

**ADELPHA FERNANDEZ, MARISSA DOMINGO, EUNICE OFRECIA,
ROSELYN MENDOZA, ARLENE CABALLERO, ALMIRA MIRANDA, AND
MARY CHRISTINE VALENTON, PETITIONERS, VS. HON. RUBEN
TORRES, SECRETARY...**

G.R. No. 102940. November 06, 1992

Ponente: FELICIANO, J.

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FELICIANO, J.:

Petitioners Adelpha Fernandez, Marissa Domingo, Eunice Ofrecia, Roselyn Mendoza, Arlene Caballero, Almira Miranda and Mary Christine Valenton seek certiorari and prohibition to prohibit and restrain the Secretary of the Department of Labor and Employment ("DOLE") and the Administrator of the Philippine Overseas Employment Administration ("POEA") from enforcing and implementing Item No. 1 of DOLE Circular No. 01-91 dated 20 November 1991 entitled "Prescribing Additional Requirements, Conditions and Procedures for the Deployment of Performing Artists."

Item No. 1 of the assailed DOLE Circular provides as follows:

"1. No Filipino entertainer shall be deployed outside the Philippines except for legitimate performing artists consisting of musicians, singers and members of dance troupes. In all cases, the performing artists must have a track record of legitimate and reputable performance in the Philippines for at least one year. In no case shall the performing artist be below 23 years old.

The Secretary of Labor and Employment may, for justifiable reasons, exempt performing artists from coverage hereof."

The promulgation of DOLE Circular No. 01-91 was preceded by public agitation (as reflected in the print media) for a total ban on deployment of Filipino entertainers abroad, in response to the growing number of documented reports and complaints from entertainers and their relatives about the exploitative working conditions, harassment, forcible detention, physical injuries, rape and even death suffered by female performing artists and entertainers abroad. Because a comprehensive prohibition of such deployment would visit obviously adverse economic consequences upon the entertainment industry, the First National Tripartite Conference for the Protection of Overseas Entertainers, attended by representatives from the Government and from the management and labor sectors of the entertainment community, was held last 18 November 1991. The Conference was convened to evaluate a Government proposal for a complete interdiction of overseas deployment of Philippine entertainers and performing artists. During this Conference, some of the problems facing Filipino entertainers (in particular, women entertainers) abroad were discussed openly: vulnerability to operations of organized crime syndicates abroad; subjection to white slavery; harsh and substandard working conditions; vulnerability to sexually transmitted diseases and unwanted pregnancies, and so forth.[1] At the end of the Conference, the consensus among the management and labor representatives which emerged was that Government should adopt a policy of selective (rather than comprehensive) prohibition of deployment abroad of Philippine entertainers, to avoid the

adverse effects which complete prohibition would impose on the country's manpower export program. The labor representatives recommended that the minimum age for performing artists seeking overseas deployment be raised from eighteen (18) years to twenty-three (23) years.[2]

In the present proceeding, petitioners allege themselves to be "qualified performing artists, mostly singers and dancers," of ages eighteen (18) to twenty-two (22) years. Through counsel, they challenge the constitutional validity of Item No. 1 of DOLE Circular No. 01-91 and their arguments may be condensed in the following manner:

(1) that Item No. 1 of DOLE Circular No. 01-91 is violative of the equal protection clause and the due process clause of the Constitution, and the state policy on protection of labor because Item No. 1 is arbitrary, oppressive and discriminatory against performing artists of ages eighteen (18) to twenty-two (22) who would otherwise be qualified for overseas employment; and

(2) that Item No. 1 of the mentioned DOLE Circular was promulgated by public respondent DOLE Secretary and POEA Administrator without or in excess of their jurisdiction or with grave abuse of discretion.

In actions involving constitutional issues, the firmly settled rule is that a constitutional question will not be heard and resolved by the courts unless the following requirements of judicial inquiry are met:

(1) the existence of an actual case or controversy;

(2) the party raising the constitutional issue must have a personal and substantial interest in the resolution thereof;

(3) the controversy must be raised at the earliest reasonable opportunity; and

(4) that the resolution of the constitutional issue must be indispensable for the final determination of the controversy.[3]

Appraising the present proceeding in terms of the foregoing requirements, the Solicitor General urges that the Petition at bar does not present a justiciable controversy for having been filed prematurely:

"x x x petitioners, who claim to be performing artists, had not previously applied with the Secretary of Labor for exemption from the coverage of the Circular in line with the aforequoted provision. Said provision connotes that the prohibition is not at all permanent or absolute. It admits of exception. x x x. But to repeat, there is no allegation in the petition that petitioners had previously sought exemption from the Secretary of Labor, from the coverage of the Circular, before filing the instant petition. Obviously, the petition must fail for prematurity."[4]

The Court agrees with the Solicitor General. We note, in the first place, that Item No. 1 of the challenged DOLE Circular does not establish an absolute and comprehensive prohibition of deployment abroad of entertainers below twenty-three (23) years of age. Item No. 1 itself provides that "the Secretary of Labor and Employment may, for justifiable reasons, exempt from performing artists from coverage hereof." The discretionary authority here asserted by the DOLE Secretary does not purport to be unlimited and arbitrary in nature. To the contrary, fairly explicit and precisely drawn grounds for exempting particular performing artists from the coverage of Item No. 1 are set out in a set of "Administrative Guidelines Implementing Department Circular No. 01-91".[5]

In the second place, petitioners have failed to allege, or have refrained from alleging, that they had previously applied to public respondent officials for exemption from the minimum age restriction imposed by Item No. 1 of DOLE Circular No. 01-91. Necessarily, therefore, petitioners also do not allege that public respondent officials have arbitrarily denied their applications for exemption from the minimum age requirement or from any other requirement established by Item No. 1. Neither have petitioners alleged that public respondents have continually

threatened to deny all and sundry applications for exemption, so as to create a reasonable expectation that their applications would be immediately and arbitrarily denied, should they in fact file them. Petitioners do assert that the exemption clause of DOLE Circular No. 01-91 is "practically useless and [constitutes] empty verbiage." They have not, however, attempted to support this assertion.

The Court is not compelled to indulge in speculation that public respondent would deny any and all applications for exemption from coverage of DOLE Circular No. 01-91. Two (2) important presumptions are here applicable. The first is that administrative orders and regulations are entitled to the presumption of constitutionality.[6] The second is that official duty has been or will be regularly performed.[7]

In *Philippine Association of Colleges and Universities v. Secretary of Education*,[8] the petitioner universities and colleges challenged a regulation requiring all private educational institutions to secure a permit to operate from the Department of Education. The Court dismissed the Petition for being premature, after finding that the petitioners had in fact in their possession permits to operate and that the petition was filed for speculative or academic purposes upon the supposition that the petitioning institutions might be denied such permits, or have their permits withdrawn, at some future time. The Court held:

"Mere apprehension that the Secretary of Education might under the law withdraw the permit of one of petitioners does not constitute a justiciable controversy. (Cf. *Com. ex rel Watkins vs. Winchester Waterworks* (Ky.) 197 S.W. 2d. 771.)

An action, like this, is brought for a positive purpose, nay, to obtain actual and positive relief. (*Salonga vs. Warner Barnes*, L--2245, January 1951). Courts do not sit to adjudicate mere academic questions to satisfy scholarly interest therein, however intellectually solid the problem may be. This is specially true where the issues 'reach constitutional dimensions, for then there comes into play regard for the court's duty to avoid decision of constitutional issues unless avoidance becomes evasion.' (*Rice vs. Sioux City*, U.S. Sup. Ct. Adv Rep., May 23, 1955, Law Ed., Vol. 99, p. 511)."[9] (Underscoring added).

To engage in judicial review, under the facts and circumstances here obtained, in advance of official efforts to apply the provisions of the challenged circular, upon the supposition that petitioners' legal rights in the premises might be denied by public respondent officials, is too close to rendering an advisory opinion in a hypothetical case -- an undertaking clearly beyond the jurisdiction of this Court.[10]

We consider, therefore, that petitioners have failed to show the first requisite of a judicial inquiry, i.e., the existence of actual case or controversy. This failure renders unnecessary consideration of the other requisites of constitutional litigation.

ACCORDINGLY, for lack of a justiciable controversy, the Court Resolved to DISMISS the Petition for Certiorari and Prohibition. Costs against petitioners.

Padilla, Bidin, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, and Campos, Jr., JJ., concur.

Narvasa, C.J., J., on official leave.

Gutierrez, Jr., J., please see dissent.

Cruz, J., see concurrence.

Griño-Aquino, J., join Justice Gutierrez dissent.

Medialdea, J., on leave.

[1] Minutes of the Workshop Proceedings to the National Tripartite Conference for the Protection of Overseas Entertainers, held last 18 November 1991, and sponsored by the DOLE and POEA.

[2] Ibid.

[3] *Garcia v. Executive Secretary*, 204 SCRA 516 [1991]; *National Economic Protectionism Association v. Ongpin*, 171 SCRA 657 [1989]; *Dumlao v. Commission on Elections*, 95 SCRA 392 [1980]; *People v. Vera*, 65 Phil. 56 [1937].

[4] Rollo, p. 35.

[5] Section 2 of the Administrative Guidelines provides as follows:

"Section 2. Exemptions

The following performing artists shall be exempted from the qualifications defined in Section 1 [of DOLE Circular 01-91].

1. Performing artists invited to perform abroad for a charitable cause as certified by the Philippine Embassy/Consulate;
2. Well known performing artists booked for limited performance;
3. Well known artists on a concert tour or in the case of well known dance troupes, on a performance tour;
4. Graduates of a regular course/formal training obtained from a performing arts school duly certified or accredited by the Department of Education and Culture;
5. Performing artists, singly or as a part of a group, with a track record of local or overseas performances in major establishments such as reputable hotels, theaters, etc.

All requests for exemption shall be submitted to the Secretary of Labor for approval."

Further,

"Performing artists, regardless of age and experience who are currently in the jobsite may continue their employment overseas until the expiry of their contracts. They may, however, be redeployed overseas provided that:

1. their employers and performance venue have been pre-qualified by the Philippine Embassy/Consulate [at] the worksite;
2. they comply with processing requirements;
3. dancers must belong to a dance troupe." (Underscoring supplied)

[6] *Garcia v. The Executive Secretary, et al.*, G.R. No. 101273, promulgated 03 July 1992; *Gonzales v. Land Bank of the Philippines*, 183 SCRA 520 (1990); *Philippine Association of Service Exporters, Inc. v. Drilon*, 163 SCRA 386 (1988); *Español v. Chairman, Philippine Veterans Administration*, 137 SCRA 314 (1985); *Ermata-Malate Hotel and Motel Operators Association, Inc. v. City of Mayor of Manila*, 20 SCRA 849 (1967).

[7] Sec. 3(m), Rule 131, Revised Rules of Court, as amended.

[8] 97 Phil. 806 (1955). See also, e.g., *Garcia v. Executive Secretary*, 204 SCRA 516 (1991); *National Economic Protectionism Association v. Ongpin*, 171 SCRA 657 (1989).

[9] 97 Phil. at 810-811.

[10] *Garcia v. Executive Secretary*, 204 SCRA 516 at 522 (1991); *Philippine Association of Colleges and*

Universities v. Secretary of Education, 97 Phil. 806 at 811 (1955).

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Concurring Opinion

CRUZ, J.:

I have said often enough that an unconstitutional measure should be slain on sight regardless of non-compliance with the established requisites of a judicial inquiry into a constitutional issue. But in so saying, I had in mind the clearly illegal act that should not be reprieved by procedural impediments to delay its inevitable annulment.

I see no such act in the case at bar. The questioned circular is at best of dubious validity, especially as it seems to offend the equal protection clause by laying down an age barrier that Justice Gutierrez finds arbitrary. I am not prepared at this time to share his conviction although I will say that I too have my doubts about the distinction.

I agree that at this point the Court should wait until an actual controversy is before it involving a justiciable issue ripe for judicial determination. Meanwhile, the petitioners should lay their case before the administrative authorities and give them a chance to re-examine their act and affirm or undo it. The policy we here pursue is based not only on sound practical considerations but also on a becoming respect for a coordinate branch of the government.

There will be time enough to "make the hammer fall, and heavily," in Justice Laurel's words, if that be necessary. In my view, that time has not yet come.

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DISSENTING OPINION

GUTIERREZ, JR., J.:

I find the age limitation in the questioned resolution arbitrary and discriminatory. There is no reasonable nexus between the requirement and the objective sought to be accomplished. I am constrained to dissent.

As stated by the petitioners, it has been the official policy and practice of the government for many years if not decades to authorize the overseas employment of performing artists, eighteen (18) years and above, provided they are qualified and have passed the auditions conducted by the Philippine Overseas Employment Administration (POEA). Every year, around 40,000 musicians, singers, and dancers go to Japan as performing artists. They allegedly contribute at least US\$780,000,000.00 to our foreign exchange earnings not to mention the considerable relief they give to our serious unemployment and under-employment problems.

According to the petitioners, there are at least 500,000 persons and family members dependent on them for all or a significant part of their living expenses and who will also be prejudiced by the enforcement of the questioned Circular No. 01-91.

The issuance of Circular No. 01-91 was triggered by the unfortunate fate of a lady entertainer who died under suspicious circumstances in Japan, an alleged victim of exploitation and abuse. I cannot recall her age but to me it has absolutely no relevance to the cause of her death. The lady would have died whether she was 18, 23, or 35 years of age.

The public respondents have failed to do their job of properly regulating the placement activities of recruitment agencies. Instead of improving their work and ascertaining their shortcomings and glaring inadequacies, the public respondents try to placate an outspoken media and angry citizenry with an unreasonable regulation.

It may be noted that almost all victims of criminal syndicates and abusive employers in Japan went there as tourists and not as legitimate performing artists. The age of the victims has nothing to do with their exploitation. It is the absence of valid working visas, the failure to enter into government approved contracts with known employers, and the absence of any singing, dancing or entertainment talent which criminal elements in Japan manipulate as they victimize the illegal entrants. The Department of Labor and Employment is mandated to allow only legitimate performing artists to leave for employment abroad. It is supposed to screen the reputable and acceptable standards of performance of singers and dancers it allows to be deployed abroad. It maintains offices and personnel in Japan where entertainers can bring their problems freely because their presence in that country is legitimate and known to DOLE officials.

It is public knowledge that in none of the above functions has DOLE been half successful in its performance. Instead, it comes out with an unreasonable regulation which will kill the legitimate livelihoods of tens of thousands of genuine entertainers without really solving the problems of the illegal entrants and the unauthorized entertainers.

I find the challenged restriction arbitrary and unreasonable because it is not rationally related to the problem intended to be solved. It is not the age of the entertainers which causes them to be victimized but the clandestine nature of their departure from the Philippines and the illegality of their status as overstaying tourists or smuggled entrants in Japan, not to mention their lack of artistic talents or their having engaged in the sex trade in the Philippines and gone to Japan because the income is better.

Circular No. 01-91 aims to "provide continuing employment opportunities to legitimate Filipino performing artists abroad and to ensure their protection and welfare x x x." The key words are "continuing employment opportunities", "legitimate", "protection", and "welfare." The challenged age requirement will severely restrict employment opportunities. Instead of using an arbitrary cut-off age, the DOLE should concentrate on seeing to it that only "legitimate" or qualified performers will be deployed and, once they are abroad, to give them the mandated protection and welfare, adequate and dedicated instead of being lackluster and desultory.

The challenged provision is discriminatory.

As stated by the petitioners, there is no reasonable standard or basis which allows a classification into 18 years old and 23 years old. An 18-year old woman can vote. A 21-year old woman is emancipated. From 18 to 23, a woman can look for a job and engage in gainful employment. Why one is forced to work only in the Philippines while the other may roam freely around the world has no reasonable basis. A psychological and maturity test in addition to effective screening of artistic abilities as an entertainer would be reasonable but not an arbitrary cut-off age.

With all due respect for the majority opinion which I find to be based more on theory than fact, the "justifiable reasons" which DOLE may use for exempting those below 23 from the ban are as illusory as its ability to regulate the proliferation of illegal recruiters and to extend protection or assistance to victims of abuses.

The other reasons used by the majority -- a failure to allege certain matters -- is to my mind unduly technical. Anyone dealing with administrative officials, especially the minor functionaries in charge of granting permits to work abroad, cannot be blamed for going immediately to Court to challenge an arbitrary regulation which effectively eliminates their livelihood.

I VOTE to GRANT the PETITION and to strike out the questioned regulation as an arbitrary infringement of

liberty.

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