

## 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 The ban was, however, rescinded after leaders of the overseas employment industry promised to extend full support for a program aimed at removing kinks in the system of deployment.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,<sup>[1]</sup> 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,"<sup>[2]</sup> this "least limitable"<sup>[3]</sup> 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*<sup>[4]</sup> 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."<sup>[5]</sup>

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,<sup>[6]</sup> 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."<sup>[7]</sup> 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."<sup>[8]</sup>

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.<sup>[9]</sup> 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,<sup>[10]</sup> 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