

PHILIPPINE INTERISLAND SHIPPING ASSOCIATION OF THE PHILIPPINES, CONFERENCE OF INTERISLAND SHIP-OWNERS AND OPERATORS, UNITED PETROLEUM TANKER OPERATORS ASSOCIATION OF THE PHILIPP...

G.R. No. 100481. January 22, 1997

Ponente: MENDOZA, J.

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MENDOZA, J.:

Private respondent United Harbor Pilots' Association of the Philippines, Inc. (UHPAP) is the umbrella organization of various groups rendering pilotage service in different ports of the Philippines. The service consists of navigating a vessel from a specific point, usually about two (2) miles off shore, to an assigned area at the pier and vice versa. When a vessel arrives, a harbor pilot takes over the ship from its captain to maneuver it to a berth in the port, and when it departs, the harbor pilot also maneuvers it up to a specific point off shore. The setup is required by the fact that each port has peculiar topography with which a harbor pilot is presumed to be more familiar than a ship captain.

The Philippine Ports Authority (PPA) is the government agency which regulates pilotage. Pursuant to Presidential Decree No. 857, it has the power "to supervise, control, regulate . . . such services as are necessary in the ports vested in, or belonging to the Authority"[1] and to "control, regulate and supervise pilotage and the conduct of pilots in any Port District." [2] It also has the power "to impose, fix, prescribe, increase or decrease such rates, charges or fees. . . for the services rendered by the Authority or by any private organization within a Port District." [3]

These cases arose out of the efforts of harbor pilots to secure enforcement of Executive Order No. 1088, which fixes the rates of pilotage service, and the equally determined efforts of the PPA and its officials, the herein petitioners, to block enforcement of the executive order, even as they promulgated their own orders which in the beginning fixed lower rates of pilotage and later left the matter to self determination by parties to a pilotage contract.

I. THE FACTS

G.R. No. 103716

On February 3, 1986, shortly before the presidential elections, President Ferdinand E. Marcos, responding to the clamor of harbor pilots for an increase in pilotage rates, issued Executive Order No. 1088, PROVIDING FOR UNIFORM AND MODIFIED RATES FOR PILOTAGE SERVICES RENDERED TO FOREIGN AND COASTWISE VESSELS IN ALL PRIVATE AND PUBLIC PORTS. The executive order increased substantially the rates of the existing pilotage fees previously fixed by the PPA.

However, the PPA refused to enforce the executive order on the ground that it had been drawn hastily and without prior consultation; that its enforcement would create disorder in the ports as the operators and owners of the maritime vessels had expressed opposition to its implementation; and that the increase in pilotage, as mandated by

it, was exorbitant and detrimental to port operations.[4]

The UHPAP then announced its intention to implement E.O. No. 1088 effective November 16, 1986. This in turn drew a warning from the PPA that disciplinary sanctions would be applied to those who would charge rates under E.O. No. 1088. The PPA instead issued Memorandum Circular No. 43-86, fixing pilotage fees at rates lower than those provided in E.O. No. 1088.

Consequently, the UHPAP filed on January 7, 1987 a complaint for injunction with the Regional Trial Court of Manila, against the then Minister of Transportation and Communications, Hernando Perez, and PPA General Manager, Primitivo S. Solis, Jr. It sought a writ of preliminary mandatory injunction for the immediate implementation of E.O. No. 1088, as well as a temporary restraining order to stop PPA officials from imposing disciplinary sanctions against UHPAP members charging rates in accordance with E.O. No. 1088.

The case, docketed as Civil Case No. 87-38913, was raffled to Branch 28 of the Regional Trial Court of Manila which issued a temporary restraining order, enjoining the PPA from threatening the UHPAP, its officers and its members with suspension and other disciplinary action for collecting pilotage fees pursuant to E.O. No. 1088.

On March 16, 1987, the Chamber of Maritime Industries of the Philippines, William Lines, Inc., Loadstar Shipping Co., Inc. and Delsen Transport Lines, Inc., after obtaining leave, filed a joint answer in intervention.

On February 26, 1988, while the case was pending, the PPA issued Administrative Order No. 02-88, entitled IMPLEMENTING GUIDELINES ON OPEN PILOTAGE SERVICE. The PPA announced in its order that it was leaving to the contracting parties, i.e., the shipping lines and the pilots, the fixing of mutually acceptable rates for pilotage services, thus abandoning the rates fixed by it (PPA) under Memorandum Circular No. 43-86, as well as those provided in E.O. No. 1088. The administrative order provided:

Section 3. Terms/Conditions on Pilotage Service. — The shipping line or vessel's agent/representative and the harbor pilot/firm chosen by the former shall agree between themselves, among others, on what pilotage service shall be performed, the use of tugs and their rates, taking into consideration the circumstances stated in Section 12 of PPA AO No. 03-85, and such other conditions designed to ensure the safe movement of the vessel in pilotage areas/grounds.

The PPA then moved to dismiss the case, contending that the issuance of its order had rendered the case moot and academic and that consequently E.O. No. 1088 had ceased to be effective. The UHPAP opposed the motion. Together with the Manila Pilots' Association (MPA), it filed on May 25, 1988 a petition for certiorari and prohibition in the RTC-Manila, questioning the validity of A.O. No. 02-88. This petition was docketed as Civil Case No. 88-44726 (United Harbor Pilots' Association and Manila Pilots' Association v. Hon. Rainerio Reyes, as Acting Secretary of the Department of Transportation and Communications and Chairman of the Philippine Ports Authority (PPA) and Maximo Dumlao, Jr., as General Manager of the Philippine Ports Authority (PPA), et al.) and raffled to Branch 2 of RTC-Manila. The factual antecedents of this case are discussed in G.R. No. 100481 below.

Meanwhile, in Civil Case 87-38913, the court, without resolving the motion to dismiss filed by the PPA, rendered a decision[5] holding that A.O. No. 02-88 did not render the case moot and academic and that the PPA was under obligation to comply with E.O. No. 1088 because the order had the force of law which the PPA could not repeal.

The then Transportation Minister Hernando Perez and the PPA filed a petition for review. The petition was filed in this Court which later referred the case to the Court of Appeals where it was docketed as CA G.R. SP. No. 18072. On the other hand the intervenors appealed to the Court of Appeals where this case was docketed as CA G.R. No. 21590. The two cases were then consolidated.

In a decision rendered on October 4, 1991, the Twelfth Division[6] of the Court of Appeals affirmed the decision of the trial court, by dismissing CA G.R. No. 21590 and denying CA G.R. SP. No. 18072. Hence, this petition by the Secretary of Transportation and Communications and the PPA. The intervenor shipping lines did not appeal.

G.R. No. 100481

Meanwhile, in a petition for certiorari filed before RTC-Manila, Branch 2 (Civil Case No. 88-44726), the UHPAP and the MPA sought the annulment of A.O. No. 02-88, which in pertinent parts provided:

Section 1. Statement of Policy. — It is hereby declared that the provision of pilotage in ports/harbors/areas defined as compulsory in Section 8 of PPA Administrative Order No. 03-85, entitled, "Rules and Regulations Governing Pilotage Services, the Conduct of Pilots and Pilotage Fees in Philippine Ports" shall be open to all licensed harbor pilots/pilotage firms/associations appointed/accredited by this authority to perform pilotage service.

Section 2. Persons Authorized to Render Pilotage. — The following individuals, persons or groups shall be appointed/accredited by this Authority to provide pilotage service:

- a. Harbor Pilots of the present Pilotage Associations of the different pilotage districts in the Philippines. Their probationary training as required under Section 31 of PPA AO No. 03-85 shall be undertaken by any member of said Association.
- b. Members/employees of any partnership/corporation or association, including Filipino shipmasters/ captains of vessel (domestic/foreign) of Philippine Registry and individuals who meet the minimum qualifications and comply with the requirements prescribed in Sec. 29 of PPA AO No. 03-85, aforesaid, and who are appointed by said firm or association and accredited as harbor pilots by this authority. New Harbor Pilots who wish to be appointed/accredited by PPA under the open pilotage system either as an individual pilot or as a member of any Harbor Pilot partnership/association shall be required to undergo a practical examination, in addition to the written examination given by the Philippine Coast Guard, prior to their appointment/ accreditation by this Authority.

The UHPAP and MPA, as petitioners below, contended (1) that A.O. No. 02-88 was issued without the benefit of a public hearing; (2) that E.O. No. 1088 had not been repealed by any other Executive Order or Presidential Decree and, therefore, should be given effect; and (3) that A.O. No. 02-88 contravened P.D. No. 857.

On August 21, 1989, the Philippine Interisland Shipping Association, Conference of Interisland Shipowners and Operators, United Petroleum Tanker Operators of the Philippines, Lighterage Association of the Philippines, and Pilotage Integrated Services Corp., were allowed to intervene.

On September 8, 1989, a writ of preliminary injunction was issued by the court, enjoining the PPA from implementing A.O. No. 02-88 and, on October 26, 1989, judgment was rendered in favor of the petitioners therein. The dispositive portion of the court's decision[7] reads:

WHEREFORE, for all of the foregoing, the petition is hereby granted.

1. Respondents are hereby declared to have acted in excess of jurisdiction and with grave abuse of discretion amounting to lack of jurisdiction in approving Resolution No. 860 and in enacting Philippine Ports Authority Administrative Order No. 02-88, the subject of which is "Implementing Guidelines on Open Pilotage Service";
2. Philippine Ports Authority Administrative Order No. 02-88 is declared null and void;
3. The preliminary injunction issued on September 8, 1989 is made permanent; and
4. Without costs.

SO ORDERED.

Respondents and the intervenors below filed a joint petition for certiorari in the Court of Appeals (CA G.R. SP No. 19570), assailing the decision of the trial court. But their petition was dismissed for lack of jurisdiction on the ground that the issue raised was purely legal.

The parties separately filed petitions for review before this Court. The first one, by the PPA and its officers, was docketed as G.R. No. 100109 (Hon. Pete Nicomedes Prado, Philippine Ports Authority and Commodore Rogelio Dayan v. United Harbor Pilots' Association of the Philippines and Manila Pilots' Association), while the second one, by the intervenors, was docketed as G.R. No. 100481 (Philippine Interisland Shipping Association of the Philippines, Conference of Interisland Ship Owners and Operators, United Petroleum Tanker Operators Association of the Philippines, Inc. v. The Court of Appeals, United Harbor Pilots' Association of the Philippines and Manila Pilots' Association.)

The petition filed by the government in G.R. No. 100109 was dismissed for failure of petitioners to show that the Court of Appeals committed a reversible error.[8] On the other hand, the petition of the intervenors in G.R. No. 100481 was given due course.

G.R. No. 107720

Following the denial of its petition in G.R. No. 100109, the PPA issued on July 31, 1992, Administrative Order No. 05-92, placing harbor pilots under the control of the PPA with respect to the scheduling and assignment of service of vessels. The PPA cited as justification "pilotage delays . . . under the set-up where private respondents (UHPAP & MPA) assign the pilots. Intentionally or otherwise, several vessels do not receive the pilotage service promptly, causing them operational disruptions and additional expenses/costs." [9]

Private respondents UHPAP and MPA viewed the matter differently. On October 28, 1992, they asked the RTC-Manila, Branch 2 which heard and decided Civil Case No. 88-44726 to cite PPA officials in contempt of court. On the same day, the trial court issued an order restraining the herein petitioners from implementing Administrative Order No. 05-92. However, the PPA proceeded to implement its order, prompting the UHPAP and MPA to move again to cite petitioners in contempt, even as they questioned the validity of A.O. No. 05-92. Accordingly the trial court issued another order on November 4, 1992, reiterating its previous order of October 28, 1992 to petitioners to refrain from implementing A.O. No. 05-92 pending resolution of the petitions.

Making a special appearance, petitioners questioned the jurisdiction of the court and moved for the dismissal of the petitions for contempt. Allegedly to prevent the disruption of pilotage services, petitioners created a special team of reserve pilots to take over the pilotage service in the event members of UHPAP/MPA refused to render pilotage services.

For the third time respondents moved to cite petitioners in contempt of court. Again petitioners questioned the court's jurisdiction and manifested that they were adopting their previous motion to dismiss petitions for contempt filed against them.

On November 17, 1992, the trial court denied the petitioners' motion and set the contempt petitions for hearing on November 19, 1992. Hence, this petition, which was docketed as G.R. No. 107720 (Hon. Jesus B. Garcia, Jr. in his capacity as Secretary of Transportation and Communications and Chairman of the Philippine Ports Authority, Commodore Rogelio A. Dayan, in his capacity as General Manager of the Philippine Ports Authority and Simeon T. Silva, Jr., in his capacity as the South Harbor Manager, Philippine Ports Authority v. Hon. Napoleon Flojo, in his capacity as the Presiding Judge of Branch 2, RTC, Manila, UHPAP and MPA).

Pending resolution of this case, the Court ordered the parties to maintain the status quo as of October 31, 1992.

II. THE ISSUES AND THEIR DISPOSITION

The issues raised are:

I. WHETHER OR NOT RESPONDENT COURT OF APPEALS ERRED IN AFFIRMING THE CHALLENGED DECISION OF RTC-MANILA, BRANCH 41, WHICH RULED THAT:

(A) CIVIL CASE NO. 87-38913 HAS NOT BECOME MOOT AND ACADEMIC WITH THE ISSUANCE OF ADMINISTRATIVE ORDER NO. 02-88; AND

(B) HEREIN PETITIONERS ARE BOUND TO COMPLY WITH E.O. NO. 1088;

II. WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN DISMISSING CA G.R. SP. NO. 19570 FOR LACK OF JURISDICTION?

III. WHETHER OR NOT RESPONDENT JUDGE NAPOLEON FLOJO COMMITTED GRAVE ABUSE OF DISCRETION IN ASSUMING JURISDICTION OVER THE PETITIONS FOR CONTEMPT FILED BY PRIVATE RESPONDENTS AS A RESULT OF THE ISSUANCE OF A.O. NO. 05-92?

These issues will be discussed in seriatim.

A. Whether Executive Order No. 1088 is Valid and

Petitioners are Bound to Obey it

(G.R. Nos. 103716-17)

Executive Order No. 1088 reads:

EXECUTIVE ORDER No. 1088

PROVIDING FOR UNIFORM AND MODIFIED RATES FOR PILOTAGE SERVICES RENDERED TO FOREIGN AND COASTWISE VESSELS IN ALL PRIVATE OR PUBLIC PHILIPPINE PORTS.

WHEREAS, the United Harbor Pilots' Association of the Philippines has clamored for the rationalization of pilotage service charges, through the imposition of uniform and adjusted rates for foreign and coastwise vessels in all Philippine ports, whether public or private;

WHEREAS, the plea of the Association has been echoed by a great number of Members of Parliament and other persons and groups;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution and by law, do hereby direct and order:

Section 1. The following shall be the rate of pilotage fees or charges based on tonnage for services rendered to both foreign and coastwise vessels;

For Foreign Vessels

Rate in US \$ or its Peso

Equivalent Less than 500GT

\$ 30.00

500GT to 2,500GT

43.33

2,500GT to 5,000GT

71.33

5,000GT to 10,000GT

133.67

10,000GT to 15,000GT

181.67

15,000GT to 20,000GT

247.00

20,000GT to 30,000GT

300.00

30,000GT to 40,000GT

416.67

40,000GT to 60,000GT

483.33

60,000GT to 80,000GT

550.00

80,000GT to 100,000GT

616.67

100,000GT to 120,000GT

666.67

120,000GT to 130,000GT

716.67

130,000GT to 140,000GT

766.67

Over 140,000 gross tonnage \$0.05 or its peso equivalent every excess tonnage. Rate for docking and undocking anchorage, conduction and shifting other related special services is equal to 100%. Pilotage services shall be compulsory in government and private wharves or piers,

For Coastwise Vessels:

Regular

100 and under 500 gross tons

P 41.70

500 and under 600 gross tons

55.60

600 and under 1,000 gross tons

69.60

1,000 and under 3,000 gross tons

139.20

3,000 and under 5,000 gross tons

300.00

5,000 and over gross tons

SEC. 2. With respect to foreign vessels, payment of pilotage services shall be made in dollars or in pesos at the prevailing exchange rate.

SEC. 3. All orders, letters of instruction, rules, regulations and other issuances inconsistent with this Executive Order are hereby repealed or amended accordingly.

SEC. 4. This Executive Order shall take effect immediately.

Done in the City of Manila, this 3rd day of February, in the year of our Lord, nineteen hundred and eighty-six.

(Sgd.) FERDINAND E. MARCOS

President of the Philippines

By the President:

(Sgd.) JUAN C. TUVERA

Presidential Executive Assistant

Petitioners contend that E.O. No. 1088 was merely an administrative issuance of then President Ferdinand E. Marcos and, as such, it could be superseded by an order of the PPA. They argue that to consider E.O. No. 1088 a statute would be to deprive the PPA of its power under its charter to fix pilotage rates.

The contention has no merit. The fixing of rates is essentially a legislative power.[10] Indeed, the great battle over the validity of the exercise of this power by administrative agencies was fought in the 1920s on the issue of undue delegation precisely because the power delegated was legislative. The growing complexity of modern society, the multiplication of the subjects of governmental regulations and the increased difficulty of administering the laws made the creation of administrative agencies and the delegation to them of legislative power necessary.[11]

There is no basis for petitioners' argument that rate fixing is merely an exercise of administrative power; that if President Marcos had power to revise the rates previously fixed by the PPA through the issuance of E.O. No. 1088, the PPA could in turn revise those fixed by the President, as the PPA actually did in A.O. No. 43-86, which fixed lower rates of pilotage fees, and even entirely left the fees to be paid for pilotage to the agreement of the parties to a contract. The orders previously issued by the PPA were in the nature of subordinate legislation, promulgated by it in the exercise of delegated power. As such these could only be amended or revised by law, as the President did by E.O. No. 1088.

It is not an answer to say that E.O. No. 1088 should not be considered a statute because that would imply the withdrawal of power from the PPA. What determines whether an act is a law or an administrative issuance is not its form but its nature. Here, as we have already said, the power to fix the rates of charges for services, including pilotage service, has always been regarded as legislative in character.

Nor is there any doubt of the power of the then President to fix rates. On February 3, 1986, when he issued E.O. No. 1088, President Marcos was authorized under Amendment No. 6 of the 1973 Constitution to exercise legislative power, just as he was under the original 1973 Constitution, when he issued P.D. NO. 857 which created the PPA, endowing it with the power to regulate pilotage service in Philippine ports. Although the power to fix rates for pilotage had been delegated to the PPA, it became necessary to rationalize the rates of charges fixed by it through the imposition of uniform rates. That is what the President did in promulgating E.O. No. 1088. As the President could delegate the ratemaking power to the PPA, so could he exercise it in specific instances without thereby withdrawing the power vested by P.D. No. 857, Section 20(a) in the PPA "to impose, fix, prescribe, increase or decrease such rates, charges or fees... for the services rendered by the Authority or by any private organization within a Port District."

It is worthy to note that E.O. No. 1088 provides for adjusted pilotage service rates without withdrawing the power of the PPA to impose, prescribe, increase or decrease rates, charges or fees. The reason is because E.O. NO. 1088 is not meant simply to fix new pilotage rates. Its legislative purpose is the "rationalization of pilotage service charges, through the imposition of uniform and adjusted rates for foreign and coastwise vessels in all Philippine ports."

The case presented is similar to the fixing of wages under the Wage Rationalization Act (R.A. No. 6727) whereby minimum wages are determined by Congress and provided by law, subject to revision by Wage Boards should later conditions warrant their revision. It cannot be denied that Congress may intervene anytime despite the existence of administrative agencies entrusted with wage-fixing powers, by virtue of the former's plenary power of legislation. When Congress does so, the result is not the withdrawal of the powers delegated to the Wage Boards but cooperative lawmaking in an area where initiative and expertise are required. The Court of Appeals is correct in holding that —

The power of the PPA to fix pilotage rates and its authority to regulate pilotage still remain notwithstanding the fact that a schedule for pilotage fees has already been prescribed by the questioned executive order. PPA is at liberty to fix new rates of pilotage subject only to the limitation that such new rates should not go below the rates fixed under E.O. 1088. The rationale behind the limitation is no different from what has been previously stated. Being a mere administrative agency, PPA cannot validly issue orders or regulations that would have the effect of rendering nugatory the provisions of the legislative issuance such as those of the executive order in question.(emphasis supplied)

Petitioners refused to implement E.O. No. 1088 on the ground that it was issued without notice to the PPA and that it was nothing but a "political gimmick" resorted to by then President Marcos. This perception obviously stemmed from the fact that E.O. No. 1088 was issued shortly before the presidential elections in 1986.

But lack of notice to the PPA is not proof that the necessary factual basis for the order was wanting. To the contrary, the presumption is that the President had before him pertinent data on which he based the rates prescribed in his order. Nor is the fact that the order might have been issued to curry favor with the voters a reason for the PPA to refuse to enforce the order in question. It is not unusual for lawmakers to have in mind partisan political consideration in sponsoring legislation. Yet that is not a ground for invalidating a statute.

Moreover, an inquiry into legislative motivation is not proper since the only relevant question is whether in

issuing it the President violated constitutional and statutory restrictions on his power. The PPA did not have any objection to the order based on constitutional ground. In fact the nearest to a challenge on constitutional grounds was that mounted not by the PPA but by the intervenors below which claimed that the rates fixed in E.O. NO. 1088 were exorbitant and unreasonable. However, both the trial court and the Court of Appeals overruled the objections and the intervenors apparently accepted the ruling because they did not appeal further to this Court.

There is, therefore, no legal basis for PPA's intransigence, after failing to get the new administration of President Aquino to revoke the order by issuing it own order in the form of A.O. NO. 02-88. It is noteworthy that if President Marcos had legislative power under Amendment No. 6 of the 1973 Constitution[12] so did President Aquino under the Provisional (Freedom) Constitution[13] who could, had she thought E.O. No. 1088 to be a mere "political gimmick," have just as easily revoked her predecessor's order. It is tempting to ask if the administrative agency would have shown the same act of defiance of the President's order had there been no change of administration. What this Court said in *La Perla Cigar and Cigarette Factory v. Capapas*," [14] *mutatis mutandis* may be applied to the cases at bar:

Was it within the powers of the then Collector Ang-angco to refuse to collect the duties that must be paid? That is the crucial point of inquiry. We hold that it was not.

Precisely, he had to give the above legal provisions, quite explicit in character, force and effect. His obligation was to collect the revenue for the government in accordance with existing legal provisions, executive agreements and executive orders certainly not excluded. He would not be living up to his official designation if he were permitted to act otherwise. He was not named Collector of Customs for nothing. . . .

Certainly, if the President himself were called upon to execute the laws faithfully, a Collector of Customs, himself a subordinate executive official, cannot be considered as exempt in any wise from such an obligation of fealty. Similarly, if the President cannot suspend the operation of any law, it would be presumptuous in the extreme for one in the position of then Collector Ang-angco to consider himself as possessed of such a prerogative. . . .

We conclude that E.O. No. 1088 is a valid statute and that the PPA is duty bound to comply with its provisions. The PPA may increase the rates but it may not decrease them below those mandated by E.O. No. 1088. Finally, the PPA cannot refuse to implement E.O. No. 1088 or alter it as it did in promulgating Memorandum Circular No. 43-86. Much less could the PPA abrogate the rates fixed and leave the fixing of rates for pilotage service to the contracting parties as it did through A. O. No. 02-88, Section 3. Theretofore the policy was one of governmental regulation of the pilotage business. By leaving the matter to the determination of the parties, the PPA jettisoned this policy and changed it to *laissez-faire*, something which only the legislature, or whoever is vested with lawmaking authority, could do.

B. Whether the Court of Appeals had Jurisdiction over the

Appeal of Intervenors from the Decision of the

Trial Court Invalidating Administrative Order

No. 02-88 of the PPA

(G.R. No. 100481)

The Court of Appeals dismissed the joint appeal of the government and the intervenors from the trial court's decision in Civil Case No. 88-44726 on the ground that the issues raised were purely legal questions.[15] The appellate court stated:

After a painstaking review of the records We resolved to dismiss the petition for lack of jurisdiction.

From the facts, it is clear that the main issue proffered by the appellant is whether or not the respondent Philippine Ports Authority could validly issue rules and regulations adopting the "open pilotage policy" pursuant to its charter (P.D. 857).

....

It must be noted that while the court a quo had clearly recognized the intricate legal issue involved, it nevertheless decided it on the merits which apparently resolved only the procedural aspect that justified it in declaring the questioned order as null and void. While We recognize the basic requirements of due process, the same cannot take precedence in the case at bar in lieu of the fact that the resolution of the present case is purely a legal question.

Moreover, it appears that appellants in the court below had filed a manifestation and motion waiving their presentation of evidence. Instead, they opted to submit a comprehensive memorandum of the case on the ground that the pivotal issue raised in the petition below is purely legal in character. (p. 231, Records)

At this juncture, We are at a loss why appellants had elevated the present action before Us where at the outset they already noted that the issue is purely legal.

If in the case of *Murillo v. Consul* (UDK-9748, Resolution en banc, March 1, 1990) the Supreme Court laid down the rule that "if an appeal by notice of appeal is taken from the Regional Trial Court to the Court of Appeals, and in the latter Court, the appellant raised naught but issues of law, the appeal should be dismissed for lack of jurisdiction (page 5, Resolution in *Murillo*)," then with more reason where as in the case at bar public-appellants thru the Office of the Solicitor General in their memorandum manifested that the controversy has reference to the pure legal question of the validity of the questioned administrative order. Consequently, We have no other recourse but to dismiss the petition on the strength of these pronouncements.

As already stated, from this decision, both the government and the intervenors separately brought petitions for review to this Court. In G.R. No. 100109, the government's petition was dismissed for lack of showing that the appellate court committed reversible error. The dismissal of the government's petition goes far to sustain the dismissal of the intervenors' petition in G.R. No. 100481 for the review of the same decision of the Court of Appeals. After all, the intervenors' petition is based on substantially the same grounds as those stated in the government's petition. It is now settled that the dismissal of a petition for review on certiorari is an adjudication on the merits of a controversy.[16] Such dismissal can only mean that the Supreme Court agrees with the findings and conclusions of the Court of Appeals or that the decision sought to be reviewed is correct.[17]

It is significant to note that the Secretary of Transportation and Communications and the PPA, petitioners in G.R. No. 100109, have conceded the finality of the dismissal of their appeal.[18] Thus, the administrative policy, the validity of which herein petitioners seek to justify by their appeal, has already been abandoned by the very administrative agency which adopted it, with the result that the question of validity of A.O. No. 02-88 is now moot and academic.

C. Whether the Trial Court has Jurisdiction to Hear and

Decide the Contempt Charges

against Petitioners

(G.R. No. 107720)

As already noted, following the dismissal of the government's appeal in G.R. No. 100109, the PPA abandoned A.O. No. 02-88 which provided for "Open Pilotage System." But it subsequently promulgated Administrative

Order No. 05-92, under which the PPA assumed the power of scheduling and assigning pilots to service vessels, allegedly regardless of whether the pilots assigned are or are not members of the UHPAP and the MPA which theretofore had been the exclusive agencies rendering pilotage service in Philippine ports. The UHPAP and the MPA saw the adoption of this system as a return to the "Open Pilotage System" and, therefore, a violation of the trial court's decision invalidating the "Open Pilotage System." They considered this to be a contempt of the trial court.

Petitioners moved to dismiss the motions for contempt against them. They contend that even if the motions were filed as incidents of Civil Case No. 88-44726, the RTC-Manila, Branch 2 did not have jurisdiction to hear them because the main case was no longer before the court and the fact was that the contempt citation was not an incident of the case, not even of its execution, but a new matter raising a new cause of action which must be litigated in a separate action, even as petitioners denied they had committed any contumacious act by the issuance of A.O. No. 05-92.

Private respondents maintained that their petitions were mere incidents of Civil Case No. 88-44726 and that the trial court has jurisdiction because in fact this Court had not yet remanded the case to the court a quo for execution of its decision. Private respondents complain that petitioners are trying to circumvent the final and executory decision of the court in Civil Case No. 88-44726, through the issuance of A.O. No. 05-92.

As already noted, however, the decision of the trial court in Civil Case No. 88-44726 enjoined petitioners from implementing the so called "Open Pilotage System" embodied in A.O. No. 02-88. If, as alleged, A.O. No. 05-92 is in substance a reenactment of A.O. No. 02-88, then there is basis for private respondents' invocation of the trial court's jurisdiction to punish for contempt.

Still it is argued that the trial court lost jurisdiction over Civil Case No. 887426, upon the perfection of their appeal from its decision. That is indeed true. "The appeal transfers the proceedings to the appellate court, and this last court becomes thereby charged with the authority to deal with contempt's committed after perfection of the appeal." [19] The trial court would have jurisdiction only in the event of an attempt to block execution of its decision and that would be after the remand of the case to the trial court. [20] Until then the trial court would have no jurisdiction to deal with alleged contemptuous acts.

The fly in the ointment, however, is that by accepting the dismissal of their petition for review in G.R. No. 100109, petitioners rendered execution of the decision of the trial court superfluous. Any attempt by them, therefore, to disobey the court's final injunction as embodied in its decision would be properly subject to punishment for contempt. Petitioners' contention that private respondents' complaint must be the subject of a separate action would nullify contempt proceedings as means of securing obedience to the lawful processes of a court. Petitioners' theory would reward ingenuity and cunning in devising orders which substantially are the same as the order previously prohibited by the court.

We hold that the trial court has jurisdiction to hear the motions for contempt filed by private respondent, subject to any valid defense which petitioners may interpose.

III. JUDGMENT

WHEREFORE, the several petitions in these cases are DISMISSED.

SO ORDERED.

Narvasa, C.J., Padilla, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Francisco, Hermosisima, Jr., Panganiban, and Torres, Jr., JJ., concur.

Regalado, J., no part – related to a counsel in G.R. No. 100481.

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- [1] P.D. No. 857, §6(a)(ii).
- [2] Id., §6(a)(viii).
- [3] Id., §20(a).
- [4] Petition in G.R. No. 103716, p. 4; Rollo, p. 13.
- [5] Per Judge Domingo D. Panis.
- [6] Per Justice Cancio C. Garcia and concurred in by Justices Manuel Herrera (Chairman) and Alfredo Benipayo.
- [7] Per Judge Napoleon R. Flojo.
- [8] Res., March 25, 1992.
- [9] Petition in G.R. No. 107720, p. 10; Rollo, p. 11.
- [10] See e.g., *Ynchausti Steamship Co. v. Public Utility Commissioner*, 42 Phil. 621, 624 (1922) ("the fixing of rates is a legislative and governmental power over which the government has complete control."); *Employers Confederation of the Philippines v. National Wages and Productivity Commission*, 201 SCRA 759,765 (1991) ("wage-fixing, like rate-making, constitutes an act of Congress.")
- [11] As Justice Irene R. Cortes points out in her book, *PHILIPPINE ADMINISTRATIVE LAW* 117 (1963): "[T]hat the legislature may directly provide for these rates, wages, or prices. But while the legislature may deal directly with these subjects it has been found more advantageous to place the performance of these functions in some administrative agency. The reason is that the legislature has not the time, the knowledge or the means necessary to handle adequately these matters. The needs for dispatch, for flexibility and for technical know-how is better met by entrusting the rate-fixing to an agency other than the legislature itself."
- [12] *Legaspi v. Minister of Finance*, 115 SCRA 418 (1982); *Marcos v. Manlapus*, 178 SCRA 760 (1989).
- [13] *Maceda v. Macaraig, Jr.*, 223 SCRA 217 (1993).
- [14] 28 SCRA 1085, 1091-1092 (1969) (emphasis supplied).
- [15] Per Justice Manuel C. Herrera (Chairman) and concurred in by Justices Alfredo L. Benipayo and Fortunato A. Vailoces.
- [16] *Commercial Union Assurance Limited v. Lepanto Consolidated Mining Company*, 86 SCRA 79 (1978); *Tayag v. Yuseco*, 105 Phil. 484 (1959).
- [17] *Smith Bell and Company (Phils.), Inc. v. Court of Appeals*, 197 SCRA 201 (1991).
- [18] See discussion in G.R. 107720, *infra*.
- [19] *People v. Alarcon*, 69 Phil 265, 272 (1939). See *People v. Godoy*, 243 SCRA 64 (1995).
- [20] *Philippine National Construction Corp. v. Court of Appeals*, 228 SCRA 565 (1993); *Shoji v. Harvey*, 43 Phil 333 (1922).

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