

## FIRST DIVISION

[ G.R. No. 116356, June 29, 1998 ]

**EASTERN SHIPPING LINES, INC., PETITIONER, VS. COURT OF APPEALS AND DAVAO PILOTS ASSOCIATION, RESPONDENTS.**

### DECISION

**PANGANIBAN, J.:**

In *Philippine Interisland Shipping Association of the Philippines vs. Court of Appeals*,<sup>[1]</sup> the Court, *en banc*, ruled that Executive Order 1088<sup>[2]</sup> was not unconstitutional. We adhere to said ruling in this case.

#### The Case

This is a petition for certiorari under Rule 45, assailing the Decision<sup>[3]</sup> of the Court of Appeals<sup>[4]</sup> in CA-GR CV No. 34487 promulgated on July 18, 1994, the dispositive portion of which reads:

"WHEREFORE, finding no reversible error in the decision appealed from, the same is hereby *AFFIRMED* in toto. With costs against defendant-appellant."

The Decision affirmed by Respondent Court disposed as follows:

"WHEREFORE, judgment is rendered directing the defendant:

1. To pay plaintiff the sum of P602,710.04 with legal rate of interest commencing from the filing of the complaint representing unpaid pilotage fees;
2. To pay attorney's fees in the sum of P50,000.00;
3. And costs.

SO ORDERED."

Hence, this appeal.<sup>[5]</sup>

#### The Facts

As found by the trial court, these are the undisputed facts:

"On September 25, 1989, plaintiff [herein private respondent] elevated a complaint against defendant [herein petitioner] for sum of money and attorney's fees alleging that plaintiff had rendered pilotage services to defendant between January 14, 1987 to July 22, 1989 with total unpaid fees of P703,290.18. Despite repeated demands, defendant failed to pay and prays that the latter be directed to pay P703,290.18 with legal rate of interest from the filing of the complaint; attorney's fees equivalent to 25% of the principal obligation and such other relief.

On November 18, 1989 defendant answered vigorously disputing the claims of plaintiff. It assailed the constitutionality of the Executive Order 1088 upon which plaintiff bases its claims; alleged that there is a pending case before the Court of Appeals elevated by the United Harbor Pilots Association of the Philippines of which plaintiff is a member[;] whereas defendant is a member of the Chamber of Maritime Industries of the Philippine[s] which is an Intervenor in CA-G.R. SP No. 18072; that there therefore is lis pendens by Section 1 (e), Rule 16 of the Rules; that the subject of the complaint falls within the scope and authority of the Philippine Ports Authority by virtue of PD No. 857 dated December 23, 1975; that Executive Order No. 1088 is an unwarranted repeal or modification of the Philippine Ports Authority Charter; that the fees charged by plaintiff are arbitrary and confiscatory; and the basis of the Executive Order 1088 is offensive, sourced from Amendment No. 6 of the 1973 Constitution and rendered inoperative by the Freedom Constitution of March 25, 1986 and the present Constitution; and that the only agency vested by law to prescribe such rates, charges or fees for services rendered by any private organization like the plaintiff within a Port District is governed by Section 20 of PD 857. As regular patron of plaintiff, defendant has never been remiss in paying plaintiff's claim for pilotage fees and the present complaint under the foregoing circumstances is without legal foundation. Defendant prays that plaintiff be advised to await the final outcome of the identical issues already elevated to and pending before the Court of Appeals as CA-G.R. SP No. 18072. Defendant prays for an award of damages, attorney's fees, litigation expense and costs.

At the Pre-Trial Conference, the only issue raised by plaintiff is whether the defendant is liable to the plaintiff for the money claims alleged in the complaint. The defendant on the other hand raised the following issues:

1. Whether or not Executive Order 1088 is constitutional;
2. Whether or not Executive Order 1088 is illegal;
3. Whether or not the plaintiff may motu proprio and independently of the Public Estates Authority enforce Executive Order 1088 and collect the pilotage fees prescribed thereunder;
4. Assuming Executive Order 1088 is constitutional, valid and self-executory, whether or not the defendant is liable; and if so, to what extent and for what particular items; and
5. Whether or not the plaintiff is liable under the counterclaims (p. 102, Expediente).

On September 5, 1990, plaintiff presented witness Capt. Felix N. Galope, in the course of which testimony identified among others EXHIBITS "B" to "E-2" and "J" to "I-2" consisting of documents related to the collection of the unpaid pilotage fees; basis for such computations; Statement of Accounts; demand letter and official recipients of payment made.

On September 6, 1990, Simplicio Barao, plaintiff's Billing Clerk testified among others on the records of plaintiff's Captain's Certificate/Pilotage Chits and Bills/Statements of Accounts on the claims against defendant (EXHIBITS "G" to "H-48-A") and the details of the outstanding accounts in favor of plaintiff. The records show defendant raised no objection

thereto and by virtue of which all of plaintiff's documentary exhibits were admitted. (Order dated January 14, 1991, p. 277 Expediente).

On March 14, 1991, defendant presented Celso Occidental, employee of defendant shipping company, in the course of which testimony submitted EXHIBITS "1" to "1-D" which is plaintiff's Billing Rate, both old and new with a payment of P79,585.64; and "2" to "2-G" representing plane ticket paid for by defendant for transportation expenses of its counsel and cost of stenographic transcripts.

Defendant's last witness, Capt. Jose Dubouzet, Jr. and a Harbor Pilot was briefly presented."<sup>[6]</sup>

After due trial, the trial court rendered its ruling, viz.:

"Plaintiff's evidence as to the unpaid pilotage services due from defendant duly supported by voluminous documentary exhibits has not been refuted nor rebutted by defendant. On the contrary, when plaintiff's documentary exhibits were formally offered, defendant did not raise any objection thereby leaving the documents unchallenged and undisputed.

Upon the other hand, while the records show that defendant raised no less than five (5) issues the evidence fails to show any proof to sustain defendant's posture. On the contrary, neither of defendant's two witnesses appear to have even grazed the outer peripheries of what could have been interesting issues with far-reaching consequences if resolved."<sup>[7]</sup>

The factual antecedents of the controversy are simple. Petitioner insists on paying pilotage fees prescribed under PPA circulars. Because EO 1088 sets a higher rate, petitioner now assails its constitutionality.

### **Public Respondent's Ruling**

As stated earlier, Respondent Court of Appeals affirmed the trial court's decision. Respondent Court pointed out that petitioner, during the pre-trial, limited the issues to whether: (1) EO 1088 is unconstitutional; (2) EO 1088 is illegal; (3) private respondent itself may enforce and collect fees under EO 1088; and (4) petitioner is liable and, if EO 1088 is legal, to what extent. It then affirmed the factual findings and conclusion of the trial court that petitioner "fail[ed] to show any proof" to support its position. Parenthetically, Respondent Court also noted two other cases decided by the Court of Appeals, upholding the constitutionality of EO 1088.<sup>[8]</sup>

### **The Issue**

In sum, petitioner raises this main issue: whether Executive Order 1088 is unconstitutional.<sup>[9]</sup>

### **The Court's Ruling**

The petition is unmeritorious.

### **EO 1088 Is Valid**