

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.
D E C I S I O N**

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, 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 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 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." (Emphasis 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;

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 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]

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