

BOARD OF MEDICINE, DR. RAUL FLORES (NOW DR. JOSE S. RAMIREZ), IN HIS CAPACITY AS CHAIRMAN OF THE BOARD, PROFESSIONAL REGULATION COMMISSION, THROUGH ITS CHAIRMAN, HERMOGENES POBR...

G.R. No. 166097. July 14, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 84945[2] dated November 16, 2004 which affirmed the Decision[3] of the Regional Trial Court (RTC), Branch 22, Manila, dated October 19, 2003.[4]

The facts are as follows:

Yasuyuki Ota (respondent) is a Japanese national, married to a Filipina, who has continuously resided in the Philippines for more than 10 years. He graduated from Bicol Christian College of Medicine on April 21, 1991 with a degree of Doctor of Medicine.[5] After successfully completing a one-year post graduate internship training at the Jose Reyes Memorial Medical Center, he filed an application to take the medical board examinations in order to obtain a medical license. He was required by the Professional Regulation Commission (PRC) to submit an affidavit of undertaking, stating among others that should he successfully pass the same, he would not practice medicine until he submits proof that reciprocity exists between Japan and the Philippines in admitting foreigners into the practice of medicine.[6]

Respondent submitted a duly notarized English translation of the Medical Practitioners Law of Japan duly authenticated by the Consul General of the Philippine Embassy to Japan, Jesus I. Yabes; [7] thus, he was allowed to take the Medical Board Examinations in August 1992, which he subsequently passed.[8]

In spite of all these, the Board of Medicine (Board) of the PRC, in a letter dated March 8, 1993, denied respondent's request for a license to practice medicine in the Philippines on the ground that the Board "believes that no genuine reciprocity can be found in the law of Japan as there is no Filipino or foreigner who can possibly practice there." [9]

Respondent then filed a Petition for Certiorari and Mandamus against the Board before the RTC of Manila on June 24, 1993, which petition was amended on February 14, 1994 to implead the PRC through its Chairman.[10]

In his petition before the RTC, respondent alleged that the Board and the PRC, in refusing to issue in his favor a Certificate of Registration and/or license to practice medicine, had acted arbitrarily, in clear contravention of the provision of Section 20 of Republic Act (R.A.) No. 2382 (The Medical Act of 1959), depriving him of his legitimate right to practice his profession in the Philippines to his great damage and prejudice.[11]

On October 19, 2003, the RTC rendered its Decision finding that respondent had adequately proved that the

medical laws of Japan allow foreigners like Filipinos to be granted license and be admitted into the practice of medicine under the principle of reciprocity; and that the Board had a ministerial duty of issuing the Certificate of Registration and license to respondent, as it was shown that he had substantially complied with the requirements under the law.[12] The RTC then ordered the Board to issue in favor of respondent the corresponding Certificate of Registration and/or license to practice medicine in the Philippines.[13]

The Board and the PRC (petitioners) appealed the case to the CA, stating that while respondent submitted documents showing that foreigners are allowed to practice medicine in Japan, it was not shown that the conditions for the practice of medicine there are practical and attainable by a foreign applicant, hence, reciprocity was not established; also, the power of the PRC and the Board to regulate and control the practice of medicine is discretionary and not ministerial, hence, not compellable by a writ of mandamus.[14]

The CA denied the appeal and affirmed the ruling of the RTC.[15]

Hence, herein petition raising the following issue:

WHETHER THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN FINDING THAT RESPONDENT HAD ESTABLISHED THE EXISTENCE OF RECIPROCITY IN THE PRACTICE OF MEDICINE BETWEEN THE PHILIPPINES AND JAPAN.[16]

Petitioners claim that: respondent has not established by competent and conclusive evidence that reciprocity in the practice of medicine exists between the Philippines and Japan. While documents state that foreigners are allowed to practice medicine in Japan, they do not similarly show that the conditions for the practice of medicine in said country are practical and attainable by a foreign applicant. There is no reciprocity in this case, as the requirements to practice medicine in Japan are practically impossible for a Filipino to comply with. There are also ambiguities in the Medical Practitioners Law of Japan, which were not clarified by respondent, i.e., what are the provisions of the School Educations Laws, what are the criteria of the Minister of Health and Welfare of Japan in determining whether the academic and technical capability of foreign medical graduates are the same or better than graduates of medical schools in Japan, and who can actually qualify to take the preparatory test for the National Medical Examination. Consul General Yabes also stated that there had not been a single Filipino who was issued a license to practice medicine by the Japanese Government. The publication showing that there were foreigners practicing medicine in Japan, which respondent presented before the Court, also did not specifically show that Filipinos were among those listed as practicing said profession.[17] Furthermore, under *Professional Regulation Commission v. De Guzman*,[18] the power of the PRC and the Board to regulate and control the practice of medicine includes the power to regulate admission to the ranks of those authorized to practice medicine, which power is discretionary and not ministerial, hence, not compellable by a writ of mandamus.[19]

Petitioners pray that the CA Decision dated November 16, 2004 be reversed and set aside, that a new one be rendered reinstating the Board Order dated March 8, 1993 which disallows respondent to practice medicine in the Philippines, and that respondent's petition before the trial court be dismissed for lack of merit.[20]

In his Comment, respondent argues that: Articles 2 and 11 of the Medical Practitioners Law of Japan and Section 9 of the Philippine Medical Act of 1959 show that reciprocity exists between the Philippines and Japan concerning the practice of medicine. Said laws clearly state that both countries allow foreigners to practice medicine in their respective jurisdictions as long as the applicant meets the educational requirements, training or residency in hospitals and pass the licensure examination given by either country. Consul General Yabes in his letter dated January 28, 1992 stated that "the Japanese Government allows a foreigner to practice medicine in Japan after complying with the local requirements." The fact that there is no reported Filipino who has successfully penetrated the medical practice in Japan does not mean that there is no reciprocity between the two

countries, since it does not follow that no Filipino will ever be granted a medical license by the Japanese Government. It is not the essence of reciprocity that before a citizen of one of the contracting countries can demand its application, it is necessary that the interested citizen's country has previously granted the same privilege to the citizens of the other contracting country.[21] Respondent further argues that Section 20 of the Medical Act of 1959[22] indicates the mandatory character of the statute and an imperative obligation on the part of the Board inconsistent with the idea of discretion. Thus, a foreigner, just like a Filipino citizen, who successfully passes the examination and has all the qualifications and none of the disqualifications, is entitled as a matter of right to the issuance of a certificate of registration or a physician's license, which right is enforceable by mandamus.[23]

Petitioners filed a Reply[24] and both parties filed their respective memoranda[25] reiterating their arguments.

The Court denies the petition for lack of merit.

There is no question that a license to practice medicine is a privilege or franchise granted by the government.[26] It is a right that is earned through years of education and training, and which requires that one must first secure a license from the state through professional board examinations.[27]

Indeed,

[T]he regulation of the practice of medicine in all its branches has long been recognized as a reasonable method of protecting the health and safety of the public. That the power to regulate and control the practice of medicine includes the power to regulate admission to the ranks of those authorized to practice medicine, is also well recognized. Thus, legislation and administrative regulations requiring those who wish to practice medicine first to take and pass medical board examinations have long ago been recognized as valid exercises of governmental power. Similarly, the establishment of minimum medical educational requirements – i.e., the completion of prescribed courses in a recognized medical school – for admission to the medical profession, has also been sustained as a legitimate exercise of the regulatory authority of the state."[28]

It must be stressed however that the power to regulate the exercise of a profession or pursuit of an occupation cannot be exercised by the State or its agents in an arbitrary, despotic, or oppressive manner. A political body which regulates the exercise of a particular privilege has the authority to both forbid and grant such privilege in accordance with certain conditions. As the legislature cannot validly bestow an arbitrary power to grant or refuse a license on a public agency or officer, courts will generally strike down license legislation that vests in public officials discretion to grant or refuse a license to carry on some ordinarily lawful business, profession, or activity without prescribing definite rules and conditions for the guidance of said officials in the exercise of their power.[29]

R.A. No. 2382 otherwise known as the Medical Act of 1959 states in Section 9 thereof that:

Section 9. Candidates for Board Examinations. – Candidates for Board examinations shall have the following qualifications:

- He shall be a citizen of the Philippines or a citizen of any foreign country who has submitted competent and conclusive documentary evidence, confirmed by the Department of Foreign Affairs, showing that his country's existing laws permit citizens of the Philippines to practice medicine under the same rules and regulations governing citizens thereof;

x x x x

Presidential Decree (P.D.) No. 223[30] also provides in Section (j) thereof that:

j) The [Professional Regulation] Commission may, upon the recommendation of the Board concerned, approve

the registration of and authorize the issuance of a certificate of registration with or without examination to a foreigner who is registered under the laws of his country: Provided, That the requirement for the registration or licensing in said foreign state or country are substantially the same as those required and contemplated by the laws of the Philippines and that the laws of such foreign state or country allow the citizens of the Philippines to practice the profession on the same basis and grant the same privileges as the subject or citizens of such foreign state or country: Provided, finally, That the applicant shall submit competent and conclusive documentary evidence, confirmed by the Department of Foreign Affairs, showing that his country's existing laws permit citizens of the Philippines to practice the profession under the rules and regulations governing citizens thereof. The Commission is also hereby authorized to prescribe additional requirements or grant certain privileges to foreigners seeking registration in the Philippines if the same privileges are granted to or some additional requirements are required of citizens of the Philippines in acquiring the same certificates in his country;

x x x x

As required by the said laws, respondent submitted a copy of the Medical Practitioners Law of Japan, duly authenticated by the Consul General of the Embassy of the Philippines in Japan, which provides in Articles 2 and 11, thus:

Article 2. Anyone who wants to be medical practitioner must pass the national examination for medical practitioner and get license from the Minister of Health and Welfare.

x x x x

Article 11. No one can take the National Medical Examination except persons who conform to one of the following items:

- Persons who finished regular medical courses at a university based on the School Education Laws (December 26, 1947) and graduated from said university.
- Persons who passed the preparatory test for the National Medical Examination and practiced clinics and public sanitation more than one year after passing the said test.
- Persons who graduated from a foreign medical school or acquired medical practitioner license in a foreign country, and also are recognized to have the same or more academic ability and techniques as persons stated in item 1 and item 2 of this article.[31]

Petitioners argue that while the Medical Practitioners Law of Japan allows foreigners to practice medicine therein, said document does not show that conditions for the practice of medicine in said country are practical and attainable by a foreign applicant; and since the requirements are practically impossible for a Filipino to comply with, there is no reciprocity between the two countries, hence, respondent may not be granted license to practice medicine in the Philippines.

The Court does not agree.

R.A. No. 2382, which provides who may be candidates for the medical board examinations, merely requires a foreign citizen to submit competent and conclusive documentary evidence, confirmed by the Department of Foreign Affairs (DFA), showing that his country's existing laws permit citizens of the Philippines to practice medicine under the same rules and regulations governing citizens thereof.

Section (j) of P.D. No. 223 also defines the extent of PRC's power to grant licenses, i.e., it may, upon recommendation of the board, approve the registration and authorize the issuance of a certificate of registration with or without examination to a foreigner who is registered under the laws of his country, provided the following

conditions are met: (1) that the requirement for the registration or licensing in said foreign state or country are substantially the same as those required and contemplated by the laws of the Philippines; (2) that the laws of such foreign state or country allow the citizens of the Philippines to practice the profession on the same basis and grant the same privileges as the subject or citizens of such foreign state or country; and (3) that the applicant shall submit competent and conclusive documentary evidence, confirmed by the DFA, showing that his country's existing laws permit citizens of the Philippines to practice the profession under the rules and regulations governing citizens thereof.

The said provision further states that the PRC is authorized to prescribe additional requirements or grant certain privileges to foreigners seeking registration in the Philippines if the same privileges are granted to or some additional requirements are required of citizens of the Philippines in acquiring the same certificates in his country.

Nowhere in said statutes is it stated that the foreign applicant must show that the conditions for the practice of medicine in said country are practical and attainable by Filipinos. Neither is it stated that it must first be proven that a Filipino has been granted license and allowed to practice his profession in said country before a foreign applicant may be given license to practice in the Philippines. Indeed, the phrase used in both R.A. No. 2382 and P.D. No. 223 is that:

[T]he applicant shall submit] competent and conclusive documentary evidence, confirmed by the Department of Foreign Affairs, showing that his country's existing laws permit citizens of the Philippines to practice the profession [of medicine] under the [same] rules and regulations governing citizens thereof. x x x (Emphasis supplied)

It is enough that the laws in the foreign country permit a Filipino to get license and practice therein. Requiring respondent to prove first that a Filipino has already been granted license and is actually practicing therein unduly expands the requirements provided for under R.A. No. 2382 and P.D. No. 223.

While it is true that respondent failed to give details as to the conditions stated in the Medical Practitioners Law of Japan -- i.e., the provisions of the School Educations Laws, the criteria of the Minister of Health and Welfare of Japan in determining whether the academic and technical capability of foreign medical graduates are the same as or better than that of graduates of medical schools in Japan, and who can actually qualify to take the preparatory test for the National Medical Examination -- respondent, however, presented proof that foreigners are actually practicing in Japan and that Filipinos are not precluded from getting a license to practice there.

Respondent presented before the trial court a Japanese Government publication, Physician-Dentist- Pharmaceutist Survey, showing that there are a number of foreign physicians practicing medicine in Japan.[32] He also presented a letter dated January 28, 1992 from Consul General Yabes,[33] which states:

Sir:

With reference to your letter dated 12 January 1993, concerning your request for a Certificate of Confirmation for the purpose of establishing a reciprocity with Japan in the practice of medical profession relative to the case of Mr. Yasuyuki Ota, a Japanese national, the Embassy wishes to inform you that inquiries from the Japanese Ministry of Foreign Affairs, Ministry of Health and Welfare as well as Bureau of Immigration yielded the following information:

- They are not aware of a Filipino physician who was granted a license by the Japanese Government to practice medicine in Japan;
- However, the Japanese Government allows a foreigner to practice medicine in Japan after complying with the local requirements such as holding a valid visa for the purpose of taking the medical board exam, checking the applicant's qualifications to take the examination, taking the national board examination in Japanese and filing

an application for the issuance of the medical license.

Accordingly, the Embassy is not aware of a single Filipino physician who was issued by the Japanese Government a license to practice medicine, because it is extremely difficult to pass the medical board examination in the Japanese language. Filipino doctors here are only allowed to work in Japanese hospitals as trainees under the supervision of a Japanese doctor. On certain occasions, they are allowed to show their medical skills during seminars for demonstration purposes only. (Emphasis supplied)

Very truly yours,

Jesus I. Yabes

Minister Counsellor &
Consul General

From said letter, one can see that the Japanese Government allows foreigners to practice medicine therein provided that the local requirements are complied with, and that it is not the impossibility or the prohibition against Filipinos that would account for the absence of Filipino physicians holding licenses and practicing medicine in Japan, but the difficulty of passing the board examination in the Japanese language. Granting that there is still no Filipino who has been given license to practice medicine in Japan, it does not mean that no Filipino will ever be able to be given one.

Petitioners next argue that as held in *De Guzman*, its power to issue licenses is discretionary, hence, not compellable by mandamus.

The Court finds that the factual circumstances of *De Guzman* are different from those of the case at bar; hence, the principle applied therein should be viewed differently in this case. In *De Guzman*, there were doubts about the integrity and validity of the test results of the examinees from a particular school which garnered unusually high scores in the two most difficult subjects. Said doubts called for serious inquiry concerning the applicants' satisfactory compliance with the Board requirements.[34] And as there was no definite showing that the requirements and conditions to be granted license to practice medicine had been satisfactorily met, the Court held that the writ of mandamus may not be granted to secure said privilege without thwarting the legislative will.[35]

Indeed, to be granted the privilege to practice medicine, the applicant must show that he possesses all the qualifications and none of the disqualifications. It must also appear that he has fully complied with all the conditions and requirements imposed by the law and the licensing authority.[36]

In *De Guzman* itself, the Court explained that:

A careful reading of Section 20[37] of the Medical Act of 1959 discloses that the law uses the word "shall" with respect to the issuance of certificates of registration. Thus, the petitioners [PRC] "shall sign and issue certificates of registration to those who have satisfactorily complied with the requirements of the Board." In statutory construction the term "shall" is a word of command. It is given imperative meaning. Thus, when an examinee satisfies the requirements for the grant of his physician's license, the Board is obliged to administer to him his oath and register him as a physician, pursuant to Section 20 and par. (1) of Section 22 of the Medical Act of 1959.[38]

In this case, there is no doubt as to the competence and qualifications of respondent. He finished his medical

degree from Bicol Christian College of Medicine. He completed a one-year post graduate internship training at the Jose Reyes Memorial Medical Center, a government hospital. Then he passed the Medical Board Examinations which was given on August 8, 1992 with a general average of 81.83, with scores higher than 80 in 9 of the 12 subjects.

In fine, the only matter being questioned by petitioners is the alleged failure of respondent to prove that there is reciprocity between the laws of Japan and the Philippines in admitting foreigners into the practice of medicine. Respondent has satisfactorily complied with the said requirement and the CA has not committed any reversible error in rendering its Decision dated November 16, 2004 and Resolution dated October 19, 2003.

WHEREFORE, the petition is hereby DENIED for lack of merit.

SO ORDERED.

Quisumbing,[*] Ynares-Santiago,(Chairperson), Nachura, and Reyes, JJ.. concur.

[*] In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 508 dated June 25, 2008.

[1] Penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Bienvenido L. Reyes and Rosalinda Asuncion-Vicente.

[2] Rollo, pp. 28-36.

[3] Penned by Judge Marino M. Dela Cruz, Jr.

[4] Rollo, pp. 38-54.

[5] Id. at 29 (CA Decision).

[6] Id. at 29-30; records, pp. 2-3; 9,11; 309.

[7] Id. at 30; records, pp. 221-227.

[8] Id.; records, p. 10.

[9] Rollo, p. 30; records, p. 21.

[10] Records, pp. 71-82, 92.

[11] Id. at 5, 80.

[12] Id. at 316-318, 322.

[13] Id. at 324.

[14] CA rollo, pp.11-16.

[15] Rollo, pp. 34-35.

[16] Id. at 15.

[17] Rollo, pp. 16-22.

[18] G.R. No. 144681, June 21, 2004, 432 SCRA 505.

[19] Rollo, p. 23.

[20] Id. at 23-24.

[21] Rollo, pp. 75-81.

[22] It states that "x x x the Board of Medicine Examiners shall sign and issue certificates of registration to those who have satisfactorily complied with the requirements of the Board."

[23] Rollo, pp. 83-84.

[24] Id. at 95-104.

[25] Dated October 3, 2006 for respondent and November 28, 2006 for petitioners.

[26] Professional Regulation Commission v. De Guzman, supra note 18, at 523.

[27] Reyes v. Sisters of Mercy Hospital, 396 Phil. 87, 107 (2000).

[28] Tablarin v. Gutierrez, G.R. No. L-78164, July 31, 1987, 152 SCRA 730, 742.

[29] Professional Regulation Commission v. De Guzman, supra note 18, at 524.

[30] Creating the Professional Regulation Commission and Prescribing Its Powers and Functions, June 22, 1973.

[31] See records, pp. 221, 224.

[32] Exhibits "D", "D-1", "D-2", "D-3" and "E-1", "E-2", "E-3", "E-4"; records, pp. 230-237.

[33] Exhibit "C", id. at 228.

[34] Professional Regulation Commission v. De Guzman, supra note 18, at 521.

[35] Id. at 525.

[36] Id.

[37] Section 20. Issuance of Certificate of Registration, grounds for refusal of same. The Commissioner of Civil Service and the secretary of the Board of Medical Examiners shall sign jointly and issue certificates of registration to those who have satisfactorily complied with the requirements of the Board. They shall not issue a certificate of registration to any candidate who has been convicted by a court of competent jurisdiction of any criminal offense involving moral turpitude, or has been found guilty of immoral or dishonorable conduct after he due investigation by the Board of Medical Examiners, or has been declared to be of unsound mind.

[38] Professional Regulation Commission v. De Guzman, supra note 18, at 520.

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