

**[ SP No. 92615, April 23, 2007 ]**

**SKIPPERS UNITED PACIFIC, INC., PETITIONER, VS. THE HON. SECRETARY OF LABOR AND EMPLOYMENT AND NELSON PAGAYUNAN, RESPONDENTS.**

This is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure seeking to annul and set aside 1] the July 1, 2005 Order of the public respondent which affirmed the decision of the POEA Administrator adjudging petitioner liable for violating Section 2 (b), Rule V, Book II, in relation to Section 2 (a), Rule 1, Part VI of the 1991 POEA Rules and Regulations; and 2] the October 13, 2005 Order denying the motion for the reconsideration of the first order.

The dispositive portion of the October 13, 2005 Order reads as follows:

"WHEREFORE, premises considered, the Motion for Reconsideration filed by Skippers United Pacific, Inc. is hereby DENIED for lack of merit. Accordingly, our Order dated July 1, 2005, affirming the Order dated October 11, 2004 of the POEA Administrator, finding petitioner liable for violating Section 2 (b), Rule V, Book II in relation to Section 2 (a), Rule I, Part VI of the 1991 Rules and Regulations, thereby imposing upon it the penalty of suspension of its license for a period of two (2) months or, in lieu thereof, the payment of fine in the amount of Fifty Thousand Pesos (Php50,000.00), is AFFIRMED."<sup>[1]</sup>

The factual and procedural antecedents were succinctly stated in the decision of the public respondent, to wit:

"In his Sworn Statement, complainant alleged that sometime in January 2002, he applied with petitioner to work as a bosun on board a vessel. He was assured of placement and deployment by a certain 'Arsenia Villamor,' Crewing Manager of the petitioner, and in consideration for the same, he was required to pay the amount of Fifty Thousand Pesos (Php50,000.00), which he paid in three (3) installment, to wit:

- a. March 20, 2002 — Php20,000.00
- b. May 18, 2002 — Php20,000.00
- c. July 10, 2002 — Php10,000.00

Complainant made the said payments to Ms. Villamor in the office of the petitioner for which no receipts were issued. Complainant likewise averred that he constantly demanded for a receipt, but without valid reason therefor, Ms. Villamor always refused to issue the same. For failure of petitioner to issue the corresponding receipts, complainant filed a complaint with the POEA charging petitioner with violation of the Article 32 of the Labor Code, as amended, in relation to the POEA Rules and Regulations.

A Show-Cause Order was sent to the petitioner requiring the latter to file its Answer. Subsequently, hearing were held on November 6, 12, and 25,

2003, and April 26, 2004. During the November 6, 2003 hearing, petitioner failed to appear despite due notice, while complainant, on the other hand, affirmed the veracity of the allegations in his Sworn Statement. On November 12, 2003, petitioner filed its Answer, and both parties agreed to reset the said hearing. In the November 25, 2003 hearing, only the complainant appeared. Subsequently, the hearing Officer moved the hearing to another date. In the April 26, 2004 hearing, again, petitioner failed to appear despite proper notice. Thereafter, upon request of the complainant, the case was submitted for resolution.

On October 11, 2004 the POEA Administrator issued the assailed Order, finding the petitioner liable for violating Section 2 (b), Rule V, Book II in relation to Section 2 (a), Rule 1, Part VI of the 1991 POEA Rules and Regulations, considering that it failed to issue the appropriate receipt. On October 25, 2004, petitioner received the assailed Order, and on November 4, 2004, the instant petition was timely filed."<sup>[2]</sup>

In sustaining the decision of the POEA Administrator, in its July 1, 2005 Order, the Secretary of the Department of Labor and Employment (DOLE) gave the following rationalization, to wit:

"The petition is without merit.

Section 2 (b), Rule V, Book II of the 1991 POEA Rules and Regulations provides that:

**'Section 2. Fee/Costs Chargeable from Workers.—**

\*                    \*                    \*                    \*  
                          \*                    \*                    \*

**(b) Manning agencies shall not charge any fee from seafarer-applicants for its recruitment and placement services.**

In relation to the said provision, Section 2 (a), Rule I, Book VI of the same Rules explicitly states that:

**'Section 2. Grounds for suspension/ cancellation of license.—**

**(a) Charging, imposing or accepting directly or indirectly any amount of money goods or services, or any fee or bound for any purpose whatsoever before employment is obtained for an applicant worker or where the fee charged is excessive or contrary to what is prescribed by the Secretary of labor and Employment.'**

In our examination and evaluation of the record, the controversy involved in this case occurred in the year 2002, when the complainant applied for overseas employment on board the vessel with the petitioner. It was in

the year 2002, when the petitioner committed certain violations of the POEA Rules, in the same manner that all the evidence presented as well as the testimony made by the complainant pertains to the said year. Petitioner presented as evidence the complainant's employment contract, notice of reprimand, minutes of hearings, (Rollo, pp. 34 38). However, this documents pertain to the previous employment of the complainant. In other words, these evidence, even if given probative value, will not substantially affect the determination of the instant case. Even by presenting such evidence, it would not deviate from the fact that complainant applied for overseas employment, which the complainant established in a very categorical and straightforward manner.

Likewise, the numerous photocopies of appointment slips (Rollo, pp. 24-31) prove that complainant relentlessly guarded his job application with the petitioner with a hope that he would be successfully deployed by the latter because there was already an initial payment of placement fee. Thus, the inability of the petitioner to refute and overturn such evidence of the complainant, despite the opportunity given, is sufficient to consider that the latter fully substantiated his claim. Therefore, the POEA is correct in finding petitioner liable for violating Section 2 (b), Rule V, Book II, in relation to Section 2 (a), Rule 1, Part VI of the 1991 POEA Rules and Regulations, when the latter collected a fee from the complainant as payment for its recruitment and placement services."

In this special civil action, petitioner is assailing the subject orders of the Secretary of DOLE and POEA Case No. RV 03-09-1914; OS-POEA 1214-2004-0365 presenting this lone.

### **GROUND RELIED UPON IN THIS PETITION**

**PUBLIC RESPONDENT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION WHEN IT RENDERED THE ABOVE-ASSAILED ORDERS.**

Elaborating, petitioner contends that the photocopies of the appointment slips it presented before the POEA were for the purpose of proving that private respondent was lying when he claimed to have made several payments to its Crewing Manager, Arsenia V. Villamor. The dates the private respondent stated in his pro forma complaint do not coincide with any of the dates in said photocopies of the appointment slips. In his Complaint, he alleged that petitioner's Crewing Manager, Arsenia Villamor, collected from him at Skippers' Office, a total amount of P50,000.00 paid by him on various dates, namely, March 20, 2002-P20,000.00; May 18, 2002-P20,000.00 and July 10, 2002-P10.000.00. The appointment slips, however, do not show that he reported to petitioner's office on such dates. He may have reported on several dates but they do not coincide with the dates when he claimed to have paid said amount to Ms. Villamor.

These evidence were instead used by public respondent as an indication that herein private respondent allegedly "relentlessly guarded his job application with a hope that he would be successfully deployed by the latter because there was already an initial payment of placement fee". These findings of public respondent does not find support in law.

The photocopies of the appointment slips should have been considered by public respondent in its favor and not for private respondent. Under Rule 130, Section 13 of the Rules on Evidence, it is stated that "for the proper construction of an instrument, the circumstances under which it was made, including the situation of the subject thereof and of the parties to it, may be shown, so that the judge may be placed in the position of those whose language he is to interpret."

Despite these submissions, the public respondent brushed aside its arguments. That the complainant allegedly testified "in a very categorical and straightforward manner" cannot be interpreted to cure the absence of proof and support of his allegations of illegal exaction. The record is bereft of any document or testimony taken during the supposed hearings wherein private respondent was placed under oath and testified on his complaint. Thus, the public respondent's conclusion was based on clear speculation.

### **PRIVATE RESPONDENT'S POSITION**

Traversing the foregoing, private respondent claims that while he diligently attended the scheduled hearings and affirmed the allegations in his complaint, petitioner belatedly filed its responsive pleadings and never once presented testimony in the hearings. The petitioner should have appeared and affirmed the allegations contained in its belatedly filed pleadings "in order to merit a disturbance of the positive and categorical declarations made by private respondent that petitioner's crewing manager Arsenia Villamor collected the total amount of P50,000.00 from him." The circumstances of this case is no different from the case of ***Ong v. Manalabe, A.M. No. P-05-1931, Jan. 13, 2005*** which held that:

"\* \* \* Respondent's plain denial of the acts imputed to him cannot overcome the categorical and positive declarations made by complainant, her husband, and Garcia that he demanded money from complainant and her spouse with the promise that he would help them seek a favorable judgment for complainant's cousin Mario Tan. These declarations constitute substantial evidence required to administrative proceedings."

The petitioner cannot be allowed to present its evidence, the Affidavit of its Crewing Manager, Arsenia Villamor, on appeal. To do so would be to render nugatory and make a mockery of the proceedings that were conducted before the POEA. Petitioner cannot harp that it was denied due process because it was given every opportunity to refute and overturn private respondent's evidence. The fact is that petitioner failed to appear on the scheduled hearings for the reception of its evidence and to substantiate its allegations constraining the public respondent to consider the case as submitted for decision.

### **PUBLIC RESPONDENT'S POSITION**

In his Comment, the public respondent submits that petitioner was not able to prove the commission of a grave abuse of discretion. Contrary to the argument of the petitioner, he carefully examined and evaluated all the evidence at hand. The evidence substantially established that, in connection with the recruitment and placement of private respondent, petitioner collected placement fee, which is prohibited under the POEA Rules. Between the unwavering and consistent declaration of the private respondent and the bare denials and self-serving

statements of the petitioner, the former should be given greater weight and must prevail.

On the appointment slips submitted by the petitioner, he did not say that they were considered as proof of payment of placement fees by the private respondent. The appointment slips were given due consideration to bolster the testimony of the private respondent that he went to follow-up his employment with the petitioner several times. The appointment slips did not, in any manner, disprove the fact that the petitioner exacted the amount of R50,000.00 from the private respondent as placement fee. The private respondent substantially established that upon payment of the placement fee, petitioner assured him overseas employment. If the averment of the petitioner that it was impossible for the private respondent to find employment by reason of his past poor performance were true, then it was strange for him to return to the office of petitioner, not twice, but fifteen (15) times over a short period of time to follow-up the promised employment. The numerous visits made by the private respondent to the office of the petitioner was indicative of his eagerness to pursue a promised deployment.

It was also established in the proceedings before the POEA that private respondent was already made to undergo medical examination on July 12, 2002 because he was supposedly set to be deployed on a vessel named MV New Bulker. That fact and the positive and categorical statement of private respondent were sufficient to prove that petitioner was liable for violation of the POEA Rules.

Instead of disproving the allegations and charges, what petitioner did was to tackle collateral issues dealing with the qualification and performance of the private respondent in his previous employment. These, however, had nothing to do with the main issue on exaction of illegal fees.

On due process, the records reveal that during the proceedings before the POEA, petitioner failed to appear in all the scheduled hearings, except on November 12, 2003, when eventually it filed its Answer. On the other hand, the private respondent was consistently present and was able to convincingly narrate the events surrounding his recruitment and placement. He was consistent with his testimony and unflinchingly mentioned the name of the person he dealt with, as well as the dates and amount of money he paid in the office of the petitioner.

## **THE COURTS RULING**

The main thrust of a petition for certiorari under Rule 65 of the Rules of Court is only the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction, not merely errors of judgment.<sup>[3]</sup> Although it defies exact definition, grave abuse of discretion generally refers to whimsical and capricious exercise of power.<sup>[4]</sup>

As a preliminary, "the essential requisites for a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure are: (1) the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction; or with grave abuse of discretion amounting to lack or excess of jurisdiction; or with \*\*\*grave abuse of discretion amounting to lack or excess of jurisdiction; (3) there is no appeal or any