

EN BANC

[G.R. No. 100481, January 22, 1997]

PHILIPPINE INTERISLAND SHIPPING ASSOCIATION OF THE PHILIPPINES, CONFERENCE OF INTERISLAND SHIP-OWNERS AND OPERATORS, UNITED PETROLEUM TANKER OPERATORS ASSOCIATION OF THE PHILIPPINES, LIGHTERAGE ASSOCIATION OF THE PHILIPPINES AND PILOTAGE INTEGRATED SERVICES CORPORATION, PETITIONERS, VS. COURT OF APPEALS, UNITED HARBOR PILOTS' ASSOCIATION OF THE PHILIPPINES, INC. AND MANILA PILOTS' ASSOCIATION, RESPONDENTS.

[G.R. NOS. 103716-17. JANUARY 22, 1997]

HON. PETE NICOMEDES PRADO, IN HIS CAPACITY AS SECRETARY OF TRANSPORTATION AND COMMUNICATIONS AND THE PHILIPPINE PORTS AUTHORITY, PETITIONERS, VS. COURT OF APPEALS, UNITED HARBOR PILOTS' ASSOCIATION OF THE PHILIPPINES, INC., RESPONDENTS.

[G.R. NO. 107720. JANUARY 22, 1997]

HON. JESUS B. GARCIA, JR., IN HIS CAPACITY AS SECRETARY OF TRANSPORTATION AND COMMUNICATIONS AND CHAIRMAN OF THE PHILIPPINE PORTS AUTHORITY, COMMODORE ROGELIO A. DAYAN, IN HIS CAPACITY AS GENERAL MANAGER OF THE PHILIPPINE PORTS AUTHORITY, AND SIMEON T. SILVA, JR., IN HIS CAPACITY AS THE SOUTH HARBOR MANAGER, PHILIPPINE PORTS AUTHORITY, PETITIONERS, VS. HON. NAPOLEON R. FLOJO, IN HIS CAPACITY AS THE PRESIDING JUDGE OF BRANCH 2, REGIONAL TRIAL COURT - MANILA, UNITED HARBOR PILOTS' ASSOCIATION OF THE PHILIPPINES AND THE MANILA PILOTS' ASSOCIATION, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

Private respondent United Harbor Pilots' Association of the Philippines, Inc. (UHPAP) is the umbrella organization of various groups rendering pilotage service in different ports of the Philippines. The service consists of navigating a vessel from a specific point, usually about two (2) miles off shore, to an assigned area at the pier and vice versa. When a vessel arrives, a harbor pilot takes over the ship from its captain to maneuver it to a berth in the port, and when it departs, the harbor pilot also maneuvers it up to a specific point off shore. The setup is required by the fact that each port has peculiar topography with which a harbor pilot is presumed to be more familiar than a ship captain.

The Philippine Ports Authority (PPA) is the government agency which regulates pilotage. Pursuant to Presidential Decree No. 857, it has the power "to supervise, control, regulate . . . such services as are necessary in the ports vested in, or belonging to the Authority"^[1] and to "control, regulate and supervise pilotage and the conduct of pilots in any Port District."^[2] It also has the power "to impose, fix, prescribe, increase or decrease such rates, charges or fees. . . for the services rendered by the Authority or by any private organization within a Port District."^[3]

These cases arose out of the efforts of harbor pilots to secure enforcement of Executive Order No. 1088, which fixes the rates of pilotage service, and the equally determined efforts of the PPA and its officials, the herein petitioners, to block enforcement of the executive order, even as they promulgated their own orders which in the beginning fixed lower rates of pilotage and later left the matter to self determination by parties to a pilotage contract.

I. THE FACTS

G.R. No. 103716

On February 3, 1986, shortly before the presidential elections, President Ferdinand E. Marcos, responding to the clamor of harbor pilots for an increase in pilotage rates, issued Executive Order No. 1088, PROVIDING FOR UNIFORM AND MODIFIED RATES FOR PILOTAGE SERVICES RENDERED TO FOREIGN AND COASTWISE VESSELS IN ALL PRIVATE AND PUBLIC PORTS. The executive order increased substantially the rates of the existing pilotage fees previously fixed by the PPA.

However, the PPA refused to enforce the executive order on the ground that it had been drawn hastily and without prior consultation; that its enforcement would create disorder in the ports as the operators and owners of the maritime vessels had expressed opposition to its implementation; and that the increase in pilotage, as mandated by it, was exorbitant and detrimental to port operations.^[4]

The UHPAP then announced its intention to implement E.O. No. 1088 effective November 16, 1986. This in turn drew a warning from the PPA that disciplinary sanctions would be applied to those who would charge rates under E.O. No. 1088. The PPA instead issued Memorandum Circular No. 43-86, fixing pilotage fees at rates lower than those provided in E.O. No. 1088.

Consequently, the UHPAP filed on January 7, 1987 a complaint for injunction with the Regional Trial Court of Manila, against the then Minister of Transportation and Communications, Hernando Perez, and PPA General Manager, Primitivo S. Solis, Jr. It sought a writ of preliminary mandatory injunction for the immediate implementation of E.O. No. 1088, as well as a temporary restraining order to stop PPA officials from imposing disciplinary sanctions against UHPAP members charging rates in accordance with E.O. No. 1088.

The case, docketed as Civil Case No. 87-38913, was raffled to Branch 28 of the Regional Trial Court of Manila which issued a temporary restraining order, enjoining the PPA from threatening the UHPAP, its officers and its members with suspension and other disciplinary action for collecting pilotage fees pursuant to E.O. No. 1088.

On March 16, 1987, the Chamber of Maritime Industries of the Philippines, William Lines, Inc., Loadstar Shipping Co., Inc. and Delsen Transport Lines, Inc., after obtaining leave, filed a joint answer in intervention.

On February 26, 1988, while the case was pending, the PPA issued Administrative Order No. 02-88, entitled IMPLEMENTING GUIDELINES ON OPEN PILOTAGE SERVICE. The PPA announced in its order that it was leaving to the contracting parties, i.e., the shipping lines and the pilots, the fixing of mutually acceptable rates for pilotage services, thus abandoning the rates fixed by it (PPA) under Memorandum Circular No. 43-86, as well as those provided in E.O. No. 1088. The administrative order provided:

Section 3. Terms/Conditions on Pilotage Service. — The shipping line or vessel's agent/representative and the harbor pilot/firm chosen by the former shall agree between themselves, among others, on what pilotage service shall be performed, the use of tugs and their rates, taking into consideration the circumstances stated in Section 12 of PPA AO No. 03-85, and such other conditions designed to ensure the safe movement of the vessel in pilotage areas/grounds.

The PPA then moved to dismiss the case, contending that the issuance of its order had rendered the case moot and academic and that consequently E.O. No. 1088 had ceased to be effective. The UHPAP opposed the motion. Together with the Manila Pilots' Association (MPA), it filed on May 25, 1988 a petition for certiorari and prohibition in the RTC-Manila, questioning the validity of A.O. No. 02-88. This petition was docketed as Civil Case No. 88-44726 (United Harbor Pilots' Association and Manila Pilots' Association v. Hon. Rainerio Reyes, as Acting Secretary of the Department of Transportation and Communications and Chairman of the Philippine Ports Authority (PPA) and Maximo Dumlao, Jr., as General Manager of the Philippine Ports Authority (PPA), et al.) and raffled to Branch 2 of RTC-Manila. The factual antecedents of this case are discussed in G.R. No. 100481 below.

Meanwhile, in Civil Case 87-38913, the court, without resolving the motion to dismiss filed by the PPA, rendered a decision^[5] holding that A.O. No. 02-88 did not render the case moot and academic and that the PPA was under obligation to comply with E.O. No. 1088 because the order had the force of law which the PPA could not repeal.

The then Transportation Minister Hernando Perez and the PPA filed a petition for review. The petition was filed in this Court which later referred the case to the Court of Appeals where it was docketed as CA G.R. SP. No. 18072. On the other hand the intervenors appealed to the Court of Appeals where this case was docketed as CA G.R. No. 21590. The two cases were then consolidated.

In a decision rendered on October 4, 1991, the Twelfth Division^[6] of the Court of Appeals affirmed the decision of the trial court, by dismissing CA G.R. No. 21590 and denying CA G.R. SP. No. 18072. Hence, this petition by the Secretary of Transportation and Communications and the PPA. The intervenor shipping lines did not appeal.

Meanwhile, in a petition for certiorari filed before RTC-Manila, Branch 2 (Civil Case No. 88-44726), the UHPAP and the MPA sought the annulment of A.O. No. 02-88, which in pertinent parts provided:

Section 1. *Statement of Policy.* — It is hereby declared that the provision of pilotage in ports/harbors/areas defined as compulsory in Section 8 of PPA Administrative Order No. 03-85, entitled, "Rules and Regulations Governing Pilotage Services, the Conduct of Pilots and Pilotage Fees in Philippine Ports" shall be open to all licensed harbor pilots/pilotage firms/associations appointed/accredited by this authority to perform pilotage service.

Section 2. *Persons Authorized to Render Pilotage.* — The following individuals, persons or groups shall be appointed/accredited by this Authority to provide pilotage service:

a. Harbor Pilots of the present Pilotage Associations of the different pilotage districts in the Philippines. Their probationary training as required under Section 31 of PPA AO No. 03-85 shall be undertaken by any member of said Association.

b. Members/employees of any partnership/corporation or association, including Filipino shipmasters/ captains of vessel (domestic/foreign) of Philippine Registry and individuals who meet the minimum qualifications and comply with the requirements prescribed in Sec. 29 of PPA AO No. 03-85, aforesaid, and who are appointed by said firm or association and accredited as harbor pilots by this authority. New Harbor Pilots who wish to be appointed/accredited by PPA under the open pilotage system either as an individual pilot or as a member of any Harbor Pilot partnership/association shall be required to undergo a practical examination, in addition to the written examination given by the Philippine Coast Guard, prior to their appointment/ accreditation by this Authority.

The UHPAP and MPA, as petitioners below, contended (1) that A.O. No. 02-88 was issued without the benefit of a public hearing; (2) that E.O. No. 1088 had not been repealed by any other Executive Order or Presidential Decree and, therefore, should be given effect; and (3) that A.O. No. 02-88 contravened P.D. No. 857.

On August 21, 1989, the Philippine Interisland Shipping Association, Conference of Interisland Shipowners and Operators, United Petroleum Tanker Operators of the Philippines, Lighterage Association of the Philippines, and Pilotage Integrated Services Corp., were allowed to intervene.

On September 8, 1989, a writ of preliminary injunction was issued by the court, enjoining the PPA from implementing A.O. No. 02-88 and, on October 26, 1989, judgment was rendered in favor of the petitioners therein. The dispositive portion of the court's decision^[7] reads:

WHEREFORE, for all of the foregoing, the petition is hereby granted.

1. Respondents are hereby declared to have acted in excess of jurisdiction and with grave abuse of discretion amounting to lack of jurisdiction in approving Resolution No. 860 and in enacting Philippine Ports Authority Administrative Order No. 02-88, the subject of which is

"Implementing Guidelines on Open Pilotage Service";

2. Philippine Ports Authority Administrative Order No. 02-88 is declared null and void;

3. The preliminary injunction issued on September 8, 1989 is made permanent; and

4. Without costs.

SO ORDERED.

Respondents and the intervenors below filed a joint petition for certiorari in the Court of Appeals (CA G.R. SP No. 19570), assailing the decision of the trial court. But their petition was dismissed for lack of jurisdiction on the ground that the issue raised was purely legal.

The parties separately filed petitions for review before this Court. The first one, by the PPA and its officers, was docketed as G.R. No. 100109 (Hon. Pete Nicomedes Prado, Philippine Ports Authority and Commodore Rogelio Dayan v. United Harbor Pilots' Association of the Philippines and Manila Pilots' Association), while the second one, by the intervenors, was docketed as G.R. No. 100481 (Philippine Interisland Shipping Association of the Philippines, Conference of Interisland Ship Owners and Operators, United Petroleum Tanker Operators Association of the Philippines, Inc. v. The Court of Appeals, United Harbor Pilots' Association of the Philippines and Manila Pilots' Association.)

The petition filed by the government in G.R. No. 100109 was dismissed for failure of petitioners to show that the Court of Appeals committed a reversible error.^[8] On the other hand, the petition of the intervenors in G.R. No. 100481 was given due course.

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Following the denial of its petition in G.R. No. 100109, the PPA issued on July 31, 1992, Administrative Order No. 05-92, placing harbor pilots under the control of the PPA with respect to the scheduling and assignment of service of vessels. The PPA cited as justification "pilotage delays . . . under the set-up where private respondents (UHPAP & MPA) assign the pilots. Intentionally or otherwise, several vessels do not receive the pilotage service promptly, causing them operational disruptions and additional expenses/costs." ^[9]

Private respondents UHPAP and MPA viewed the matter differently. On October 28, 1992, they asked the RTC-Manila, Branch 2 which heard and decided Civil Case No. 88-44726 to cite PPA officials in contempt of court. On the same day, the trial court issued an order restraining the herein petitioners from implementing Administrative Order No. 05-92. However, the PPA proceeded to implement its order, prompting the UHPAP and MPA to move again to cite petitioners in contempt, even as they questioned the validity of A.O. No. 05-92. Accordingly the trial court issued another order on November 4, 1992, reiterating its previous order of October 28, 1992 to petitioners to refrain from implementing A.O. No. 05-92 pending resolution of the petitions.