

PHILIPPINE ASSOCIATION OF SERVICE EXPORTERS, INC. (PASEI), PHILIPPINE ENTERTAINMENT EXPORTERS AND PROMOTERS ASSOCIATION (PEEPA), AND ASSOCIATION OF FILIPINO OVERSEAS WORKERS, IN...

G.R. No. 98472. August 19, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

May an Executive Order (EO)[1] repeal a Letter of Instruction (LOI)?[2]

Ordinarily, since both LOI and EO are presidential issuances, one may repeal or otherwise alter, modify or amend the other, depending on which comes later. The case before us appears compounded by the circumstance that the LOI in question was issued by former President Ferdinand E. Marcos when he was clothed with legislative power, while the EO revoking the LOI was issued by then President Corazon C. Aquino at a time when she had already lost her law-making power after Congress convened on 27 July 1987.[3] Although the EO issued by President Aquino is undoubtedly not a law but a mere administrative issuance, the parties here debate whether the LOI issued by President Marcos was a law or simply an administrative rule in view of his dual position then as chief executive and as legislative authority. Petitioners contend that the LOI is a law, hence, the EO cannot countermand it, while public respondent claims that the LOI is only an administrative issuance which may be superseded by an EO.

In determining whether a presidential issuance under the 1973 Constitution may be considered a law, we held in *Garcia-Padilla v. Enrile*[4] that "[t]o form part of the law of the land, the decree, order or LOI must be issued by the President in the exercise of his extraordinary power of legislation as contemplated in Section 6 of the 1976 Amendments to the Constitution, whenever in his judgment there exists a grave emergency or a threat or imminence thereof, or whenever the interim Batasan Pambansa or the regular National Assembly fails or is unable to act adequately on any matter for any reason that in his judgment requires immediate action x x x Verily, not all LOI issued by the President should be dignified into forming part of the law of the land."

Article 25 of the Labor Code of the Philippines (P.D. 442, as amended)[5] encourages private sector participation in recruitment and placement of workers under guidelines, rules and regulations to be issued by the Secretary of Labor. On 20 January 1982, President Marcos issued LOI 1190 withholding the grant of new licenses to operate agencies for overseas employment effective 1 January 1982 except as he may otherwise direct.[6] On 19 March 1991, President Aquino issued EO 450 lifting the ban on new applications for licenses to operate recruitment agencies subject to guidelines and regulations the Secretary of Labor may promulgate.[7] On 8 April 1991, respondent Secretary of Labor and Employment promulgated Department Order (DO) No. 9, Series of 1991, entitled "Guidelines Implementing Executive Order No. 450."

In this Petition for Prohibition with Preliminary Injunction/Restraining Order filed 14 May 1991 petitioners Philippine Association of Service Exporters, Inc. (PASEI), Philippine Entertainment Exporters and Promoters

Association (PEEPA), and Association of Filipino Overseas Workers, Inc. (AFOWI) pray that EO 450 be declared invalid for being contrary to LOI 1190.

On 16 May 1991, we issued a temporary restraining order directing respondent Secretary of Labor and Employment to cease and desist from enforcing EO 450 and DO 9 until further orders.[8] Thereafter, three motions for intervention were filed,[9] which the Court eventually allowed.[10] Intervenor Joblink International, Inc. (JOBLINK), Prospects International Consultancy, Amader International, Inc. (AMADER), IDG Trading & General Services, Philcango International Recruitment Services, Pan Asia Manpower Placement, International Manpower Services, Lyka International Manpower Services, Mainline Recruitment International, Inc., World Matrix Unlimited Services Consultancy & Trading Co., Nuba International Manpower Services Corporation, El Bary Manpower Services, Social Services Cont. Int'l Co., Ltd., CDD Enterprises and Velrey Recruitment Company, all applicants for new licenses, support the position of respondent that LOI 1190 was not a law.

On the other hand, intervenor RP-Japan Entertainment Promoters Association, Inc. (REPA), a non-stock, non-profit domestic corporation composed of private employment agencies authorized to recruit and deploy contract workers abroad, prays for the modification of the restraining order we issued on 16 May 1991. We addressed this incident on 4 July 1991 when we explained that our temporary restraining order did not comprehend renewal of existing licenses since EO 450 covered only new applications.[11] The other pending issue relating to the lifting and modification of our Resolution of 16 May 1991 will accordingly be resolved in this decision.

First, on the challenge of intervenors AMADER, et al., that petitioners lack locus standi, we need only reiterate that the "proper-party" requirement is satisfied if it is alleged that petitioners and intervenors have sustained or are in danger of sustaining immediate injury resulting from the acts or measures complained of.[12] Petitioners PASEI and PEEPA allege that their member agencies, which enjoy protection against competition by new licensees pursuant to LOI 1190, will suffer irreparable injury with the repeal of LOI 1190 by EO 450, considering further that there is no additional demand for Filipino workers abroad. Hence, any gain made by the new agencies on the supposed exclusive preserve of existing agencies necessarily results in the latter's loss.

But, as regards petitioner Association of Filipino Overseas Workers, Inc. (AFOWI), we are not persuaded that the proliferation of recruitment agencies will necessarily result in exposure of workers to exploitation by unscrupulous recruiters, for the stiffer competition may even compel these agencies to seek better terms and conditions for overseas workers. Hence, the petition being founded on mere speculation insofar as it affects AFOWI, the same should be dismissed for want of a valid cause of action.

On the issue raised by intervenors that the petition can be decided without touching on the validity of EO 450, we cannot find any other way but to meet the question squarely since petitioners' relief depends on its validity.

The central thesis of the petition is that LOI 1190 was issued pursuant to the law-making power of the President under Sec. 6 of the 1976 Amendments to the 1973 Constitution in response to "a grave emergency which cried for immediate and decisive action," hence, should be considered part of the law of the land. Petitioners argue that because of its repealing or modifying effect on Art. 25 of the Labor Code, LOI 1190 could be valid only if treated as a law, and that a contrary interpretation that would render LOI 1190 invalid could not have been intended by the then incumbent President.

As we view it, LOI 1190[13] simply imposes a presidential review of the authority of the Minister of Labor and Employment to grant licenses, hence, directed to him alone. Since this is undoubtedly an administrative action, LOI 1190 should properly be treated as an administrative issuance. Unlike Presidential Decrees which by usage have gained acceptance as laws promulgated by the President, Letters of Instruction are presumed to be mere

administrative issuances except when the conditions set out in *Garcia-Padilla v. Enrile* exist. Consequently, to be considered part of the law of the land, petitioners must establish that LOI 1190 was issued in response to "a grave emergency or a threat or imminence thereof, or whenever the interim Batasan Pambansa or the regular National Assembly fails or is unable to act adequately on any matter." The conspicuous absence of any of these conditions fortifies the opinion that LOI 1190 cannot be any more than a mere administrative issuance.

In arguing that LOI 1190 was issued to cope with "a grave emergency," petitioners point to the 3rd "Whereas" clause which speaks of the concern of the state against cut-throat competition seriously affecting the integrity and viability of the overseas recruitment industry, and the difficulty in the regulation and supervision of agencies and the protection of the welfare of the workers. The petitioners' appraisal that the 3rd "Whereas" clause manifests a grave emergency situation is as good as anybody else's contrary view. Moreover, even if we treat as emergency the "situation which has seriously affected the integrity and viability of the overseas employment industry," there is no indication that in the judgment of the President it is grave.

Petitioners argue that since the repeal of Art. 25 of the Labor Code could not be done through an administrative issuance, LOI 1190 must of necessity be a law. This reasoning is flawed.

There is nothing in the LOI which repeals or runs counter to Art. 25 of the Labor Code, as amended. Instead, contrary to the perception of petitioners, LOI 1190 does not actually ban the grant of licenses nor bar the entry of new licensees since anybody could still apply for license with the Minister of Labor and Employment, although the grant thereof is subject to the prior authority of the President. In fact, the LOI did not modify the rule-making power of the Minister of Labor and Employment under the Labor Code; it only added another tier of review.

Neither can petitioners consider this additional review by the President as an amendment of Art. 25, for this is within the scope of the exercise of his constitutionally sanctioned control over the executive departments of government.^[14] Implicit in that power of control is the President's "authority to go over, confirm, modify or reverse the action taken by his department secretaries."^[15] Moreover, if we discern the intent of LOI 1190 from the manner it was enforced, the un rebutted allegation of respondent - that 319 private employment agencies secured administrative presidential approval from 1982 to 1989^[16] - shows that then President Marcos merely intended to regulate, and not ban altogether, new applications for licenses. For this reason, Marcos could not have contemplated repealing Art. 25 of the Labor Code.

Petitioners advance a rather outrageous interpretation of LOI 1190 when they claim that "[t]he then President was in effect saying that 'Art. 25 of the Labor Code is hereby repealed as regards overseas workers until I otherwise direct.'"^[17] By their nature, and their purpose to maintain stability in the polity, laws have a certain degree of permanence such that they are not intended to be repealed one hour after their enactment, then re-enacted the following hour, and so on. If the law has to be applied on a case to case basis, as in the case of Art. 25 of the Labor Code, it does not have to undergo the tedious process of repeal and re-enactment every time its application is warranted.

Petitioners would impress upon us the interpretation that LOI 1190 suspended the effectivity of Art. 25, which could not be done because the chief executive is constitutionally bound to "ensure that the laws be faithfully executed."^[18] As we earlier stated, the LOI did not suspend the enforcement of Art. 25 of the Labor Code; it merely added another level of administrative review.

The discussion on whether the word "I" in the phrase "except as I may otherwise direct" refers to the President as chief executive or as a legislator is meaningless, for the correct interpretation would ultimately depend on whether the LOI is a law or an administrative issuance.

Petitioners also contend that EO 450 cannot repeal LOI 1190 for Congress has not delegated that power to the President.[19] We do not agree. There is no need for legislative delegation of power to the President to revoke the LOI by way of an EO in view of our finding that LOI 1190 is a mere administrative directive,[20] hence, may be repealed, altered or modified by EO 450, and DO 9 must consequently be upheld.

Of the three (3) groups of intervenors, only AMADER, et al., pray for attorney's fees claiming that they were compelled to hire counsel to enforce and protect their rights. However, in view of the complexity of the legal issue involved, the Court resolves not to grant attorney's fees.

WHEREFORE, the instant petition is DISMISSED. The Temporary Restraining Order we issued on 16 May 1991 is accordingly LIFTED and SET ASIDE. Executive Order No. 450 and Department Order No. 9 of the Department of Labor and Employment are SUSTAINED. Accordingly, Letter of Instruction No. 1190 is declared REPEALED and SUPERSEDED by Executive Order No. 450.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Melo, Quiason, Puno, and Vitug, JJ., concur.

[1] "Sec. 2. Executive Orders. - Acts of the President providing for rules of a general or permanent character in implementation or execution of constitutional or statutory powers shall be promulgated in executive orders" (Chapter 2, Title I, Book III, Executive Order No. 292, otherwise known as the Administrative Code of 1987).

[2] "Letters of Instructions are the orders by the President to specific government officials directing or authorizing the doing of certain things, or laying guidelines to be complied with for the effective implementation of a law. Examples are Letters of Instruction No. 2 ordering the Secretary of National Defense to take over the management, control and operation of public utilities, and No. 65 directing compliance with certain guidelines for the full implementation of the tax amnesty on previously untaxed income under Presidential Decree No. 23, as amended.

"They have also been issued to announce and order designations to certain positions (e.g., L.I. No. 87.) and to announce the approval and effectivity of programs, plans (e.g., L.I. No. 64, 66.), or recommendations (e.g., L.I. No. 91 approving NEDA recommendation for the salary structure of the staffing pattern of the NEDA) requiring the approval of the President x x x They have also been issued to repeal, modify or amend laws (e.g., L.I. No. 1054 which amended Sec. 268 of the National Internal Revenue Code by deleting bowling alleys as among those subject to tax (De Leon, Hector, S., Textbook on the Philippine Provisional Constitution, 1986 ed., p. 506).

[3] *Kapatiran ng mga Naglilingkod sa Pamahalaan ng Pilipinas, Inc. v. Bienvenido Tan*, G.R. No. L--81311, 30 June 1988, and companion cases; 163 SCRA 371, 380.

[4] G.R. No. 61388, 20 April 1983; 121 SCRA 472, 499.

[5] "Art. 25. Private Sector Participation in the Recruitment and Placement of Workers. – Pursuant to national development objectives and in order to harness and maximize the use of private sector resources and initiative in the development and implementation of a comprehensive employment program, the private employment sector shall participate in the recruitment and placement of workers, locally and overseas, under such guidelines, rules and regulations, as may be issued by the Secretary of Labor."

[6] Full text of LETTER OF INSTRUCTION NO. 1190:

"TO: The Minister of Labor and Employment

"WHEREAS, under Section 1 of the Presidential Decree No. 1412 promulgated June 9, 1978, Article 25 of the Labor Code which among other things provided for the phaseout of all private fee charging recruitment agencies by October 31, 1978, was amended so as to allow the continued participation of the private employment sector in the recruitment and placement of workers, locally or overseas, under guidelines, rules and regulations as may be issued by the Secretary of Labor, now Minister of Labor and Employment;

"WHEREAS, by operation of this amendment and its implementing rules and regulations, and in spite of the stiff qualification requirements imposed by the Minister of Labor and Employment, there are now more than 300 recruitment agencies which were able to qualify for licensing;

"WHEREAS, the proliferation of recruitment agencies has resulted in cut-throat competition for foreign employers and employees, a situation which has seriously affected the integrity and viability of the overseas employment industry and has rendered more difficult the regulation and supervision of private sector participation, including the protection of workers from prohibited and exploitative practices at the hands of recruiters;

"NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, do hereby direct that effective January 1, 1982, no new applications for licenses to operate private employment agencies engaged in the recruitment and placement of Filipino workers for overseas employment shall be granted except as I may otherwise direct.

"Done in the City of Manila, this 20th day of January, in the year of Our Lord, nineteen hundred and eighty-two."

[7] Full Text of EXECUTIVE ORDER NO. 450:

"LIFTING THE BAN ON NEW APPLICATIONS FOR LICENSES TO OPERATE PRIVATE EMPLOYMENT AGENCIES ENGAGED IN RECRUITMENT AND PLACEMENT OF FILIPINO WORKERS FOR OVERSEAS EMPLOYMENT

"WHEREAS, Article 25 of the Labor Code of the Philippines, as amended, allowed the continued participation of the private employment sector in the recruitment and placement of workers locally and overseas, under such guidelines as may be issued by the Secretary of Labor and Employment;

"WHEREAS, Letter of Instruction No. 1190, issued on January 20, 1982, banned the issuance of licenses to operate private employment agencies engaged in the recruitment and placement of Filipino workers for overseas employment to stop the proliferation of recruitment agencies and prevent cut--throat competition, and to protect workers from prohibited and exploitative practices at the hands of recruiters;

"WHEREAS, LOI 1190 was issued in 1982 in view of the absence of an effective administrative machinery which would address the upsurge, and supervise the operations of, licensed placement agencies;

"WHEREAS, this incapacity has been properly addressed by the integration of all offices involved in the overseas employment program through the creation of the Philippine Overseas Employment Administration (POEA);

"WHEREAS, recent developments affecting the overseas employment program of the government, particularly the opening of new markets with increasing demand for Filipino manpower at competitive employment terms and conditions, has necessitated a review and re-evaluation of licensing policies;

"WHEREAS, the potentials of these new markets and the encouraging growth of deployment over the years ought to be taken advantage of by the government;

"WHEREAS, it has become necessary to develop and maintain a roster of responsible and reputable licensed agencies engaged in recruitment for overseas employment, the operations of which shall be under the strict supervision and regulation by the Department of Labor and Employment;

"WHEREAS, lifting the ban on the issuance of licenses will open the opportunity for the entry of innovative and dynamic participants who can revitalize existing markets and respond to the challenges of emerging ones;

"WHEREAS, the much needed foreign exchange will be aggressively channeled through the efforts of licensed agencies;

"NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by law, do hereby direct the immediate lifting of the ban on new applications for licenses to operate private recruitment agencies subject to such guidelines, rules and regulations as may be promulgated by the Secretary of Labor and Employment.

"Done in the City of Manila, this 19th day of March, in the year of Our Lord, nineteen hundred and ninety-one."

[8] Rollo, p. 24.

[9] Joblink International, Inc. (JOBLINK), et al., Rollo, pp. 54, et seq.; RP-Japan Entertainment Promoters Association, Inc. (REPA), Rollo, pp. 68, et seq.; and, Amader International Inc. (AMADER), et al., Rollo, pp. 100, et seq.

[10] For JOBLINK, see Resolution of 4 July 1991, Rollo, p. 195; for REPA, see Resolution of 4 July 1991, Rollo, pp. 61-62; and, for AMADER, see Resolution of 15 August 1991, Rollo, p. 178-A.

[11] Rollo, pp. 61-62.

[12] Association of Small Landowners in the Philippines, Inc., v. Secretary of Agrarian Reform, G.R. No. 78742 and companion cases, 14 July 1989; 175 SCRA 343, 364.

[13] See Note 6.

[14] "The President shall have control of all the executive departments, bureaus, and offices x x x" (Sec. 17, Art. VII, Constitution).

[15] Lacson-Magallanes Co. Inc. v. Paño, G.R. No. L-27811, 17 November 1967; 129 Phil 123, 127.

[16] Comment, p. 9; Rollo, p. 41.

[17] Reply to Comment, p. 4; Rollo, p. 89.

[18] Petitioners cite the second sentence of Sec. 17, Art. 7, of the Constitution which states: "He (the President) shall ensure that the laws be faithfully executed," and the comment thereon of Fr. Joaquin Bernas in his Constitution of the Republic of the Philippines, 1988 ed., Vol. II, p. 66, that: "The reverse side of the power to execute the law is the duty to carry it out. The President cannot refuse to carry out a law for the simple reason that in his judgment it will not be beneficial to the people."

[19] Petition, p. 11; Rollo, p. 12.

[20] Sec. 3, Art. XVIII of the Constitution provides: "All laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked."

The original version of the foregoing section reads: "Section 3. All existing laws, decrees, executive orders,

proclamations, letters of instructions and other executive issuances not inconsistent with this Constitution shall remain operative until amended, modified or repealed by Congress" (Record of the Constitutional Commission, Vol. V, p. 311). The following are excerpts of the floor deliberations on this proposed provision of Sec. 3:

"MR. MAAMBONG. Mr. Presiding Officer, would Commissioner Davide accept a modification by putting a period (.) after the word 'REPEALED,' then eliminating the words 'by Congress'?"

"MR. DAVIDE. 'By Congress.'

"MR. MAAMBONG. As originally formulated we will just put a period (.) after the word 'repealed' on the last sentence and eliminate the words 'by Congress.'

"In this manner, Mr. Presiding Officer, it is open-ended. The President, while she still has the power and before the Congress convenes, can repeal all laws or decrees and after Congress shall have convened, we shall eliminate the words 'by Congress.' The President, in accordance with our discussion yesterday, can still continue to revoke executive orders, proclamations and other issuances or letters of instructions or memorandum/circulars for that matter. So it will solve the whole problem, Madam President.

"MR. DAVIDE. Mr. Presiding Officer, the Commissioner mentioned the word 'revoked' or in other words, granting the authority to revoke. That revocation insofar as the President is concerned may be done by the incumbent President, not necessarily because of her legislative powers, but because of her executive powers.

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"MR. MAAMBONG. Mr. Presiding Officer, we accepted the amendment of Commissioner Davide by putting in the word 'REVOKED' because that refers to the action of the President, not of the legislative body. The President can revoke executive orders and proclamations on her own authority, that is why we accepted the word 'REVOKED,' Mr. Presiding Officer" (Ibid., pp. 349, 350).

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