Supreme Court E-Library

Hence, in *Nery,* the subsequent agreement of the accused and the complainant for the payment of the defrauded amount and the partial payment thereof did not totally extinguish the civil liability of the accused. The trial court ordered the accused to indemnify the sum of the unpaid balance, and this award was affirmed by the Supreme Court.

WHEREFORE, premises considered, the petition is *DENIED* and the assailed Decision is *AFFIRMED in toto.* Costs against petitioner.

SO ORDERED.

Narvasa, C.J. (Chairman), Romero, Melo, and *Francisco, JJ.,* concur.

EN BANC

[G.R. No. 111953. December 12, 1997]

HON. RENATO C. CORONA, in his capacity as Assistant Secretary for Legal Affairs, HON. JESUS B. GARCIA, in his capacity as Acting Secretary, Department of Transportation and Communications, and ROGELIO A. DAYAN, in his capacity as General Manager of Philippine Ports Authority, *petitioners, vs.* **UNITED HARBOR PILOTS ASSOCIATION OF THE PHILIPPINES and MANILA PILOTS ASSOCIATION,** *respondents.*

SYNOPSIS

On July 15, 1992, PPA General Manager Rogelio A. Dayan issued PPA-AO No. 04-92, limiting the term of Appointment of harbor pilots to one (1) year subject to renewal or cancellation by the authority after conduct of a rigid evaluation of the appointee's

Supreme Court E-Library

performance. Respondents, through Capt. Alberto C. Compas, questioned PPA-AO No. 04-92 before the Department of Transportation and Communication, but they were informed by the Department Secretary that the matter of reviewing, recalling or annulling PPA's administrative issuances lies exclusively with its Board of Directors as its governing body. Respondents appealed to the Office of the President which ordered the PPA to hold in abeyance the implementation of the administrative order. However, the Office of the President through then Assistant Executive Secretary for Legal Affairs Renato C. Corona dismissed the appeal/ petition and lifted the restraining order issued earlier. Respondents filed a petition for *certiorari*, prohibition and injunction with the Regional Trial Court of Manila. The trial court ruled that herein petitioners have acted in excess of jurisdiction and with grave abuse of discretion in promulgating PPA AO No. 04-92 including its implementing memoranda. The trial court also declared the administrative order null and void and permanently enjoined its implementation. Hence, herein petitioners elevated the case to the Court on *certiorari*.

The Supreme Court ruled that PPA-AO No. 04-92 was issued in utter disregard of respondent's right against deprivation of property without due process of law. The Court held that the provision limiting the term of appointment of harbor pilots unduly restricts the right of harbor pilots to enjoy their profession before their retirement. Renewal of their license is now dependent on a rigid evaluation of performance which is conducted only after the license has been cancelled. Hence, the use of the term "renewal." It is the "pre-evaluation" cancellation which primarily makes PPA-AO No. 04-92 unreasonable and constitutionally infirm. In a real sense, it is deprivation of property without due process of law.

Petition denied.

SYLLABUS

1. CONSTITUTIONAL LAW; BILL OF RIGHTS; PPA-AO NO. 04-92; DECLARED UNCONSTITUTIONAL; THE PRE-EVALUATION CANCELLATION OF THE HARBOR PILOTS' LICENSES IS WHAT PRIMARILY MAKES THE ADMINISTRATIVE ORDER UNREASONABLE AND CONSTITUTIONALLY INFIRM; IT CONSTITUTES DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS

Supreme Court E-Library

OF LAW.— It is readily apparent that PPA-AO No. 04-92 unduly restricts the right of harbor pilots to enjoy their profession before their compulsory retirement. In the past, they enjoyed a measure of security knowing that after passing five examinations and undergoing years of on-the-job training, they would have a license which they could use until their retirement, unless sooner revoked by the PPA for mental or physical unfitness. Under the new issuance, they have to contend with an annual cancellation of their license which can be temporary or permanent depending on the outcome of their performance evaluation. Veteran pilots and neophytes alike are suddenly confronted with one-year terms which *ipso facto* expire at the end of that period. Renewal of their license is now dependent on a "rigid evaluation of performance" which is conducted only after the license has already been cancelled. Hence, the use of the term "renewal." It is this pre-evaluation cancellation which primarily makes PPA-AO No. 04-92 unreasonable and constitutionally infirm. In a real sense, it is a deprivation of property without due process of law.

2. **ID.; ID.; ID.; AN UNNECESSARY ENACTMENT; SINCE THE LAW ADDS NOTHING NEW OR SUBSTANTIAL IT MUST BE STRUCK DOWN.**— The Court notes that PPA-AO No. 04-92 and PPA-MO No. 08-92 are already covered by PPA-AO No. 03-85, which is still operational. Respondents are correct in pointing out that PPA-AO No. 04-92 is a "surplusage" and, therefore, an unnecessary enactment. PPA-AO 03-85 is a comprehensive order setting forth the "Rules and Regulations Governing Pilotage Services, the Conduct of Pilots and Pilotage Fees in Philippine Ports." It provides, *inter alia*, for the qualification, appointment, performance evaluation, disciplining and removal of harbor pilots — matters which are duplicated in PPA-AO No. 04-92 and its implementing memorandum order. Since it adds nothing new or substantial, PPA-AO No. 04-92 must be struck down.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.

Manuel E. Valenzuela and *Jesus P. Amparo* for private respondents.

Supreme Court E-Library

DECISION

ROMERO, *J.*:

In issuing Administrative Order No. 04-92 (PPA-AO No. 04-92), limiting the term of appointment of harbor pilots to one year subject to yearly renewal or cancellation, did the Philippine Ports Authority (PPA) violate respondents' right to exercise their profession and their right to due process of law?

The PPA was created on July 11, 1974, by virtue of Presidential Decree No. 505. On December 23, 1975, Presidential Decree No. 857 was issued revising the PPA's charter. Pursuant to its power of control, regulation, and supervision of pilots and the pilotage profession,[1] the PPA promulgated PPA-AO-03-85[2] on March 21, 1985, which embodied the "Rules and Regulations Governing Pilotage Services, the Conduct of Pilots and Pilotage Fees in Philippine Ports." These rules mandate, *inter alia*, that aspiring pilots must be holders of pilot licenses[3] and must train as probationary pilots in outports for three months and in the Port of Manila for four months. It is only after they have achieved satisfactory performance[4] that they are given *permanent and regular appointments* by the PPA itself[5] *to exercise harbor pilotage until they reach the age of 70*, unless sooner removed by reason of mental or physical unfitness by the PPA General Manager.[6] Harbor pilots in every harbor district are further required to organize themselves into pilot associations which would make available such equipment as may be required by the PPA for effective pilotage services. In view of this mandate,

---

[1] Pilotage is the act of conducting a vessel from the high seas into a port. Usually, pilotage is conducted within a two-mile area offshore to an assigned berthing area and vice versa.

[2] *Rollo*, p. 87.

[3] The pilot licensing function itself which used to be exercised by the Philippine Coast Guard pursuant to the Revised Coast Guard Law of 1974 (P. D. No. 601) has been transferred to the Maritime Industry Authority (MARINA) by virtue of Executive Order No. 125, which took effect on January 30, 1987.

[4] Determined by an Evaluation Committee.

[5] Upon the recommendation of the PPA General Manager.

[6] Article IV, Section 20.

Supreme Court E-Library

pilot associations invested in floating, communications, and office equipment. In fact, every new pilot appointed by the PPA automatically becomes a member of a pilot association and is required to pay a proportionate equivalent equity or capital before being allowed to assume his duties, as reimbursement to the association concerned of the amount it paid to his predecessor.

Subsequently, then PPA General Manager Rogelio A. Dayan issued PPA-AO No. 04-92[7] on July 15, 1992, whose avowed policy was to "instill effective discipline and thereby afford better protection to the port users through the improvement of pilotage services." This was implemented by providing therein that "*all existing regular appointments which have been previously issued either by the Bureau of Customs or the PPA shall remain valid up to 31 December 1992 only*" and that "*all appointments to harbor pilot positions in all pilotage districts shall, henceforth, be only for a term of one (1) year from date of effectivity subject to yearly renewal or cancellation by the Authority after conduct of a rigid evaluation of performance*."

On August 12, 1992, respondents United Harbor Pilots Association and the Manila Pilots Association, through Capt. Alberto C. Compas, questioned PPA-AO No. 04-92 before the Department of Transportation and Communication, but they were informed by then DOTC Secretary Jesus B. Garcia that "the matter of reviewing, recalling or annulling PPA's administrative issuances lies exclusively with its Board of Directors as its governing body."

Meanwhile, on August 31, 1992, the PPA issued Memorandum Order No. 08-92[8] which laid down the criteria or factors to be considered in the reappointment of harbor pilots, *viz.*: (1) Qualifying Factors:[9] safety record and physical/mental medical exam report and (2) Criteria for Evaluation:[10] promptness in

[7] *Rollo*, p. 41.

[8] *Ibid.*, p. 42.

[9] Qualifying factors are requirements which must be met before a pilot's application for reappointment is even evaluated by the PPA.

[10] These criteria are used for evaluation by the PPA after a pilot has complied with all the requirements to qualify for evaluation. Each criterion is assigned a certain number of points.

Supreme Court E-Library

servicing vessels, compliance with PPA Pilotage Guidelines, number of years as a harbor pilot, average GRT of vessels serviced as pilot, awards/commendations as harbor pilot, and age.

Respondents reiterated their request for the suspension of the implementation of PPA-AO No. 04-92, but Secretary Garcia insisted on his position that the matter was within the jurisdiction of the Board of Directors of the PPA. Compas appealed this ruling to the Office of the President (OP), reiterating his arguments before the DOTC.

On December 23, 1992, the OP issued an order directing the PPA to hold in abeyance the implementation of PPA-AO No. 04-92. In its answer, the PPA countered that said administrative order was issued in the exercise of its administrative control and supervision over harbor pilots under Section 6-a (viii), Article IV of P.D. No. 857, as amended, and it, along with its implementing guidelines, was intended to restore order in the ports and to improve the quality of port services.

On March 17, 1993, the OP, through then Assistant Executive Secretary for Legal Affairs Renato C. Corona, dismissed the appeal/petition and lifted the restraining order issued earlier.[11] He concluded that PPA-AO No. 04-92 applied to all harbor pilots and, for all intents and purposes, was not the act of Dayan, but of the PPA, which was merely implementing Section 6 of P.D. No. 857, mandating it "to control, regulate and supervise pilotage and conduct of pilots in any port district."

On the alleged unconstitutionality and illegality of PPA-AO No. 04-92 and its implementing memoranda and circulars, Secretary Corona opined that:

"The exercise of one's profession falls within the constitutional guarantee against wrongful deprivation of, or interference with, property rights without due process. In the limited context of this case, PPA-AO 04-92 does not constitute a wrongful interference with, let alone a wrongful deprivation of, the property rights of those affected thereby. As may be noted, the issuance aims no more than to improve pilotage

---

[11] *Rollo*, pp. 36-40.

Supreme Court E-Library

services by limiting the appointment to harbor pilot positions to one year, subject to renewal or cancellation after a rigid evaluation of the appointee's performance.

PPA-AO 04-92 does not forbid, but merely regulates, the exercise by harbor pilots of their profession in PPA's jurisdictional area." (Italics supplied)

Finally, as regards the alleged "absence of ample prior consultation" before the issuance of the administrative order, Secretary Corona cited Section 26 of P.D. No. 857, which merely requires the PPA to consult with "relevant Government agencies." Since the PPA Board of Directors is composed of the Secretaries of the DOTC, the Department of Public Works and Highways, the Department of Finance, and the Department of Environment and Natural Resources, as well as the Director-General of the National Economic Development Agency, the Administrator of the Maritime Industry Authority (MARINA), and the private sector representative who, due to his knowledge and expertise, was appointed by the President to the Board, he concluded that the law has been sufficiently complied with by the PPA in issuing the assailed administrative order.

Consequently, respondents filed a petition for *certiorari*, prohibition and injunction with prayer for the issuance of a temporary restraining order and damages, before Branch 6 of the Regional Trial Court of Manila, which was docketed as Civil Case No. 93-65673. On September 6, 1993, the trial court rendered the following judgment:[12]

"WHEREFORE, for all the foregoing, this Court hereby rules that:

1. Respondents (herein petitioners) have acted in excess of jurisdiction and with grave abuse of discretion and in a capricious, whimsical and arbitrary manner in promulgating PPA Administrative Order 04-92 including all its implementing Memoranda, Circulars and Orders;

2. PPA Administrative Order 04-92 and its implementing Circulars and Orders are declared null and void;

---

[12] *Ibid.*, pp. 29-35.

Supreme Court E-Library

3. The respondents are permanently enjoined from implementing PPA Administrative Order 04-92 and its implementing Memoranda, Circulars and Orders.

No costs.

SO ORDERED."

The court *a quo* pointed out that the Bureau of Customs, the precursor of the PPA, recognized pilotage as a profession and, therefore, a property right under *Callanta v. Carnation Philippines, Inc.*[13] Thus, abbreviating the term within which that privilege may be exercised would be an interference with the property rights of the harbor pilots. Consequently, any "withdrawal or alteration" of such property right must be strictly made in accordance with the constitutional mandate of due process of law. This was apparently not followed by the PPA when it did not conduct public hearings prior to the issuance of PPA-AO No. 04-92; respondents allegedly learned about it only after its publication in the newspapers. From this decision, petitioners elevated their case to this Court on *certiorari*.

After carefully examining the records and deliberating on the arguments of the parties, the Court is convinced that PPA-AO No. 04-92 was issued in stark disregard of respondents' right against deprivation of property without due process of law. Consequently, the instant petition must be denied.

Section 1 of the Bill of Rights lays down what is known as the "due process clause" of the Constitution, *viz.*:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, x x x."

In order to fall within the aegis of this provision, two conditions must concur, namely, that there is a deprivation and that such deprivation is done without proper observance of due process. When one speaks of due process of law, however, a distinction must be made between matters of procedure and matters of substance. In essence, procedural due process "refers to the method or manner by which the law is enforced," while

[13] 145 SCRA 268 (1986).

Supreme Court E-Library

substantive due process "requires that the law itself, not merely the procedures by which the law would be enforced, is fair, reasonable, and just."[14] PPA-AO No. 04-92 must be examined in light of this distinction.

Respondents argue that due process was not observed in the adoption of PPA-AO No. 04-92 allegedly because no hearing was conducted whereby "relevant government agencies" and the pilots themselves could ventilate their views. They are obviously referring to the procedural aspect of the enactment. Fortunately, the Court has maintained a clear position in this regard, a stance it has stressed in the recent case of *Lumiqued v. Hon. Exevea*,[15] where it declared that "(a)s long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process. Moreover, this constitutional mandate is deemed satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of."

In the case at bar, respondents questioned PPA-AO No. 04-92 no less than four times[16] before the matter was finally elevated to this Tribunal. Their arguments on this score, however, fail to persuade. While respondents emphasize that the Philippine Coast Guard, "which issues the licenses of pilots after administering the pilots' examinations," was not consulted,[17] the facts show that the MARINA, which took over the licensing function of the Philippine Coast Guard, was duly represented in the Board of Directors of the PPA. Thus, petitioners correctly argued that, there being no matters of naval defense involved in the issuance of the administrative order, the Philippine Coast Guard need not be consulted.[18]

---

[14] De Leon, Textbook on the Philippine Constitution, 1991, p.81.

[15] G.R. No. 117565, November 18, 1997, citing Legarda *v.* Court of Appeals, G.R. No. 94457, October 16, 1997, and Pizza Hut/Progressive Development Corporation *v.* NLRC, 322 Phil. 573.

[16] Questioned twice before the DOTC, appealed to the OP, before finding affirmative relief with the RTC of Manila.

[17] *Rollo*, p. 55.

[18] *Ibid.*, p. 163.

Supreme Court E-Library

Neither does the fact that the pilots themselves were not consulted in any way taint the validity of the administrative order. As a general rule, notice and hearing, as the fundamental requirements of procedural due process, are essential only when an administrative body exercises its quasi-judicial function. In the performance of its executive or legislative functions, such as issuing rules and regulations, an administrative body need not comply with the requirements of notice and hearing.[19]

Upon the other hand, it is also contended that the sole and exclusive right to the exercise of harbor pilotage by pilots is a settled issue. Respondents aver that said right has become vested and can only be "withdrawn or shortened" by observing the constitutional mandate of due process of law. Their argument has thus shifted from the procedural to one of substance. It is here where PPA-AO No. 04-92 fails to meet the condition set by the organic law.

There is no dispute that pilotage as a profession has taken on the nature of a property right. Even petitioner Corona recognized this when he stated in his March 17, 1993 decision that "(t)he exercise of one's profession falls within the constitutional guarantee against wrongful deprivation of, or interference with, property rights without due process."[20] He merely expressed the opinion that "(i)n the limited context of this case, PPA-AO 04-92 does not constitute a wrongful interference with, let alone a wrongful deprivation of, the property rights of those affected thereby," and that "PPA-AO 04-92 does not forbid, but merely regulates, the exercise by harbor pilots of their profession." As will be presently demonstrated, such supposition is gravely erroneous and tends to perpetuate an administrative order which is not only unreasonable but also superfluous.

Pilotage, just like other professions, may be practiced only by duly licensed individuals. Licensure is "the granting of license especially to practice a profession." It is also "the system of

---

[19] Philippine Communications Satellite Corporation *v.* Alcuaz, 180 SCRA 218 (1989), citing 73 C.J.S. 452-453.

[20] *Rollo*, p. 38.

Supreme Court E-Library

granting licenses (as for professional practice) in accordance with established standards."[21] A license is a right or permission granted by some competent authority to carry on a business or do an act which, without such license, would be illegal.[22]

Before harbor pilots can earn a license to practice their profession, they literally have to pass through the proverbial eye of a needle by taking, not one but *five* examinations, each followed by actual training and practice. Thus, the court *a quo* observed:

"Petitioners (herein respondents) contend, and the respondents (herein petitioners) do not deny, that here (sic) in this jurisdiction, before a person can be a harbor pilot, he must pass five (5) government professional examinations, namely, (1) For Third Mate and after which he must work, train and practice on board a vessel for at least a year; (2) For Second Mate and after which he must work, train and practice for at least a year; (3) For Chief Mate and after which he must work, train and practice for at least a year; (4) For a Master Mariner and after which he must work as Captain of vessels for at least two (2) years to qualify for an examination to be a pilot; and finally, of course, that given for pilots."

Their license is granted in the form of an appointment which allows them to engage in pilotage until they retire at the age 70 years. This is a vested right. Under the terms of PPA-AO No. 04-92, "(a)ll existing regular appointments which have been previously issued by the Bureau of Customs or the PPA shall remain valid up to 31 December 1992 only," and "(a)ll appointments to harbor pilot positions in all pilotage districts shall, henceforth, be only for a term of one (1) year from date of effectivity subject to renewal or cancellation by the Authority after conduct of a rigid evaluation of performance."

---

[21] Webster's Third World International Dictionary, 1993 ed., p. 1304.

[22] 53 C.J.S. 445, citing 37 C.J. 168. In Tan *v.* Director of Forestry, 210 Phil. 244 (1983), the Court defined a license as merely a permit or privilege to do what otherwise would be unlawful. It is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted. Neither is it property or a property right, nor does it create a vested right; nor is it taxation.

Supreme Court E-Library

It is readily apparent that PPA-AO No. 04-92 unduly restricts the right of harbor pilots to enjoy their profession before their compulsory retirement. In the past, they enjoyed a measure of security knowing that after passing five examinations and undergoing years of on-the-job training, they would have a license which they could use until their retirement, unless sooner revoked by the PPA for mental or physical unfitness. Under the new issuance, they have to contend with an annual cancellation of their license which can be temporary or permanent depending on the outcome of their performance evaluation. Veteran pilots and neophytes alike are suddenly confronted with one-year terms which *ipso facto* expire at the end of that period. Renewal of their license is now dependent on a "rigid evaluation of performance" which is conducted only after the license has already been cancelled. Hence, the use of the term "renewal." It is this pre-evaluation cancellation which primarily makes PPA-AO No. 04-92 unreasonable and constitutionally infirm. In a real sense, it is a deprivation of property without due process of law.

The Court notes that PPA-AO No. 04-92 and PPA-MO No. 08-92 are already covered by PPA-AO No. 03-85, which is still operational. Respondents are correct in pointing out that PPA-AO No. 04-92 is a "surplusage"[23] and, therefore, an unnecessary enactment. PPA-AO 03-85 is a comprehensive order setting forth the "Rules and Regulations Governing Pilotage Services, the Conduct of Pilots and Pilotage Fees in Philippine Ports." It provides, *inter alia*, for the qualification, appointment, performance evaluation, disciplining and removal of harbor pilots — matters which are duplicated in PPA-AO No. 04-92 and its implementing memorandum order. Since it adds nothing new or substantial, PPA-AO No. 04-92 must be struck down.

Finally, respondents' insinuation that then PPA General Manager Dayan was responsible for the issuance of the questioned administrative order may have some factual basis; after all, power and authority were vested in his office to propose rules and regulations. The trial court's finding of animosity between him and private respondents might likewise have a grain of truth.

---

[23] *Rollo*, p. 65.

Supreme Court E-Library

Yet the number of cases filed in court between private respondents and Dayan, including cases which have reached this Court, cannot certainly be considered the primordial reason for the issuance of PPA-AO No. 04-92. In the absence of proof to the contrary, Dayan should be presumed to have acted in accordance with law and the best of professional motives. In any event, his actions are certainly always subject to scrutiny by higher administrative authorities.

WHEREFORE, the instant petition is hereby *DISMISSED* and the assailed decision of the court *a quo* dated September 6, 1993, in Civil Case No. 93-65673 is *AFFIRMED.* No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, and *Panganiban, JJ.,* concur.

Martinez, J., took no part.

THIRD DIVISION

[G.R. No. 112287. December 12, 1997]

NATIONAL STEEL CORPORATION, *petitioner, vs.* **COURT OF APPEALS AND VLASONS SHIPPING, INC.,** *respondents.*

[G.R. No. 112350. December 12, 1997]

VLASONS SHIPPING, INC., *petitioner, vs.* **COURT OF APPEALS AND NATIONAL STEEL CORPORATION,** *respondents.*