

**PHILIPPINE ASSOCIATION OF SERVICE EXPORTERS, INC.,
PETITIONER, VS. HON. FRANKLIN M. DRILON AS SECRETARY OF
LABOR AND EMPLOYMENT, AND TOMAS D. ACHACOSO, AS
ADMINISTRATOR OF THE P...**

G.R. No. 81958. June 30, 1988

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The petitioner, Philippine Association of Service Exporters, Inc. (PASEI, for short), a firm "engaged principally in the recruitment of Filipino workers, male and female, for overseas placement,"[1] challenges the Constitutional validity of Department Order No. 1, Series of 1988, of the Department of Labor and Employment, in the character of "GUIDELINES GOVERNING THE TEMPORARY SUSPENSION OF DEPLOYMENT OF FILIPINO DOMESTIC AND HOUSEHOLD WORKERS," in this petition for certiorari and prohibition. Specifically, the measure is assailed for "discrimination against males or females[2];" that it "does not apply to all Filipino workers but only to domestic helpers and females with similar skills[3];" and that it is violative of the right to travel. It is held likewise to be an invalid exercise of the lawmaking power, police power being legislative, and not executive, in character.

In its supplement to the petition, PASEI invokes Section 3, of Article XIII, of the Constitution, providing for worker participation "in policy and decision-making processes affecting their rights and benefits as may be provided by law." [4] Department Order No. 1, it is contended, was passed in the absence of prior consultations. It is claimed, finally, to be in violation of the Charter's non-impairment clause, in addition to the "great and irreparable injury" that PASEI members face should the Order be further enforced.

On May 25, 1988, the Solicitor General, on behalf of the respondents Secretary of Labor and Administrator of the Philippine Overseas Employment Administration, filed a Comment informing the Court that on March 8, 1988, the respondent Labor Secretary lifted the deployment ban in the states of Iraq, Jordan, Qatar, Canada, Hongkong, United States, Italy, Norway, Austria, and Switzerland.* In submitting the validity of the challenged "guidelines," the Solicitor General invokes the police power of the Philippine State.

It is admitted that Department Order No. 1 is in the nature of a police power measure. The only question is whether or not it is valid under the Constitution.

The concept of police power is well-established in this jurisdiction. It has been defined as the "state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare."⁵ As defined, it consists of (1) an imposition of restraint upon liberty or property, (2) in order to foster the common good. It is not capable of an exact definition but has been, purposely, veiled in general terms to underscore its all-comprehensive embrace.

"Its scope, ever-expanding to meet the exigencies of the times, even to anticipate the future where it could be

done, provides enough room for an efficient and flexible response to conditions and circumstances thus assuring the greatest benefits."[6]

It finds no specific Constitutional grant for the plain reason that it does not owe its origin to the Charter. Along with the taxing power and eminent domain, it is inborn in the very fact of statehood and sovereignty. It is a fundamental attribute of government that has enabled it to perform the most vital functions of governance. Marshall, to whom the expression has been credited,[7] refers to it succinctly as the plenary power of the State "to govern its citizens." [8]

"The police power of the State ... is a power coextensive with self-protection, and it is not inaptly termed the 'law of overwhelming necessity.' It may be said to be that inherent and plenary power in the State which enables it to prohibit all things hurtful to the comfort, safety, and welfare of society." [9]

It constitutes an implied limitation on the Bill of Rights. According to Fernando, it is "rooted in the conception that men in organizing the state and imposing upon its government limitations to safeguard constitutional rights did not intend thereby to enable an individual citizen or a group of citizens to obstruct unreasonably the enactment of such salutary measures calculated to ensure communal peace, safety, good order, and welfare." [10] Significantly, the Bill of Rights itself does not purport to be an absolute guaranty of individual rights and liberties "Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's will." [11] It is subject to the far more overriding demands and requirements of the greater number.

Notwithstanding its extensive sweep, police power is not without its own limitations. For all its awesome consequences, it may not be exercised arbitrarily or unreasonably. Otherwise, and in that event, it defeats the purpose for which it is exercised, that is, to advance the public good. Thus, when the power is used to further private interests at the expense of the citizenry, there is a clear misuse of the power. [12]

In the light of the foregoing, the petition must be dismissed.

As a general rule, official acts enjoy a presumed validity. [13] In the absence of clear and convincing evidence to the contrary, the presumption logically stands.

The petitioner has shown no satisfactory reason why the contested measure should be nullified. There is no question that Department Order No. 1 applies only to "female contract workers," [14] but it does not thereby make an undue discrimination between the sexes. It is well-settled that "equality before the law" under the Constitution [15] does not import a perfect identity of rights among all men and women. It admits of classifications, provided that (1) such classifications rest on substantial distinctions; (2) they are germane to the purposes of the law; (3) they are not confined to existing conditions; and (4) they apply equally to all members of the same class [16]

The Court is satisfied that the classification made — the preference for female workers — rests on substantial distinctions.

As a matter of judicial notice, the Court is well aware of the unhappy plight that has befallen our female labor force abroad, especially domestic servants, amid exploitative working conditions marked by, in not a few cases, physical and personal abuse. The sordid tales of maltreatment suffered by migrant Filipina workers, even rape and various forms of torture, confirmed by testimonies of returning workers, are compelling motives for urgent Government action. As precisely the caretaker of Constitutional rights, the Court is called upon to protect victims of exploitation. In fulfilling that duty, the Court sustains the Government's efforts.

The same, however, cannot be said of our male workers. In the first place, there is no evidence that, except perhaps for isolated instances, our men abroad have been afflicted with an identical predicament. The petitioner

has proffered no argument that the Government should act similarly with respect to male workers. The Court, of course, is not impressing some male chauvinistic notion that men are superior to women. What the Court is saying is that it was largely a matter of evidence (that women domestic workers are being ill-treated abroad in massive instances) and not upon some fanciful or arbitrary yardstick that the Government acted in this case. It is evidence capable indeed of unquestionable demonstration and evidence this Court accepts. The Court cannot, however, say the same thing as far as men are concerned. There is simply no evidence to justify such an inference. Suffice it to state, then, that insofar as classifications are concerned, this Court is content that distinctions are borne by the evidence. Discrimination in this case is justified.

As we have furthermore indicated, executive determinations are generally final on the Court. Under a republican regime, it is the executive branch that enforces policy. For their part, the courts decide, in the proper cases, whether that policy, or the manner by which it is implemented, agrees with the Constitution or the laws, but it is not for them to question its wisdom. As a co-equal body, the judiciary has great respect for determinations of the Chief Executive or his subalterns, especially when the legislature itself has specifically given them enough room on how the law should be effectively enforced. In the case at bar, there is no gainsaying the fact, and the Court will deal with this at greater length shortly, that Department Order No. 1 implements the rule-making powers granted by the Labor Code. But what should be noted is the fact that in spite of such a fiction of finality, the Court is on its own persuaded that prevailing conditions indeed call for a deployment ban.

There is likewise no doubt that such a classification is germane to the purpose behind the measure. Unquestionably, it is the avowed objective of Department Order No. 1 to "enhance the protection for Filipino female overseas workers." [17] This Court has no quarrel that in the midst of the terrible mistreatment Filipina workers have suffered abroad, a ban on deployment will be for their own good and welfare.

The Order does not narrowly apply to existing conditions. Rather, it is intended to apply indefinitely so long as those conditions exist. This is clear from the Order itself ("Pending review of the administrative and legal measures, in the Philippines and in the host countries . . ." [18]), meaning to say that should the authorities arrive at a means impressed with a greater degree of permanency, the ban shall be lifted. As a stop-gap measure, it is possessed of a necessary malleability, depending on the circumstances of each case. Accordingly, it provides:

9.

LIFTING OF SUSPENSION. — The Secretary of Labor and Employment (DOLE) may, upon recommendation of the Philippine Overseas Employment Administration (POEA), lift the suspension in countries where there are:

1.

Bilateral agreements or understanding with the Philippines, and/or,

2.

Existing mechanisms providing for sufficient safeguards to ensure the welfare and protection of Filipino workers. [19]

The Court finds, finally, the impugned guidelines to be applicable to all female domestic overseas workers. That it does not apply to "all Filipina workers" [20] is not an argument for unconstitutionality. Had the ban been given universal applicability, then it would have been unreasonable and arbitrary. For obvious reasons, not all of them are similarly circumstanced. What the Constitution prohibits is the singling out of a select person or group of persons within an existing class, to the prejudice of such a person or group or resulting in an unfair advantage to another person or group of persons. To apply the ban, say, exclusively to workers deployed by A, but not to those

recruited by B, would obviously clash with the equal protection clause of the Charter. It would be a classic case of what Chase refers to as a law that "takes property from A and gives it to B." [21] It would be an unlawful invasion of property rights and freedom of contract and needless to state, an invalid act. [22] (Fernando says: "Where the classification is based on such distinctions that make a real difference as infancy, sex, and stage of civilization of minority groups, the better rule, it would seem, is to recognize its validity only if the young, the women, and the cultural minorities are singled out for favorable treatment. There would be an element of unreasonableness if on the contrary their status that calls for the law ministering to their needs is made the basis of discriminatory legislation against them. If such be the case, it would be difficult to refute the assertion of denial of equal protection." [23] In the case at bar, the assailed Order clearly accords protection to certain women workers, and not the contrary.)

It is incorrect to say that Department Order No. 1 prescribes a total ban on overseas deployment. From scattered provisions of the Order, it is evident that such a total ban has not been contemplated. We quote:

5.

AUTHORIZED DEPLOYMENT — The deployment of domestic helpers and workers of similar skills defined herein to the following [sic] are authorized under these guidelines and are exempted from the suspension.

5.1

Hirings by immediate members of the family of Heads of State and Government;

5.2

Hirings by Minister, Deputy Minister and the other senior government officials; and

5.3

Hirings by senior officials of the diplomatic corps and duly accredited international organizations;

5.4

Hirings by employers in countries with whom the Philippines have [sic] bilateral labor agreements or understanding.

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7.

VACATIONING DOMESTIC HELPERS AND WORKERS OF SIMILAR SKILLS — Vacationing domestic helpers and/ or workers of similar skills shall be allowed to process with the POEA and leave for worksite only if they are returning to the same employer to finish an existing or partially served employment contract. Those workers returning to worksite to serve a new employer shall be covered by the suspension and the provision of these guidelines.

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LIFTING OF SUSPENSION — The Secretary of Labor and Employment (DOLE) may, upon recommendation of the Philippine Overseas Employment Administration (POEA), lift the suspension in countries where there are:

1.

Bilateral agreements or understanding with the Philippines, and/or,

2.

Existing mechanisms providing for sufficient safeguards to ensure the welfare and protection of Filipino workers.[24]

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The consequence the deployment ban has on the right to travel does not impair the right. The right to travel is subject, among other things, to the requirements of "public safety," "as may be provided by law." [25] Department Order No. 1 is a valid implementation of the Labor Code, in particular, its basic policy to "afford protection to labor," [26] pursuant to the respondent Department of Labor's rule-making authority vested in it by the Labor Code. [27] The petitioner assumes that it is unreasonable simply because of its impact on the right to travel, but as we have stated, the right itself is not absolute. The disputed Order is a valid qualification thereto.

Neither is there merit in the contention that Department Order No. 1 constitutes an invalid exercise of legislative power. It is true that police power is the domain of the legislature, but it does not mean that such an authority may not be lawfully delegated. As we have mentioned, the Labor Code itself vests the Department of Labor and Employment with rule-making powers in the enforcement whereof. [28]

The petitioners's reliance on the Constitutional guaranty of worker participation "in policy and decision-making processes affecting their rights and benefits [29]." is not well-taken. The right granted by this provision, again, must submit to the demands and necessities of the State's power of regulation.

The Constitution declares that:

Sec 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. [30]

"Protection to labor" does not signify the promotion of employment alone. What concerns the Constitution more paramountly is that such an employment be above all, decent, just, and humane. It is bad enough that the country has to send its sons and daughters to strange lands because it cannot satisfy their employment needs at home. Under these circumstances, the Government is duty-bound to insure that our toiling expatriates have adequate protection, personally and economically, while away from home. In this case, the Government has evidence, an evidence the petitioner cannot seriously dispute, of the lack or inadequacy of such protection, and as part of its duty, it has precisely ordered an indefinite ban on deployment.

The Court finds furthermore that the Government has not indiscriminately made use of its authority. It is not contested that it has in fact removed the prohibition with respect to certain countries as manifested by the Solicitor General.

The non-impairment clause of the Constitution, invoked by the petitioner, must yield to the loftier purposes targeted by the Government. [31] Freedom of contract and enterprise, like all other freedoms, is not free from restrictions, more so in this jurisdiction, where laissez faire has never been fully accepted as a controlling economic way of life.

This Court understands the grave implications the questioned Order has on the business of recruitment. The concern of the Government, however, is not necessarily to maintain profits of business firms. In the ordinary sequence of events, it is profits that suffer as a result of Government regulation. The interest of the State is to provide a decent living to its citizens. The Government has convinced the Court in this case that this is its intent.

We do not find the impugned Order to be tainted with a grave abuse of discretion to warrant the extraordinary relief prayed for.

WHEREFORE, the petition is DISMISSED. No costs.

SO ORDERED.

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

Gutierrez, Jr. and Medialdea, JJ., on leave.

[1] Rollo, 3.

[2] Id., 12.

[3] Id., 13.

[4] CONST., Art. XIII, Sec. 3.

* Per reports, on June 14, 1988, the Government is said to have lifted the ban on five more countries: New Zealand, Australia, Sweden, Spain, and West Germany. ("Maid export ban lifted in 5 states," The Manila Chronicle, June 14, 1988, p. 17, col. 2.).

[5] *Edu v. Ericta*, No. L-32096, October 24, 1970, 35 SCR A 481, 487.

[6] *Supra*, 488.

[7] TRIBE, AMERICAN CONSTITUTIONAL LAW, 323 (1978).

[8] Id.

[9] *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 708 (1919).

[10] *Edu v. Ericta*, *supra*.

[11] *Rubi v. Provincial Board of Mindoro*, *supra*, 704.

[12] It is generally presumed, notwithstanding the plenary character of the lawmaking power, that the legislature must act for public purposes. In *Pascual v. Secretary of Public Works* [110 Phil. 331 (1960)], the Court nullified an act of Congress appropriating funds for a private purpose. The prohibition was not embodied in the Constitution then in force, however, it was presumed that Congress could not do it.

[13] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, No. L-24693, July 31, 1967, 20 SCRA 849.

[14] Dept. Order No. 1 (DOLE), February 10, 1988.

[15] CONST., *supra*, Art. III, Sec. 1.

[16] *People v. Cayat*, 68 Phil. 12 (1939).

[17] Dept. Order No. 1, *supra*.

[18] *Supra*.

[19] Supra.

[20] Rollo, id., 13.

[21] See *TRIBE*, id., citing *Calder v. Bull*, 3 U.S. 386 (1798).

[22] Id.

[23] FERNANDO, *THE CONSTITUTION OF THE PHILIPPINES* 549- 550(1977).

[24] Dept. Order No. 1, supra.

[25] CONST., supra, Art. III, Sec. 6.

[26] Pres. Decree No. 442, Art. 3.

[27] Supra, Art. 5.

[28] Supra.

[29] CONST., supra, Art. XIII, Sec. 3.

[30] Supra.

[31] *Heirs of Juancho Ardon v. Reyes*, Nos. 60549, 60553-60555, October 26,1983, 125SCRA220.

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