

FIRST DIVISION

[G.R. No. 120095, August 05, 1996]

JMM PROMOTION AND MANAGEMENT, INC., AND KARY INTERNATIONAL, INC., PETITIONER, VS. HON. COURT OF APPEALS, HON. MA. NIEVES CONFESSOR, THEN SECRETARY OF THE DEPARTMENT OF THE LABOR AND EMPLOYMENT, HON. JOSE BRILLANTES, IN HIS CAPACITY AS ACTING SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT AND HON. FELICISIMO JOSON, IN HIS CAPACITY AS ADMINISTRATOR OF THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION, RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

The limits of government regulation under the State's Police Power are once again at the vortex of the instant controversy. Assailed is the government's power to control deployment of female entertainers to Japan by requiring an Artist Record Book (ARB) as a precondition to the processing by the POEA of any contract for overseas employment. By contending that the right to overseas employment, is a property right within the meaning of the Constitution, petitioners vigorously aver that deprivation thereof allegedly through the onerous requirement of an ARB violates the due process clause and constitutes an invalid exercise of the police power.

The factual antecedents are undisputed.

Following the much-publicized death of Maricris Sioson in 1991, former President Corazon C. Aquino ordered a total ban against the deployment of performing artists to Japan and other foreign destinations. The ban was, however, rescinded after leaders of the overseas employment industry promised to extend full support for a program aimed at removing kinks in the system of deployment. In its place, the government, through the Secretary of Labor and Employment, subsequently issued Department Order No. 28, creating the Entertainment Industry Advisory Council (EIAC), which was tasked with issuing guidelines on the training, testing certification and deployment of performing artists abroad.

Pursuant to the EIAC's recommendations,^[1] the Secretary of Labor, on January 6, 1994, issued Department Order No. 3 establishing various procedures and requirements for screening performing artists under a new system of training, testing, certification and deployment of the former. Performing artists successfully hurdling the test, training and certification requirement were to be issued an Artist's Record Book (ARB), a necessary prerequisite to processing of any contract of employment by the

POEA. Upon request of the industry, implementation of the process, originally scheduled for April 1, 1994, was moved to October 1, 1994.

Thereafter, the Department of Labor, following the EIAC's recommendation, issued a series of orders fine-tuning and implementing the new system. Prominent among these orders were the following issuances:

1. Department Order No. 3-A, providing for additional guidelines on the training, testing, certification and deployment of performing artists.
2. Department Order No. 3-B, pertaining to the Artist Record Book (ARB) requirement, which could be processed only after the artist could show proof of academic and skills training and has passed the required tests.
3. Department Order No. 3-E, providing the minimum salary a performing artist ought to receive (not less than US\$600.00 for those bound for Japan) and the authorized deductions therefrom.
4. Department Order No. 3-F, providing for the guidelines on the issuance and use of the ARB by returning performing artists who, unlike new artists, shall only undergo a Special Orientation Program (shorter than the basic program) although they must pass the academic test.

In Civil Case No. 95-72750, the Federation of Entertainment Talent Managers of the Philippines (FETMOP), on January 27, 1995 filed a class suit assailing these department orders, principally contending that said orders 1) violated the constitutional right to travel; 2) abridged existing contracts for employment; and 3) deprived individual artists of their licenses without due process of law. FETMOP, likewise, averred that the issuance of the Artist Record Book (ARB) was discriminatory and illegal and "in gross violation of the constitutional right... to life liberty and property." Said Federation consequently prayed for the issuance of a writ of preliminary injunction against the aforestated orders.

On February 2, 1992, JMM Promotion and Management, Inc. and Kary International, Inc., herein petitioners, filed a Motion for Intervention in said civil case, which was granted by the trial court in an Order dated 15 February, 1995.

However, on February 21, 1995, the trial court issued an Order denying petitioners' prayer for a writ of preliminary injunction and dismissed the complaint.

On appeal from the trial court's Order, respondent court, in CA G.R. SP No. 36713 dismissed the same. Tracing the circumstances which led to the issuance of the ARB requirement and the assailed Department Order, respondent court concluded that the issuances constituted a valid exercise by the state of the police power.

We agree.

The *latin maxim salus populi est suprema lex* embodies the character of the entire spectrum of public laws aimed at promoting the general welfare of the people under the

State's police power. As an inherent attribute of sovereignty which virtually "extends to all public needs,"^[2] this "least limitable"^[3] of governmental powers grants a wide panoply of instruments through which the state, as *parens patriae* gives effect to a host of its regulatory powers.

Describing the nature and scope of the police power, Justice Malcolm, in the early case of *Rubi v. Provincial Board of Mindoro*^[4] wrote:

"The police power of the State," one court has said...'is a power coextensive with self-protection, and is not inaptly termed 'the law of overruling 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.' Carried onward by the current of legislature, the judiciary rarely attempts to dam the onrushing power of legislative discretion, provided the purposes of the law do not go beyond the great principles that mean security for the public welfare or do not arbitrarily interfere with the right of the individual."^[5]

Thus, police power concerns government enactments which precisely interfere with personal liberty or property in order to promote the general welfare or the common good. As the assailed Department Order enjoys a presumed validity, it follows that the burden rests upon petitioners to demonstrate that the said order, particularly, its ARB requirement, does not enhance the public welfare or was exercised arbitrarily or unreasonably.

A thorough review of the facts and circumstances leading to the issuance of the assailed orders compels us to rule that the Artist Record Book requirement and the questioned Department Order related to its issuance were issued by the Secretary of Labor pursuant to a valid exercise of the police power.

In 1984, the Philippines emerged as the largest labor sending country in Asia dwarfing the labor export of countries with mammoth populations such as India and China. According to the National Statistics Office, this *diaspora* was augmented annually by over 450,000 documented and clandestine or illegal (undocumented) workers who left the country for various destinations abroad, lured by higher salaries, better work opportunities and sometimes better living conditions.

Of the hundreds of thousands of workers who left the country for greener pastures in the last few years, women composed slightly close to half of those deployed, constituting 47% between 1987-1991, exceeding this proportion (58%) by the end of 1991,^[6] the year former President Aquino instituted the ban on deployment of performing artists to Japan and other countries as a result of the gruesome death of Filipino entertainer Maricris Sioson.

It was during the same period that this Court took judicial notice not only of the trend, but also of the fact that most of our women, a large number employed as domestic helpers and entertainers, worked under exploitative conditions "marked by physical and personal abuse."^[7] Even then, we noted that "[t]he sordid tales of maltreatment

suffered by migrant Filipina workers, even rape and various forms of torture, confirmed by testimonies of returning workers" compelled "urgent government action."^[8]

Pursuant to the alarming number of reports that a significant number of Filipina performing artists ended up as prostitutes abroad (many of whom were beaten, drugged and forced into prostitution), and following the deaths of a number of these women, the government began instituting measures aimed at deploying only those individuals who met set standards which would qualify them as legitimate performing artists. In spite of these measures, however, a number of our countrymen have nonetheless fallen victim to unscrupulous recruiters, ending up as virtual slaves controlled by foreign crime syndicates and forced into jobs other than those indicated in their employment contracts. Worse, some of our women have been forced into prostitution.

Thus, after a number of inadequate and failed accreditation schemes, the Secretary of Labor issued on August 16, 1993, D.O. No. 28, establishing the Entertainment Industry Advisory Council (EIAC), the policy advisory body of DOLE on entertainment industry matters.^[9] Acting on the recommendations of the said body, the Secretary of Labor, on January 6, 1994, issued the assailed orders. These orders embodied EIAC's Resolution No. 1, which called for guidelines on screening, testing and accrediting performing overseas Filipino artists. Significantly, as the respondent court noted, petitioners were duly represented in the EIAC,^[10] which gave the recommendations on which the ARB and other requirements were based.

Clearly, the welfare of Filipino performing artists, particularly the women was paramount in the issuance of Department Order No. 3. Short of a total and absolute ban against the deployment of performing artists to "high risk" destinations, a measure which would only drive recruitment further underground, the new scheme at the very least rationalizes the method of screening performing artists by requiring reasonable educational and artistic skills from them and limits deployment to only those individuals adequately prepared for the unpredictable demands of employment as artists abroad. It cannot be gainsaid that this scheme at least lessens the room for exploitation by unscrupulous individuals and agencies.

Moreover, here or abroad, selection of performing artists is usually accomplished by auditions, where those deemed unfit are usually weeded out through a process which is inherently subjective and vulnerable to bias and differences in taste. The ARB requirement goes one step further, however, attempting to minimize the subjectivity of the process by defining the minimum skills required from entertainers and performing artists. As the Solicitor General observed, this should be easily met by experienced artists possessing merely basic skills. The tests are aimed at segregating real artists or performers from those passing themselves off as such, eager to accept any available job and therefore exposing themselves to possible exploitation.

As to the other provisions of Department Order No. 3 questioned by petitioners, we see nothing wrong with the requirement for document and booking confirmation (D.O. 3-C), a minimum salary scale (D.O. 3-E), or the requirement for registration of returning performers. The requirement for a venue certificate or other documents evidencing the

place and nature of work allows the government closer monitoring of foreign employers and helps keep our entertainers away from prostitution fronts and other worksites associated with unsavory, immoral, illegal or exploitative practices. Parenthetically, none of these issuances appear to us, by any stretch of the imagination, even remotely unreasonable or arbitrary. They address a felt need of according greater protection for an oft-exploited segment of our OCW's. They respond to the industry's demand for clearer and more practicable rules and guidelines. Many of these provisions were fleshed out following recommendations by, and after consultations with, the affected sectors and non-government organizations. On the whole, they are aimed at enhancing the safety and security of entertainers and artists bound for Japan and other destinations, without stifling the industry's concerns for expansion and growth.

In any event, apart from the State's police power, the Constitution itself mandates government to extend the fullest protection to our overseas workers. The basic constitutional statement on labor, embodied in Section 18 of Article II of the Constitution provides:

Sec. 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

More emphatically, the social justice provision on labor of the 1987 Constitution in its first paragraph states:

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.

Obviously, protection to labor does not indicate promotion of employment alone. Under the welfare and social justice provisions of the Constitution, the promotion of full employment, while desirable, cannot take a backseat to the government's constitutional duty to provide mechanisms for the protection of our workforce, local or overseas. As this Court explained in *Philippine Association of Service Exporters (PASEI) v. Drilon*,^[11] in reference to the recurring problems faced by our overseas workers:

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.

We now go to petitioners' assertion that the police power cannot, nevertheless, abridge the right of our performing workers to return to work abroad after having earlier qualified under the old process, because, having previously been accredited, their accreditation became a property right," protected by the due process clause. We find this contention untenable.

A profession, trade or calling is a property right within the meaning of our constitutional guarantees. One cannot be deprived of the right to work and the right to make a living because these rights are property rights, the arbitrary and unwarranted deprivation of

which normally constitutes an actionable wrong.^[12]

Nevertheless, no right is absolute, and the proper regulation of a profession, calling, business or trade has always been upheld as a legitimate subject of a valid exercise of the police power by the state particularly when their conduct affects either the execution of legitimate governmental functions, the preservation of the State, the public health and welfare and public morals. According to the *maxim, sic utere tuo ut alienum non laedas*, it must of course be within the legitimate range of legislative action to define the mode and manner in which every one may so use his own property so as not to pose injury to himself or others.^[13]

In any case, where the liberty curtailed affects at most the rights of property, the permissible scope of regulatory measures is certainly much wider.^[14] To pretend that licensing or accreditation requirements violates the due process clause is to ignore the settled practice, under the mantle of the police power, of regulating entry to the practice of various trades or professions. Professionals leaving for abroad are required to pass rigid written and practical exams before they are deemed fit to practice their trade. Seamen are required to take tests determining their seamanship. Locally, the Professional Regulation Commission has began to require previously licensed doctors and other professionals to furnish documentary proof that they had either re-trained or had undertaken continuing education courses as a requirement for renewal of their licenses. It is not claimed that these requirements pose an unwarranted deprivation of a property right under the due process clause. So long as Professionals and other workers meet reasonable regulatory standards no such deprivation exists.

Finally, it is a futile gesture on the part of petitioners to invoke the non-impairment clause of the Constitution to support their argument that the government cannot enact the assailed regulatory measures because they abridge the freedom to contract. In *Philippine Association of Service Exporters, Inc. vs. Drilon*, we held that "[t]he non-impairment clause of the Constitution... must yield to the loftier purposes targeted by the government."^[15] Equally important, into every contract is read provisions of existing law, and always, a reservation of the police power for so long as the agreement deals with a subject impressed with the public welfare.

A last point. Petitioners suggest that the singling out of entertainers and performing artists under the assailed department orders constitutes class legislation which violates the equal protection clause of the Constitution. We do not agree.

The equal protection clause is directed principally against undue favor and individual or class privilege. It is not intended to prohibit legislation which is limited to the object to which it is directed or by the territory in which it is to operate. It does not require absolute equality, but merely that all persons be treated alike under like conditions both as to privileges conferred and liabilities imposed.^[16] We have held, time and again, that the equal protection clause of the Constitution does not forbid classification for so long as such classification is based on real and substantial differences having a reasonable relation to the subject of the particular legislation.^[17] If classification is germane to the purpose of the law, concerns all members of the class, and applies

equally to present and future conditions, the classification does not violate the equal protection guarantee.

In the case at bar, the challenged Department Order clearly applies to all performing artists and entertainers destined for jobs abroad. These orders, we stressed hereinbefore, further the Constitutional mandate requiring Government to protect our workforce, particularly those who may be prone to abuse and exploitation as they are beyond the physical reach of government regulatory agencies. The tragic incidents must somehow stop, but short of absolutely curtailing the right of these performers and entertainers to work abroad, the assailed measures enable our government to assume a measure of control.

WHEREFORE, finding no reversible error in the decision sought to be reviewed, petition is hereby **DENIED**.

SO ORDERED.

Padilla (Chairman), Bellosillo, Vitug, and Hermosisima, Jr., JJ., concur.

[1] EIAC, Res. No. 1.

[2] Noble State Bank v. Haskell, 219 US 112 (1911).

[3] Smith, Bell and Co. v. Natividad, 40 Phil. 136 (1919).

[4] 39 Phil 660, 708 (1919).

[5] Id., at 708-709.

[6] Source: National Statistics Office, 1992.

[7] Philippine Association of Service Exporters, Inc. v. Drilon 163 SCRA 386, 392 (1988).

[8] Id.

[9] Department Order No. 28 vests the EIAC with the following principal functions:

a) recommend to the DOLE policies, plans and programs for the development of the entertainment industry, local and overseas, including but not limited to talents training and upgrading, employment standards and other internationally acceptable trade practices;

b) promote ethical business standards and dignified workplaces;

c) act as the coordinating body for all training programs and technical assistance to the

entertainment industry;

d) advise the DOLE on the institutionalization of an internationally acceptable system of manpower development, talent protection and welfare;

e) assist the appropriate agencies, private or public in the implementation of a trainors and training and upgrading program;

f) review existing issuances on the industry including the system of training, testing and accreditation of performing artists/talents and recommend to the Secretary such measures or schemes as are deemed necessary for its proper compliance xxx xxx.

[10] The EIAC is chaired by an Undersecretary of Labor and is composed of 3 representatives from the government, 2 representatives from the employers' sector, one representative from the talent developers, 2 representatives from the workers' sector and one representative from the Non-government Organizations.

[11] Id.

[12] Phil. Movie Workers' Assn. v. Premier Productions, Inc., 92 Phil. 8423 (1953); National Labor Union vs. Court of Industrial Relations, 68 Phil. 732 (1939).

[13] Case vs. Board of Helath, 24 Phil. 250, 280 (1913).

[14] Ermita Malate Hotel and Motel Operators vs. City of Manila, 20 SCRA 849 (1967).

[15] Supra, note 6, at 397.

[16] Itchong, etc., et al. vs. Hernandez, 101 Phil. 1155 (1957).

[17] Villegas vs. Hiu Chiong Tsai Pao Ho, 86 SCRA 272 (1978).



Source: Supreme Court E-Library
This page was dynamically generated
by the E-Library Content Management System (E-LibCMS)