

**HORTENCIA SALAZAR, PETITIONER, VS. HON. TOMAS D. ACHACOSO,
IN HIS CAPACITY AS ADMINISTRATOR OF THE PHILIPPINE
OVERSEAS EMPLOYMENT ADMINISTRATION, AND FERDIE
MARQUEZ, RESPONDENTS.**

G.R. NO. 81510. March 14, 1990

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

This concerns the validity of the power of the Secretary of Labor to issue warrants of arrest and seizure under Article 38 of the Labor Code, prohibiting illegal recruitment.

The facts are as follows:

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1. On October 21, 1987, Rosalie Tesoro of 177 Tupaz Street, Leveriza, Pasay City, in a sworn statement filed with the Philippine Overseas Employment Administration (POEA for brevity) charged petitioner Hortencia Salazar, viz:

"04.

T:

Ano ba ang dahilan at ikaw ngayon ay narito at nagbibigay ng salaysay.

S:

Upang ireklamo sa dahilan ang aking PECC Card ay ayaw ibigay sa akin ng dati kong manager. - Horty Salazar, 615 R.O. Santos, Mandaluyong, Mla.

05.

T:

Kailan at saan naganap ang ginawang panloloko sa iyo ng tao/mga taong inireklamo mo?

S:

Sa bahay ni Horty Salazar.

06.

T:

Paano naman naganap ang pangyayari?

S:

Pagkagaling ko sa Japan ipinatawag niya ako. Kinuha ang PECC Card ko at sinabing hahanapan ako ng Booking sa Japan. Mag-9 month's na ako sa Phils. ay hindi pa niya ako napa-alis. So, lumipat ako ibang company pero ayaw niyang ibigay ang PECC Card ko.

2. On November 3, 1987, public respondent Atty. Ferdinand Marquez to whom said complaint was assigned, sent to the petitioner the following telegram:

"YOU ARE HEREBY DIRECTED TO APPEAR BEFORE FERGIE MARQUEZ POEA ANTI ILLEGAL RECRUITMENT UNIT 6TH FLR. POEA BLDG. EDSA COR. ORTIGAS AVE. MANDALUYONG MM NOVEMBER 6, 1987 AT 10 AM RE CASE FILED AGAINST YOU. FAIL NOT UNDER PENALTY OF LAW."

4. On the same day, having ascertained that the petitioner had no license to operate a recruitment agency, public respondent Administrator Tomas D. Achacoso issued his challenged CLOSURE AND SEIZURE ORDER NO. 1205 which reads:

"HORTY SALAZAR
NO. 615 R.O. Santos St.
Mandaluyong, Metro Manila

Pursuant to the powers vested in me under Presidential Decree No. 1920 and Executive Order No. 1022, I hereby order the CLOSURE of your recruitment agency being operated at No. 615 R. O. Santos St., Mandaluyong, Metro Manila and the seizure of the documents and paraphernalia being used or intended to be used as the means of committing illegal recruitment, it having verified that you have –

(1)

No valid license or authority from the Department of Labor and Employment to recruit and deploy workers for overseas employment;

(2)

Committed/are committing acts prohibited under Article 34 of the New Labor Code in relation to Article 38 of the same code.

This ORDER is without prejudice to your criminal prosecution under existing laws.

Done in the City of Manila, this 3th day of November, 1987."

5. On January 26, 1988 POEA Director on Licensing and Regulation Atty. Estelita B. Espiritu issued an office order designating respondents Atty. Marquez, Atty. Jovencio Abara and Atty. Ernesto Vistro as members of a team tasked to implement Closure and Seizure Order No. 1205. Doing so, the group assisted by Mandaluyong policemen and mediamen Lito Castillo of the People's Journal and Ernie Baluyot of News Today proceeded to the residence of the petitioner at 615 R. O. Santos St., Mandaluyong, Metro Manila. There it was found that petitioner was operating Hannalie Dance Studio. Before entering the place, the team served said Closure and Seizure order on a certain Mrs. Flora Salazar who voluntarily allowed them entry into the premises. Mrs. Flora Salazar informed the team that Hannalie Dance Studio was accredited with Moreman Development (Phil.) However, when required to show credentials, she was unable to produce any. Inside the studio, the team chanced upon twelve talent

performers – practicing a dance number and saw about twenty more waiting outside. The team confiscated assorted costumes which were duly receipted for by Mrs. Asuncion Maguelan and witnessed by Mrs. Flora Salazar.

6. On January 28, 1988, filed with POEA the following letter:

"Gentlemen:

On behalf of Ms. Horty Salazar of 615 R. O. Santos, Mandaluyong, Metro Manila, we respectfully request that the personal properties seized at her residence last January 26, 1988 be immediately returned on the ground that said seizure was contrary to law and against the will of the owner thereof. Among our reasons are the following:

- Our client has not been given any prior notice or hearing, hence the Closure and Seizure Order No. 1205 dated November 3, 1987 violates "due process of law" guaranteed under Sec.1, Art. 111, of the Philippine Constitution.

- Your acts also violate Sec. 2, Art. III of the Philippine Constitution which guarantees right of the people "to be secure in their persons, house, paper, and effects against unreasonable searches and seizures of whatever nature and for any purpose."

- The premises invaded by your Mr. Ferdie Marquez and five (5) others (including 2 policemen) are the private residence of the Salazar family, and the entry, search as well as the seizure of the personal properties belonging to our client were without her consent and were done with unreasonable force and intimidation, together with grave abuse of the color of authority, and constitute robbery and violation of domicile under Arts. 293 and 128 of the Revised Penal Code.

Unless said personal properties worth around TEN THOUSAND PESOS (P10,000.00) in all (and which were already due for shipment to Japan) are returned within twenty-four (24) hours from your receipt hereof, we shall feel free to take all legal action, civil and criminal, to protect our client's interests.

We trust that you will give due attention to these important matters."

7. On February 2, 1988, before POEA could answer the letter, petitioner filed the instant petition; on even date, POEA filed a criminal complaint against her with the Pasig Provincial Fiscal, docketed as IS-88-836.[1]

On February 2, 1988, the petitioner filed this suit for prohibition. Although the acts sought to be barred are already fait accompli, thereby making prohibition too late, we consider the petition as one for certiorari in view of the grave public interest involved.

The Court finds that a lone issue confronts it: May the Philippine Overseas Employment Administration (or the Secretary of Labor) validly issue warrants of search and seizure (or arrest) under Article 38 of the Labor Code? It is also an issue squarely raised by the petitioner for the Court's resolution.

Under the new Constitution, which states:

x x x no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce and particularly describing the place to be searched and the persons or things to be seized.[2]

It is only a judge who may issue warrants of search and arrest.[3] In one case, it was declared that mayors may not exercise this power:

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But it must be emphasized here and now that what has just been described is the state of the law as it was in September, 1985. The law has since been altered. No longer does the mayor have at this time the power to conduct preliminary investigations, much less issue orders of arrest. Section 143 of the Local Government Code, conferring this power on the mayor has been abrogated, rendered *functus officio* by the 1987 Constitution which took effect on February 2, 1987, the date of its ratification by the Filipino people. Section 2, Article III of the 1987 Constitution pertinently provides that "no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the person or things to be seized." The constitutional proscription has thereby been manifested that thenceforth, the function of determining probable cause and issuing, on the basis thereof, warrants of arrest or search warrants, may be validly exercised only by judges, this being evidenced by the elimination in the present Constitution of the phrase, "such other responsible officer as may be authorized by law" found in the counterpart provision of said 1973 Constitution, who, aside from judges, might conduct preliminary investigations and issue warrants of arrest or search warrants.[4]

Neither may it be done by a mere prosecuting body:

We agree that the Presidential Anti-Dollar Salting Task Force exercises, or was meant to exercise, prosecutorial powers, and on that ground, it cannot be said to be a neutral and detached "judge" to determine the existence of probable cause for purposes of arrest or search. Unlike a magistrate, a prosecutor is naturally interested in the success of his case. Although his office "is to see that justice is done and not necessarily to secure the conviction of the person accused," he stands, invariably, as the accused's adversary and his accuser. To permit him to issue search warrants and indeed, warrants of arrest, is to make him both judge and jury in his own right, when he is neither. That makes, to our mind and to that extent, Presidential Decree No. 1936 as amended by Presidential Decree No. 2002, unconstitutional.[5]

Section 38, paragraph (c), of the Labor Code, as now written, was entered as an amendment by Presidential Decrees Nos. 1920 and 2018 of the late President Ferdinand Marcos, to Presidential Decree No. 1693, in the exercise of his legislative powers under Amendment No. 6 of the 1973 Constitution. Under the latter, the then Minister of Labor merely exercised recommendatory powers:

(c) The Minister of Labor or his duly authorized representative shall have the power to recommend the arrest and detention of any person engaged in illegal recruitment.[6]

On May 1, 1984, Mr. Marcos promulgated Presidential Decree No. 1920, with the avowed purpose of giving more teeth to the campaign against illegal recruitment. The Decree gave the Minister of Labor arrest and closure powers:

(b) The Minister of Labor and Employment shall have the power to cause the arrest and detention of such non-licensee or non-holder of Authority if after proper investigation it is determined that his activities constitute a danger to national security and public order or will lead to further exploitation of job-seekers. The Minister shall order the closure of companies, establishment and entities found to be engaged in the recruitment of workers for overseas employment, without having been licensed or authorized to do so.[7]

On January 26, 1986, he, Mr. Marcos, promulgated Presidential Decree No. 2018, giving the Labor Minister search and seizure powers as well:

(c) The Minister of Labor and Employment or his duly authorized representatives shall have the power to cause the arrest and detention of such non-licensee or non-holder of authority if after investigation it is determined that his activities constitute a danger to national security and public order or will lead to further exploitation of job-seekers. The Minister shall order the search of the office or premises and seizure of documents, paraphernalia, properties and other implements used in illegal recruitment activities and the closure

of companies, establishment and entities found to be engaged in the recruitment of workers for overseas employment, without having been licensed or authorized to do so.[8]

The above has now been etched as Article 38, paragraph (c) of the Labor Code.

The decrees in question, it is well to note, stand as the dying vestiges of authoritarian rule in its twilight moments.

We reiterate that the Secretary of Labor, not being a judge, may no longer issue search or arrest warrants. Hence, the authorities must go through the judicial process. To that extent, we declare Article 38, paragraph (c), of the Labor Code, unconstitutional and of no force and effect.

The Solicitor General's reliance on the case of *Morano v. Vivo*[9] is not well-taken. *Vivo* involved a deportation case, governed by Section 69 of the defunct Revised Administrative Code and by Section 37 of the Immigration Law. We have ruled that in deportation cases, an arrest (of an undesirable alien) ordered by the President or his duly authorized representatives, in order to carry out final decision of deportation is valid.[10] It is valid, however, because of the recognized supremacy of the Executive in matters involving foreign affairs. We have held:[11]

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The State has the inherent power to deport undesirable aliens (*Chuoco Tiaco vs. Forbes*, 228 U.S. 549, 57 L. Ed. 960, 40 Phil. 1122, 1125). That power may be exercised by, the Chief Executive "when he deems such action necessary for the peace and domestic tranquility of the nation." Justice Johnson's opinion is that when the Chief Executive finds that there are aliens whose continued presence in the country is injurious to the public interest, "he may, even in the absence of express law, deport them". (*Forbes vs. Chuoco Tiaco and Crossfield*, 16 Phil. 534, 568, 569; *In re McCulloch Dick*, 38 Phil. 41).

"The right of a country to expel or deport aliens because their continued presence is detrimental to public welfare is absolute and unqualified" (*Tiu Chun Hai and Go Tam vs. Commissioner of Immigration and the Director of NBI*, 104 Phil. 949, 956).[12]

The power of the President to order the arrest of aliens for deportation is, obviously, exceptional. It (the Power to order arrests) can not be made to extend to other cases, like the one at bar. Under the Constitution, it is the sole domain of the courts.

Moreover, the search and seizure order in question, assuming, *ex gratia argumenti*, that it was validly issued, is clearly in the nature of a general warrant:

Pursuant to the powers vested in me under Presidential Decree No. 1920 and Executive Order No. 1022, I hereby order the CLOSURE of your recruitment agency being operated at No. 615 R.O. Santos St., Mandaluyong, Metro Manila and the seizure of the documents and paraphernalia being used or intended to be used as the means of committing illegal recruitment, it having verified that you have –

(1) No valid license or authority from the Department of Labor and Employment to recruit and deploy workers for overseas employment;

(2) Committed/are committing acts prohibited under Article 34 of the New Labor Code in relation to Article 38 of the same code.

This ORDER is without prejudice to your criminal prosecution under existing laws.[13]

We have held that a warrant must identify clearly the things to be seized, otherwise, it is null and void, thus:

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Another factor which makes the search warrants under consideration constitutionally objectionable is that they

are in the nature of general warrants. The search warrants describe the articles sought to be seized in this wise:

"1) All printing equipment, paprahernalia, paper, ink, photo equipment typewriters, cabinets, tables, communications/recording equipment, tape recorders, dictaphone and the like used and/or connected in the printing of the 'WE FORUM' newspaper and any and all documents/communications, letters and facsimile of prints related to the 'WE FORUM' newspaper.

2) Subversive documents pamphlets, leaflets, books, and other publications to promote the objectives and purposes of the subversive organizations known as Movement for Free Philippines, Light-a-Fire movement and April 6 Movement; and

3) Motor vehicles used in the distribution/circulation of the 'WE FORUM' and other subversive materials and propaganda, more particularly,

1) Toyota-Corolla, colored yellow with Plate No. NKA 892;

2) DATSUN pick-up colored white with Plate No. NKV 969;

3) A delivery truck with Plate No. NBS 542;

4) TOYOTA-TAMARAW, colored white with Plate No. PBP 665; and

5) TOYOTA Hi-Lux, pick-up truck with Plate No. NGV 472 with marking 'Bagong Silang.' "

In *Stanford v. State of Texas*, the search warrant which authorized the search for 'books, records, pamphlets, cards, receipts, lists, memoranda, pictures, recordings and other written instruments concerning the Communist Parties of Texas, and the operations of the Community Party in Texas,' was declared void by the U.S. Supreme Court for being too general. In like manner, directions to "seize any evidence in connection with the violation of SDC 13-3703 or otherwise" have been held too general, and that portion of a search warrant which authorized the seizure of any "paraphernalia which could be used to violate Sec. 54-197 of the Connecticut General Statutes [the statute dealing with the crime of conspiracy]" was held to be a general warrant, and therefore invalid. The description of the articles sought to be seized under the search warrants in question cannot be characterized differently.

In the *Stanford* case, the U.S. Supreme Court calls to mind a notable chapter in English history: the era of disaccord between the Tudor Government and the English Press, when "Officers of the Crown were given roving commissions to search where they pleased in order to suppress and destroy the literature of dissent both Catholic and Puritan." Reference herein to such historical episode would not be relevant for it is not the policy of our government to suppress any newspaper or publication that speaks with "the voice of non-conformity" but poses no clear and imminent danger to state security.[14]

For the guidance of the bench and the bar, we reaffirm the following principles:

- Under Article III, Section 2, of the 1987 Constitution, it is only judges, and no other, who may issue warrants of arrest and search;

- The exception is in cases of deportation of illegal and undesirable aliens, whom the President or the Commissioner of immigration may order arrested, following a final order of deportation, for the purpose of deportation.

WHEREFORE, the petition is GRANTED. Article 38, paragraph (c) of the Labor Code is declared UNCONSTITUTIONAL and null and void. The respondents are ORDERED to return all materials seized as a result of the implementation of Search and Seizure Order No. 1205.

No Costs.

SO ORDERED.

Fernan, C.J, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

[1] Rollo, 19-24; emphases in the original.

[2] CONST., art. III, sec. 2.

[3] See *Ponsica v. Ignalaga*, No. 72301, July 31, 1987, 152 SCRA 647; *Presidential Anti-Dollar Salting Task Force v. Court of Appeals*, G.R. No. 83578, March 16, 1989.

[4] *Ponsica*, supra, 662-663.

[5] *Presidential Anti-Dollar Salting Task Force*, supra, 21.

[6] Pres. Decree No. 1693, "FURTHER AMENDING, ARTICLE 38 OF THE LABOR CODE BY MAKING ILLEGAL RECRUITMENT A CRIME OF ECONOMIC SABOTAGE."

[7] *Supra*, sec. 1.

[8] Pres. Decree No. 2018, "FURTHER AMENDING ARTICLES 38 AND 39 OF THE LABOR CODE BY MAKING ILLEGAL RECRUITMENT A CRIME OF ECONOMIC SABOTAGE AND PUNISHABLE WITH IMPRISONMENT."

[9] No. L-22196, June 30, 1967 20 SCRA 562.

[10] *Qua Chee Gan v. Deportation Board*, No. L-10280, September 30, 1963, 9 SCRA 27; *Vivo v. Montesa*, No. L-24576, 24 SCRA 155.

[11] *Go Tek v. Deportation Board*, No. L-23846, September 9, 1977, 79 SCRA 17.

[12] *Supra*, 21-22.

[13] Rollo, id., 15.

[14] *Burgos, Sr. v. Chief of Staff. AFP.* No. 64261, December 26, 1984, 133 SCRA 800, 814-816.

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