

## **EN BANC**

**[ G.R. No. 152642, November 13, 2012 ]**

**HON. PATRICIA A. STO. TOMAS, ROSALINDA BALDOZ AND LUCITA LAZO, PETITIONERS, VS. REY SALAC, WILLIE D. ESPIRITU, MARIO MONTENEGRO, DODGIE BELONIO, LOLIT SALINEL AND BUDDY BONNEVIE, RESPONDENTS.**

**[ G.R. NO. 152710 ]**

**HON. PATRICIA A. STO. TOMAS, IN HER CAPACITY AS SECRETARY OF DEPARTMENT OF LABOR AND EMPLOYMENT (DOLE), HON. ROSALINDA D. BALDOZ, IN HER CAPACITY AS ADMINISTRATOR, PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA), AND THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION GOVERNING BOARD, PETITIONERS, VS. HON. JOSE G. PANEDA, IN HIS CAPACITY AS THE PRESIDING JUDGE OF BRANCH 220, QUEZON CITY, ASIAN RECRUITMENT COUNCIL PHILIPPINE CHAPTER, INC. (ARCOPHIL), FOR ITSELF AND IN BEHALF OF ITS MEMBERS: WORLDCARE PHILIPPINES SERVIZO INTERNATIONALE, INC., STEADFAST INTERNATIONAL RECRUITMENT CORP., VERDANT MANPOWER MOBILIZATION CORP., BRENT OVERSEAS PERSONNEL, INC., ARL MANPOWER SERVICES, INC., DAHLZEN INTERNATIONAL SERVICES, INC., INTERWORLD PLACEMENT CENTER, INC., LAKAS TAO CONTRACT SERVICES LTD. CO., SSC MULTI-SERVICES, DMJ INTERNATIONAL, AND MIP INTERNATIONAL MANPOWER SERVICES, REPRESENTED BY ITS PROPRIETRESS, MARCELINA I. PAGESIBIGAN, RESPONDENTS.**

**[G.R. NO. 167590]**

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE HONORABLE EXECUTIVE SECRETARY, THE HONORABLE SECRETARY OF LABOR AND EMPLOYMENT (DOLE), THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA), THE OVERSEAS WORKERS WELFARE ADMINISTRATION (OWWA), THE LABOR ARBITERS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), THE HONORABLE SECRETARY OF JUSTICE, THE HONORABLE SECRETARY OF FOREIGN AFFAIRS AND THE COMMISSION ON AUDIT (COA), PETITIONERS, VS. PHILIPPINE ASSOCIATION OF SERVICE EXPORTERS, INC. (PASEI), RESPONDENT.**

**[G.R. NOS. 182978-79]**

**BECMEN SERVICE EXPORTER AND PROMOTION, INC.,**

**PETITIONER, VS. SPOUSES SIMPLICIO AND MILA CUARESMA  
(FOR AND IN BEHALF OF DAUGHTER, JASMIN G. CUARESMA),  
WHITE FALCON SERVICES, INC., AND JAIME ORTIZ (PRESIDENT  
OF WHITE FALCON SERVICES, INC.), RESPONDENTS.**

**[G.R. NOS. 184298-99]**

**SPOUSES SIMPLICIO AND MILA CUARESMA (FOR AND IN  
BEHALF OF DECEASED DAUGHTER, JASMIN G. CUARESMA),  
PETITIONERS, VS. WHITE FALCON SERVICES, INC. AND BECMEN  
SERVICES EXPORTER AND PROMOTION, INC., RESPONDENTS.**

**D E C I S I O N**

**ABAD, J.:**

These consolidated cases pertain to the constitutionality of certain provisions of Republic Act 8042, otherwise known as the *Migrant Workers and Overseas Filipinos Act of 1995*.

**The Facts and the Case**

On June 7, 1995 Congress enacted Republic Act (R.A.) 8042 or the Migrant Workers and Overseas Filipinos Act of 1995 that, for among other purposes, sets the Government's policies on overseas employment and establishes a higher standard of protection and promotion of the welfare of migrant workers, their families, and overseas Filipinos in distress.

***G.R. 152642 and G.R. 152710***

*(Constitutionality of Sections 29 and 30, R.A. 8042)*

Sections 29 and 30 of the Act<sup>[1]</sup> commanded the Department of Labor and Employment (DOLE) to begin deregulating within one year of its passage the business of handling the recruitment and migration of overseas Filipino workers and phase out within five years the regulatory functions of the Philippine Overseas Employment Administration (POEA).

On January 8, 2002 respondents Rey Salac, Willie D. Espiritu, Mario Montenegro, Dodgie Belonio, Lolit Salinel, and Buddy Bonnevie (Salac, *et al.*) filed a petition for *certiorari*, prohibition and *mandamus* with application for temporary restraining order (TRO) and preliminary injunction against petitioners, the DOLE Secretary, the POEA Administrator, and the Technical Education and Skills Development Authority (TESDA) Secretary-General before the Regional Trial Court (RTC) of Quezon City, Branch 96.<sup>[2]</sup>

Salac, *et al.* sought to: **1)** nullify DOLE Department Order 10 (DOLE DO 10) and POEA Memorandum Circular 15 (POEA MC 15); **2)** prohibit the DOLE, POEA, and TESDA from implementing the same and from further issuing rules and regulations that would regulate the recruitment and placement of overseas Filipino workers (OFWs); and **3)** also enjoin them to comply with the policy of deregulation mandated under Sections 29 and 30 of Republic Act 8042.

On March 20, 2002 the Quezon City RTC granted Salac, *et al.*'s petition and ordered the government agencies mentioned to deregulate the recruitment and placement of OFWs.<sup>[3]</sup> The RTC also annulled DOLE DO 10, POEA MC 15, and all other orders, circulars and issuances that are inconsistent with the policy of deregulation under R.A. 8042.

Prompted by the RTC's above actions, the government officials concerned filed the present petition in G.R. 152642 seeking to annul the RTC's decision and have the same enjoined pending action on the petition.

On April 17, 2002 the Philippine Association of Service Exporters, Inc. intervened in the case before the Court, claiming that the RTC March 20, 2002 Decision gravely affected them since it paralyzed the deployment abroad of OFWs and performing artists. The Confederated Association of Licensed Entertainment Agencies, Incorporated (CALEA) intervened for the same purpose.<sup>[4]</sup>

On May 23, 2002 the Court<sup>[5]</sup> issued a TRO in the case, enjoining the Quezon City RTC, Branch 96, from enforcing its decision.

In a parallel case, on February 12, 2002 respondents Asian Recruitment Council Philippine Chapter, Inc. and others (Arcophil, *et al.*) filed a petition for certiorari and prohibition with application for TRO and preliminary injunction against the DOLE Secretary, the POEA Administrator, and the TESDA Director-General,<sup>[6]</sup> before the RTC of Quezon City, Branch 220, to enjoin the latter from implementing the 2002 *Rules and Regulations Governing the Recruitment and Employment of Overseas Workers* and to cease and desist from issuing other orders, circulars, and policies that tend to regulate the recruitment and placement of OFWs in violation of the policy of deregulation provided in Sections 29 and 30 of R.A. 8042.

On March 12, 2002 the Quezon City RTC rendered an Order, granting the petition and enjoining the government agencies involved from exercising regulatory functions over the recruitment and placement of OFWs. This prompted the DOLE Secretary, the POEA Administrator, and the TESDA Director-General to file the present action in G.R. 152710. As in G.R. 152642, the Court issued on May 23, 2002 a TRO enjoining the Quezon City RTC, Branch 220 from enforcing its decision.

On December 4, 2008, however, the Republic informed<sup>[7]</sup> the Court that on April 10, 2007 former President Gloria Macapagal-Arroyo signed into law R.A. 9422<sup>[8]</sup> which expressly repealed Sections 29 and 30 of R.A. 8042 and adopted the policy of close government regulation of the recruitment and deployment of OFWs. R.A. 9422 pertinently provides:

x x x x

SEC. 1. Section 23, paragraph (b.1) of Republic Act No. 8042, otherwise known as the "Migrant Workers and Overseas Filipinos Act of 1995" is hereby amended to read as follows:

(b.1) Philippine Overseas Employment Administration – The Administration shall regulate private sector participation in the

recruitment and overseas placement of workers by setting up a licensing and registration system. It shall also formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements.

In addition to its powers and functions, the administration shall inform migrant workers not only of their rights as workers but also of their rights as human beings, instruct and guide the workers how to assert their rights and provide the available mechanism to redress violation of their rights.

In the recruitment and placement of workers to service the requirements for trained and competent Filipino workers of foreign governments and their instrumentalities, and such other employers as public interests may require, the administration shall deploy only to countries where the Philippines has concluded bilateral labor agreements or arrangements: *Provided*, That such countries shall guarantee to protect the rights of Filipino migrant workers; and: *Provided*, further, That such countries shall observe and/or comply with the international laws and standards for migrant workers.

SEC. 2. Section 29 of the same law is hereby repealed.

SEC. 3. Section 30 of the same law is also hereby repealed.

x x x x

On August 20, 2009 respondents Salac, *et al.* told the Court in G.R. 152642 that they agree<sup>[9]</sup> with the Republic's view that the repeal of Sections 29 and 30 of R.A. 8042 renders the issues they raised by their action moot and academic. The Court has no reason to disagree. Consequently, the two cases, G.R. 152642 and 152710, should be dismissed for being moot and academic.

### ***G.R. 167590***

*(Constitutionality of Sections 6, 7, and 9 of R.A. 8042)*

On August 21, 1995 respondent Philippine Association of Service Exporters, Inc. (PASEI) filed a petition for declaratory relief and prohibition with prayer for issuance of TRO and writ of preliminary injunction before the RTC of Manila, seeking to annul Sections 6, 7, and 9 of R.A. 8042 for being unconstitutional. (PASEI also sought to annul a portion of Section 10 but the Court will take up this point later together with a related case.)

Section 6 defines the crime of "illegal recruitment" and enumerates the acts constituting the same. Section 7 provides the penalties for prohibited acts. Thus:

SEC. 6. *Definition.* – For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers and includes referring, contract services,

promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-license 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 such non-license 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:

x x x x

*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 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.<sup>[10]</sup>

Finally, Section 9 of R.A. 8042 allowed the filing of criminal actions arising from “illegal recruitment” before the RTC of the province or city where the offense was committed or where the offended party actually resides at the time of the commission of the offense.

The RTC of Manila declared Section 6 unconstitutional after hearing on the ground that its definition of “illegal recruitment” is vague as it fails to distinguish between licensed and non-licensed recruiters<sup>[11]</sup> and for that reason gives undue advantage to the non-licensed recruiters in violation of the right to equal protection of those that operate with government licenses or authorities.

But “illegal recruitment” as defined in Section 6 is clear and unambiguous and, contrary to the RTC’s finding, actually makes a distinction between licensed and non-licensed recruiters. By its terms, persons who engage in “canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers” without the appropriate government license or authority are guilty of illegal recruitment whether or not they commit the wrongful acts enumerated in that section. On the other hand, recruiters who engage in the canvassing, enlisting, etc. of OFWs, although with the appropriate government license or authority, are guilty of illegal recruitment only if they commit any of the wrongful acts enumerated in Section 6.

The Manila RTC also declared Section 7 unconstitutional on the ground that its