to undergo medical examination on July 12, 2002 because he was supposedly set to be deployed on a vessel named MV New Bulker. That fact and the positive and categorical statement of private respondent were sufficient to prove that petitioner was liable for violation of the POEA Rules.

Instead of disproving the allegations and charges, what petitioner did was to tackle collateral issues dealing with the qualification and performance of the private respondent in his previous employment. These, however, had nothing to do with the main issue on exaction of illegal fees.

On due process, the records reveal that during the proceedings before the POEA, petitioner failed to appear in all the scheduled hearings, except on November 12, 2003, when eventually it filed its Answer. On the other hand, the private respondent was consistently present and was able to convincingly narrate the events surrounding his recruitment and placement. He was consistent with his testimony and unfailingly mentioned the name of the person he dealt with, as well as the dates and amount of money he paid in the office of the petitioner.

THE COURTS RULING

The main thrust of a petition for certiorari under Rule 65 of the Rules of Court is only the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction, not merely errors of judgment.[3] Although it defies exact definition, grave abuse of discretion generally refers to whimsical and capricious exercise of power.[4]

As a preliminary, "the essential requisites for a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure are: (1) the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction; or with grave abuse of discretion amounting to lack or excess of jurisdiction; or with ***grave abuse of discretion amounting to lack or excess of jurisdiction; (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of

law."[5] In the case of *Toyotaparts v. Director of Bureau of Labor Relations*, G.R. No. 131047, March 2, 1999, it was stated:

"In a plethora of cases, we have held that to justify the issuance of the writ of certiorari, the abuse of discretion on the part of the tribunal or officer must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and grave as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction."[6]

Guided by the foregoing, We find no merit in this petition.

After a study of the petition and its annexes, the Court perceived that the public respondent committed no grave abuse of discretion in affirming the decision of the POEA Administrator. The decision was rendered on the basis of the existing law and prevailing jurisprudence.

The provisions of the 1991 POEA Rules and Regulations, specifically Section 2 (b) Rule V, Book II thereof, categorically prohibit manning agencies, such as petitioner, from charging seafarer-applicants any fee for its recruitment and placement services. In the same manner, Section 2 (a), Rule I, Book VI of the same Rules and Regulations explicitly forbids the charging, imposing or accepting directly or indirectly, any amount of money, goods or services, or any fee or bond for any purpose whatsoever before employment is obtained for an applicant worker or where the fee charged is excessive or contrary to what is prescribed by the Secretary of Labor and Employment.

Despite these prohibitions in the POEA Rules, private respondent was still required to pay P50,000.00 in consideration for his placement and deployment by a certain "Arsenia Villamor," Crewing Manager of the petitioner. The latter denied this and even argued that the dates mentioned by private respondent wherein he allegedly paid the P50,000.00 in three (3) installments do not coincide with the dates in the appointment slips, which were the dates when private respondent supposedly followed-up his deployment to another ship.

Granting this to be true, there is no firm and downright denial from petitioner regarding private respondent's payment of P50,000.00 to Arsenia Villamor. Instead, it merely concentrated on assailing the dates when he paid the three (3) installments. In any case, the appointment slips were self-serving as they were belatedly presented by petitioner. Under the circumstances, that they were selected cannot be discounted considering that private respondent had no equal access to them.

Neither is the absence of a receipt to prove this payment sufficient to make Us rule that there is no illegal exaction on the part of petitioner. Precisely, the petitioner did not give any receipt so that it would be very difficult to prove such exactions. The private respondent did ask for it but he was merely told not to worry because he would be deployed soon.

Regarding petitioner's allegation that private respondent's non-redeployment was due to his poor performance, incompetence and serious violations while he was a "Bosun" on board the vessel MV Wisdom, suffice it to say that, as correctly held by the public respondent, these allegations pertain to his previous employment and not to the present controversy which transpired in 2002. Therefore, even if given probative value, proof of his poor performance in a previous contract would not substantially affect the determination of the case.[7] To borrow the observations of the public respondent, "**** if the averment of the Petitioner that it would be impossible for the Private Respondent to find employment by reason of his past poor performance were true, then it would be strange for the Private Respondent to come back not twice, but fifteen (15) times over a short period of time of follow-up promised employment."

Indeed, instead of disproving the complaint of illegal exaction, petitioner delved on matters dealing with the qualification and performance of private respondent in his previous employment to justify its failure to re-deploy him. Such matters had nothing to do at all with petitioner's defense that private respondent was not able to prove that he paid the P50,000.00 to Arsenia Villamor on the dates stated in the assailed decision.

To downplay its liability for asking P50,000.00 in consideration of private respondent's placement and deployment, petitioner contends that it only proposes candidates for available positions and that it is the principal abroad who will eventually approve its proposal. This contention does not persuade. If it is true that it is the principal who has a final say on who are qualified for the available positions, why did petitioner, through Arsenia Villamor, assure him of placement and deployment? As a matter of fact, he was even required to undergo the requisite pre-employment medical examination (PEME). In one case, it was held by the Supreme Court that:

"We do not agree that respondent company cannot be held liable for the claims of complainants. It is true that the terms of the authorization issued to Rizalina Sadang explicitly limit her authority aside from providing that respondent company shall not be held liable for Miss Sadang's illegal acts. However, under recruitment rules and regulations, licensed entities/agencies are held liable for any and all acts of their agents, representatives and/or employees. Although respondent claims that Ms. Sadang is not its agent, still by giving it the authority to refer/recommend workers to it, impliedly authorized it to recruit applicants, interview them and assure them of employment abroad, under the approved job order of respondent company. Moreover, the limitation upon the authority of respondent not having been made public, respondent also made it possible for Ms. Sadang to misrepresent her authority and to collect fees from applicant workers. Under Art. 1911, it is also provided that 'Even when the agent has exceeded his authority, the principal is solidarily liable with the agent if the former allowed the latter to act as though it had full authority. By allowing Ms. Sadang to recruit workers for referral to it, respondent indirectly made it appear that she was also authorized to collect the necessary fee in relation thereto.'"[8]

Granting that it is only the principal who has final say as to an applicant's qualification, it does not remove the fact that petitioner is still guilty of illegal exaction.

Next, petitioner avers that the public respondent erred in considering the numerous photocopies of appointment slips in favor of private respondent by holding that they proved that the latter relentlessly guarded his job application. As convincingly explained by the public respondent, however, he did not say that he considered them as proof of the payment of placement fee. Public respondent explained that he gave them due consideration to bolster the testimony of the private respondent that he went to follow-up his employment with the petitioner several times. In this regard, he was credible in the eyes of the POEA Administrator and We can only respect such accorded credence.

On due process, We find that petitioner was not denied its right. The records disclose that it was given the opportunity to defend itself. What transpired at the POEA level was recounted by the POEA Administrator in this wise:

"During the scheduled hearing on November 6, 2003, the complainant appeared. On the other hand, the respondent agency failed to appear despite notice. However, on November 3, 2003, respondent agency filed a motion for extension of time to file its explanation. The complainant affirmed all his allegations in the Sworn Statement and further testified: that he applied as a bosun; that he was assured of employment by Arsenia Villamor, crewing manager of the respondent agency; that he was charged P50,000.00 by Arsenia Villamor which he paid through installments; that he is being charged P50,000.00 because it is needed for processing of his papers according to Arsenia Villamor; that he was not issued any receipt; that when he asked for the receipt, he was told not to worry because he will be deployed to a ship already; that he was instructed undertake a medical examination because he is about to be deployed; that up to the present, in spite of the

promises of Villamor of said agency, he was not deployed.

During the hearing on November 12, 2003, both parties appeared. The respondent agency filed its answer/explanation under oath and copy furnished the complainant. Parties moved for the resetting of the case to November 26, 2003.

In its answer, respondent agency by way of special and affirmative defenses, alleged among others: that complainant is one of the former crewmembers who was placed by respondent agency in the vessel 'MV Wisdom' as Bosun; that unfortunately, due to poor performance, incompetence and serious violations which put the vessel in danger, he was repatriated; that he was repatriated on October 15, 2000 and thereafter, he reported to respondent's office asking to be re-deployed, however, due to said record of performance, he was not rehired which is understandable as character checks are conducted by different principals among themselves for proposed crew and evidently, Mr. Pagayunan's past performance did not merit his redeployment even in other principals' vessel; that documents gathered from Mr. Pagayunan himself show that the dates where he claims he reported to Mrs. Villamor to remit the amounts indicated therein do not coincide with the appointment slips; that the delay in the filing of the instant suit renders doubts as to the truth of Mr. Pagayunan's allegations and is clearly apparent that this suit was intended to harass and force respondents to re-deploy him despite his bad record of performance; and that lately, it has been discovered that Mr. Pagayunan has falsified his age in order to qualify for employment.

On November 25, 2003, the complainant appeared to follow up this case. Complainant also submitted his reply copy furnished the respondent.

During the scheduled hearing on April 26, 2004, the complainant appeared. Complainant moved for the resolution of the instant case.

On August 18, 2004, respondent agency belatedly filed its Rejoinder to Complainant's Reply and argued that its crewing manager Arsenia Villamor could not have either received or demanded the amounts complainant claims to have paid."^[9]

It is, therefore, clear from the foregoing that petitioner participated in the proceedings before the POEA administrator. It even filed a Notice of Appeal from the Administrator's Order, dated October 11, 2004. Petitioner likewise filed a Motion for Reconsideration of the public respondent's Order, dated July 1, 2005, and a Reply to the Comment/Opposition to Motion for Reconsideration filed by private respondent. In administrative proceedings, the filing of charges and giving of reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. As long as a party was given the opportunity to defend his interests in due course, he was not denied due process."^[10]

WHEREFORE, the petition is DENIED.

SO ORDERED.

Reyes, Jr., A.B and Bato, Jr., JJ., concur.

Petition denied.

[1] Ibid., p. 45.

[2] Rollo, pp. 39-40

[3] *Telefunken Semiconductors Employees Union-FFW v. Court of Appeals*, 348 SCRA 565 (2000)

[4] LMG Chemical Corporation v. Secretary of the DOLE, 356 SCRA 577 (2001)

[5] Rivera vs. Espiritu, 374 SCRA 351.

[6] PureFoods Corp. vs. NLRC, et al., G.R. No. 78591, March 21, 1989, 171 SCRA 415.

[7] Rollo p. 41

[8] Aldaba Engineering v. Administrator of Philippine Overseas Employment Administration, G. R. No. 76925 September 26, 1994

[9] Rollo, pp. 81-82.

[10] Ibid. p. 200; Private respondent's Comment citing Rodriguez v. Court of Appeals, 386 SCRA 492.

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