

SECOND DIVISION

[G.R. No. 131719, May 25, 2004]

THE EXECUTIVE SECRETARY, THE SECRETARY OF JUSTICE, THE SECRETARY OF LABOR AND EMPLOYMENT, AND THE SECRETARY OF FOREIGN AFFAIRS, OWWA ADMINISTRATOR, AND POEA ADMINISTRATOR, PETITIONERS, VS. THE HON. COURT OF APPEALS AND ASIAN RECRUITMENT COUNCIL PHILIPPINE CHAPTER (ARCO-PHIL.), INC., REPRESENTING ITS MEMBERS: WORLDCARE SERVICES INTERNATIONALE, INC., STEADFAST INTERNATIONAL RECRUITMENT CORPORATION, DRAGON INTERNATIONAL MANPOWER SERVICES CORPORATION, VERDANT MANPOWER MOBILIZATION CORPORATION, BRENT OVERSEAS PERSONNEL, INC., ARL MANPOWER SERVICES, INC., DAHLZEN INTERNATIONAL SERVICES, INC., INTERWORLD PLACEMENT CENTER, INC., LAKAS TAO CONTRACT SERVICES, LTD. CO., AND SSC MULTISERVICES, RESPONDENTS.

DECISION

CALLEJO, SR., J.:

In this petition for review on certiorari, the Executive Secretary of the President of the Philippines, the Secretary of Justice, the Secretary of Foreign Affairs, the Secretary of Labor and Employment, the POEA Administrator and the OWWA Administrator, through the Office of the Solicitor General, assail the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 38815 affirming the Order^[2] of the Regional Trial Court of Quezon City dated August 21, 1995 in Civil Case No. Q-95-24401, granting the plea of the petitioners therein for a writ of preliminary injunction and of the writ of preliminary injunction issued by the trial court on August 24, 1995.

The Antecedents

Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, took effect on July 15, 1995. The Omnibus Rules and Regulations Implementing the Migrant Workers and Overseas Filipino Act of 1995 was, thereafter, published in the April 7, 1996 issue of the Manila Bulletin. However, even before the law took effect, the Asian Recruitment Council Philippine Chapter, Inc. (ARCO-Phil.) filed, on July 17, 1995, a petition for declaratory relief under Rule 63 of the Rules of Court with the Regional Trial Court of Quezon City to declare as unconstitutional Section 2, paragraph (g), Section 6, paragraphs (a) to (j), (l) and (m), Section 7, paragraphs (a) and (b), and Sections 9 and 10 of the law, with a plea for the issuance of a temporary restraining order and/or writ of preliminary injunction enjoining the respondents therein from enforcing the assailed provisions of the law.

In a supplement to its petition, the ARCO-Phil. alleged that Rep. Act No. 8042 was

self- executory and that no implementing rules were needed. It prayed that the court issue a temporary restraining order to enjoin the enforcement of Section 6, paragraphs (a) to (m) on illegal recruitment, Section 7 on penalties for illegal recruitment, and Section 9 on venue of criminal actions for illegal recruitments, viz:

Viewed in the light of the foregoing discussions, there appears to be urgent an imperative need for this Honorable Court to maintain the status quo by enjoining the implementation or effectivity of the questioned provisions of RA 8042, by way of a restraining order otherwise, the member recruitment agencies of the petitioner will suffer grave or irreparable damage or injury. With the effectivity of RA 8042, a great majority of the duly licensed recruitment agencies have stopped or suspended their operations for fear of being prosecuted under the provisions of a law that are unjust and unconstitutional. This Honorable Court may take judicial notice of the fact that processing of deployment papers of overseas workers for the past weeks have come to a standstill at the POEA and this has affected thousands of workers everyday just because of the enactment of RA 8042. Indeed, this has far reaching effects not only to survival of the overseas manpower supply industry and the active participating recruitment agencies, the country's economy which has survived mainly due to the dollar remittances of the overseas workers but more importantly, to the poor and the needy who are in dire need of income-generating jobs which can only be obtained from abroad. The loss or injury that the recruitment agencies will suffer will then be immeasurable and irreparable. As of now, even foreign employers have already reduced their manpower requirements from the Philippines due to their knowledge that RA 8042 prejudiced and adversely affected the local recruitment agencies.^[3]

On August 1, 1995, the trial court issued a temporary restraining order effective for a period of only twenty (20) days therefrom.

After the petitioners filed their comment on the petition, the ARCO-Phil. filed an amended petition, the amendments consisting in the inclusion in the caption thereof eleven (11) other corporations which it alleged were its members and which it represented in the suit, and a plea for a temporary restraining order enjoining the respondents from enforcing Section 6 subsection (i), Section 6 subsection (k) and paragraphs 15 and 16 thereof, Section 8, Section 10, paragraphs 1 and 2, and Sections 11 and 40 of Rep. Act No. 8042.

The respondent ARCO-Phil. assailed Section 2(g) and (i), Section 6 subsection (a) to (m), Section 7(a) to (b), and Section 10 paragraphs (1) and (2), quoted as follows:

(g) THE STATE RECOGNIZES THAT THE ULTIMATE PROTECTION TO ALL MIGRANT WORKERS IS THE POSSESSION OF SKILLS. PURSUANT TO THIS AND AS SOON AS PRACTICABLE, THE GOVERNMENT SHALL DEPLOY AND/OR ALLOW THE DEPLOYMENT ONLY OF SKILLED FILIPINO WORKERS.^[4]

Sec. 2 subsection (i, 2nd par.)

Nonetheless, the deployment of Filipino overseas workers, whether land-

based or sea-based, by local service contractors and manning agents employing them shall be encourages (sic). Appropriate incentives may be extended to them.

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II. ILLEGAL RECRUITMENT

SEC. 6. Definition. – For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non- holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall, likewise, include the following acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;

(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be

required by the Secretary of Labor and Employment;

(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;

(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and

(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

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SEC. 7. Penalties. –

(a) Any person found guilty of illegal recruitment shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years and a fine of not less than two hundred thousand pesos (P200,000.00) nor more than five hundred thousand pesos (P500,000.00).

(b) The penalty of life imprisonment and a fine of not less than five hundred thousand pesos (P500,000.00) nor more than one million pesos (P1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein.

Provided, however, That the maximum penalty shall be imposed if the

person illegally recruited is less than eighteen (18) years of age or committed by a non-licensee or non-holder of authority.

Sec. 8.

Prohibition on Officials and Employees. – It shall be unlawful for any official or employee of the Department of Labor and Employment, the Philippine Overseas Employment Administration (POEA), or the Overseas Workers Welfare Administration (OWWA), or the Department of Foreign Affairs, or other government agencies involved in the implementation of this Act, or their relatives within the fourth civil degree of consanguinity or affinity, to engage, directly or indirectly, in the business of recruiting migrant workers as defined in this Act. The penalties provided in the immediate preceding paragraph shall be imposed upon them. (underscoring supplied)

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Sec. 10, pars. 1 & 2.

Money Claims. – Notwithstanding any provision of law to the contrary, the Labor Arbiters of the National Labor Relations Commission (NLRC) shall have the original and exclusive jurisdiction to hear and decide, within ninety (90) calendar days after the filing of the complaint, the claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas deployment including claims for actual, moral, exemplary and other forms of damages.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

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SEC. 11. Mandatory Periods for Resolution of Illegal Recruitment Cases. – The preliminary investigations of cases under this Act shall be terminated within a period of thirty (30) calendar days from the date of their filing. Where the preliminary investigation is conducted by a prosecution officer and a *prima facie* case is established, the corresponding information shall be filed in court within twenty-four (24) hours from the termination of the investigation. If the preliminary investigation is conducted by a judge and a *prima*