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Wilfredo V. Lapitan
 WILFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
 MAY 26 2016

Republic of the Philippines
 Supreme Court
 Baguio City

THIRD DIVISION

ASIAN INTERNATIONAL
 MANPOWER SERVICES, INC.,
 Petitioner,

G.R. No. 210308

Present:

VELASCO, JR., J.,
Chairperson,
 PERALTA,
 PEREZ,
 REYES, and
 JARDELEZA, JJ.

- versus -

DEPARTMENT OF LABOR AND
 EMPLOYMENT,
 Respondent.

Promulgated:

April 6, 2016

Wilfredo V. Lapitan

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DECISION

REYES, J.:

This is a Petition for Review on *Certiorari*¹ assailing the Decision² dated July 9, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 123565, which sustained the Order dated April 12, 2011 and Resolution dated December 22, 2011 of the Department of Labor and Employment (DOLE) in OS-POEA-0142-1013-2008.

¹ *Rollo*, pp. 15-35.

² Penned by Associate Justice Florito S. Macalino, with Associate Justices Sesinando E. Villon and Pedro B. Corales concurring; *id.* at 37-44.

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The Facts

Rule II, Part VI of the 2002 Philippine Overseas Employment Agency (POEA) Rules and Regulations Governing the Recruitment and Employment of Land-based Overseas Workers (2002 POEA Rules) authorizes the filing of a complaint by the POEA upon its own initiative³ against a recruitment agency suspected of violations of its Rules on the recruitment and placement of overseas workers. In particular, Section 2(e) of Rule I, Part VI thereof provides:

SECTION 2. Grounds for imposition of administrative sanctions:

x x x x

e. Engaging in act/s of misrepresentation in connection with recruitment and placement of workers, such as furnishing or publishing any false notice, information or document in relation to recruitment or employment;

x x x x

On November 8, 2006, the Anti-Illegal Recruitment Branch of the POEA, pursuant to Surveillance Order No. 033, Series of 2006, conducted a surveillance of Asian International Manpower Services, Inc. (AIMS) with office address at 1653 Taft Avenue corner Pedro Gil Street, Malate, Manila to determine whether it was operating as a recruitment agency despite the cancellation of its license on August 28, 2006.⁴ The operatives reported that their surveillance did not reveal the information needed, so another surveillance was recommended.⁵

On February 20, 2007, another surveillance was conducted on the premises of AIMS' office pursuant to Surveillance Order No. 011. This time the POEA operatives observed that there were people standing outside its main entrance, and there were announcements of job vacancies posted on the main glass door of the office.⁶ Posing as applicants, the POEA operatives, Atty. Romelson E. Abbang and Edilberto V. Alogoc, inquired as to the requirements for the position of executive staff, and a lady clerk of AIMS handed them a flyer.⁷ Through the flyer, they learned that AIMS was hiring hotel workers for deployment to Macau and grape pickers for California.⁸ They also

³ Section 1 of Rule II, Part VI of the 2002 POEA Rules provides that "the Administration, on its own initiative, may conduct proceedings based on reports of violation POEA Rules and Regulations and other issuances on overseas employment subject to preliminary evaluation."

⁴ *Rollo*, p. 38.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 19, 38.

⁸ *Id.* at 21.

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saw applicants inside the office waiting to be attended to. The POEA operatives later confirmed through the POEA Verification System that AIMS had regained its license and good standing on December 6, 2006, but that it had no existing approved job orders yet at that time.⁹

On March 26, 2007, the POEA issued a Show Cause Order directing AIMS and its covering surety, Country Bankers Insurance Corporation, to submit their answer or explanation to the Surveillance Report dated November 8, 2006 of the POEA operatives.¹⁰ However, no copy of the Surveillance Report dated February 21, 2007 was attached.¹¹

In compliance thereto, Danilo P. Pelagio, AIMS President, wrote to the POEA on April 3, 2007 maintaining that AIMS was not liable for any recruitment misrepresentation. Invoking the Surveillance Report dated November 8, 2006, he cited the POEA operatives' own admission that when they first came posing as applicants, the AIMS staff advised them that it had no job vacancies for waiters and that its license had been cancelled. He also called POEA's attention to the notice issued to AIMS, which was received on November 27, 2006, that the cancellation of its license had been set aside on December 6, 2006; and that the POEA Adjudication Office even circulated an advise to all its operating units of the restoration of AIMS' license.¹²

During the hearing on May 9, 2007, AIMS representative, Rommel Lugatiman (Lugatiman), appeared, and averring that it had already filed its answer, he then moved for the resolution of the complaint.¹³

In the Order dated June 30, 2008, then POEA Administrator Rosalinda Baldoz ruled that on the basis of the Surveillance Report dated February 21, 2007 of the POEA operatives, AIMS was liable for misrepresentation under Section 2(e), Rule I, Part VI of the 2002 POEA Rules, since the POEA records showed that AIMS had no job orders to hire hotel workers for Macau, nor grape pickers for California, as its flyer allegedly advertised. The *fallo* of the order reads:

⁹ Id. at 20-21.

¹⁰ Id. at 39.

¹¹ Id. at 19.

¹² Id. at 39.

¹³ Id.

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WHEREFORE, premises considered, we find and so hold [AIMS] liable for violation of Section 2(e), Rule I, Part VI of the [2002 POEA Rules] and is hereby imposed with (sic) the penalty of suspension of its license for four (4) months or, in lieu thereof, fine amounting to PHP40,000.00.

SO ORDERED.¹⁴

AIMS filed a motion for reconsideration before the DOLE. It alleged that its right to due process was violated because the POEA did not furnish it with a copy of the Surveillance Report dated February 21, 2007, which was the basis of the POEA Administrator's factual findings.¹⁵

In an Order dated April 12, 2011, the DOLE affirmed the order of the POEA, asserting that due process was observed. It cited AIMS's letter-answer to POEA's Show Cause Order dated April 3, 2007 denying POEA's charge of misrepresentation. It likewise cited the hearing held on May 9, 2007 wherein AIMS's representative, Lugatiman, after manifesting that it had filed its answer, merely moved that the case be deemed submitted for resolution instead of availing of the hearing to rebut the allegations of misrepresentation against it.¹⁶

AIMS moved for reconsideration from the DOLE ruling, which the DOLE denied on December 22, 2011.¹⁷

On January 3, 2012, AIMS filed a petition for *certiorari* in the CA, docketed as CA-G.R. SP No. 123565, upon the following grounds:

THE [DOLE] GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT DID NOT HEED THE PLEA OF [AIMS] FOR COMPLIANCE WITH THE DUE PROCESS OF LAW, AT LEAST REMANDING THE CASE TO THE POEA TO ENABLE [AIMS] TO ANSWER SQUARELY THE [SURVEILLANCE REPORT DATED FEBRUARY 21, 2007] AND ALL OTHER EVIDENCE ALONG WITH IT.

THE [DOLE] GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE ORDER OF THE POEA IN RULING THAT [AIMS] IS GUILTY OF THE OFFENSE CHARGED DESPITE THE

¹⁴ Id. at 39-40.

¹⁵ Id. at 40.

¹⁶ Id.

¹⁷ Id.

LACK OF SUBSTANTIAL EVIDENCE TO SUPPORT THE FINDINGS.¹⁸

In its Decision¹⁹ dated July 9, 2013, the CA dismissed AIMS's charge of denial of due process for failure of POEA to furnish it with a copy of the Surveillance Report dated February 21, 2007. It held that AIMS' misrepresentation with regard to the recruitment of workers for non-existent overseas jobs was supported by substantial evidence.

In the case at bench, AIMS[s] failure to receive a copy of Surveillance Report dated 21 February 2007 does not amount to denial of due process. True, in the Show Cause Order, only the Surveillance Report dated 8 November 2006 and the Affidavit of the operatives who conducted the surveillance were attached to the same. Hence, when AIMS filed a Letter in reply to the Show Cause Order, it answered only the contents of Surveillance Report dated 8 November 2006. However, it is undisputed that on 9 May 2007, POEA scheduled a preliminary hearing where Lugatiman, AIMS representative, appeared. Lugatiman was obviously informed of the charges against AIMS. Instead of rebutting the allegations of the operatives in the two (2) Surveillance Reports, Lugatiman failed to clarify the issues or the charges and merely manifested that AIMS already filed an answer and thus moved for the resolution of the Complaint against it. Clearly, AIMS was given the opportunity to be heard and to present its side but failed to make use of the same. Thus, AIMS cannot feign denial of due process.

Further, the charge of misrepresentation against AIMS is supported by substantial evidence. It is well settled that in administrative proceedings as in the case before the POEA, only substantial evidence is needed or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.

Section 2(e) of Rule I, Part VI of the 2002 POEA Rules reads:

“SECTION 2. Grounds for imposition of administrative sanctions:

x x x x

6. Engaging in act/s of misrepresentation in connection with recruitment and placement of workers, such as furnishing or publishing any false notice, information or document in relation to recruitment or employment;

x x x x”

In this case, AIMS committed misrepresentation in connection with recruitment and placement of workers when it offered various job openings in Macau as hotel workers and for U.S.A. as grape pickers although it knew that it had no existing approved job orders.

¹⁸ Id. at 41.

¹⁹ Id. at 37-44.

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AIMS misrepresented to its applicants that it had the valid authority and capacity to deploy workers to the said places in violation of the 2002 POEA Rules.²⁰ (Citations omitted and underlining ours)

In this petition, AIMS insists that its right to due process was violated because it was never furnished with a copy of the POEA Surveillance Report dated February 21, 2007, upon which both the POEA and DOLE anchored their factual finding that it misrepresented to job applicants that it had existing job orders.

Ruling of the Court

The petition is granted.

“[T]he essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one’s side or an opportunity to seek a reconsideration of the action or ruling complained of. In the application of the principle of due process, what is sought to be safeguarded is not lack of previous notice but the denial of the opportunity to be heard.”²¹

“Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself.”²² “The observance of fairness in the conduct of an investigation is at the very heart of procedural due process.”²³ As long as he is given the opportunity to defend his interests in due course, he is not denied due process.²⁴ In administrative proceedings, the filing of charges and giving reasonable opportunity to the person charged to answer the accusations against him constitute the minimum requirements of due process.²⁵

According to the CA, AIMS was “obviously informed of the charges” against it during the May 9, 2007 preliminary hearing at the POEA, where its representative Lugatiman appeared. But instead of rebutting the allegations of the POEA operatives in their Surveillance Reports, Lugatiman “failed to clarify the issues or the charges and merely manifested that AIMS already filed an answer and thus moved for the resolution of the Complaint against it.” Thus, the CA

²⁰ Id. at 42-43.

²¹ *Gannapao v. Civil Service Commission, et al.*, 665 Phil. 60, 70 (2011).

²² *F/O Ledesma v. CA*, 565 Phil. 731, 740 (2007).

²³ *Vivo v. Philippine Amusement and Gaming Corporation (PAGCOR)*, G.R. No. 187854, November 12, 2013, 709 SCRA 276, 281.

²⁴ *Gannapao v. Civil Service Commission, et al.*, supra note 21; see also *Cojuangco, Jr. v. Atty. Palma*, 501 Phil. 1, 8 (2005).

²⁵ *Rivas v. Sison*, 498 Phil. 148, 154 (2005).

concluded that AIMS was given opportunity to be heard and to present its side but it failed to make use of the said opportunity.²⁶

The Court does not agree. In concluding that, through Lugatiman, AIMS was “obviously informed of the charges” during the preliminary hearing, the CA overlooked the crucial fact that, as the POEA itself admitted, it did not furnish AIMS with a copy of its Surveillance Report dated February 21, 2007, which contains the factual allegations of misrepresentation supposedly committed by AIMS. It is incomprehensible why the POEA would neglect to furnish AIMS with a copy of the said report, since other than the fact that AIMS was represented at the hearing on May 9, 2007, there is no showing that Lugatiman was apprised of the contents thereof. In fact, as AIMS now claims, the alleged recruitment flyer distributed to its applicants was not even presented.

Since AIMS was provided with only the Surveillance Report dated November 8, 2006, it could only have been expected to respond to the charge contained in the Show Cause Order. Thus, in its answer, it needed only to point to the POEA operatives’ own admission in their Surveillance Report dated November 8, 2006 that when they came posing as job applicants, the staff of AIMS advised them that it had no job vacancies for waiters and that its license had been cancelled. As POEA now also admits, AIMS’s license to recruit was restored on December 6, 2006.

The CA faulted AIMS for failing to avail itself of the opportunity to rebut the allegations of the POEA operatives in the two Surveillance Reports, as well as “to clarify the issues or the charges,” during the May 9, 2007 preliminary hearing.²⁷ Considering that AIMS was not furnished with the Surveillance Report dated February 21, 2007, it cannot be expected to second-guess what charges and issues it needed to clarify or rebut in order to clear itself. Needless to say, its right to due process consisting of being informed of the charges against it has been grossly violated.

Moreover, AIMS also points out that the flyer advertising the jobs in Macau and California was never presented or made part of the record, and neither was the AIMS lady clerk who allegedly distributed the same even identified, as AIMS demanded. Besides, granting that AIMS did advertise with flyers for hotel workers or grape pickers, for which it allegedly had no existing approved job orders, it is provided in Sections 1 and 2 of Rule VII (Advertisement for Overseas Jobs),

²⁶ *Rollo*, p. 43.

²⁷ *Id.*

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Part II of the 2002 POEA Rules²⁸ that the said activity is permitted for manpower pooling purposes, without need of prior approval from the POEA, upon the following conditions: (1) it is done by a licensed agency; (2) the advertisement indicates in bold letters that it is for manpower pooling only; (3) no fees are collected from the applicants; and (4) the name, address and POEA license number of the agency, name and worksite of the prospective registered/accredited principal and the skill categories and qualification standards are indicated.

It is true that in administrative proceedings, as in the case below, only substantial evidence is needed, or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.²⁹ Unfortunately, there is no evidence against AIMS to speak of, much less substantial evidence. Clearly, AIMS's right to be informed of the charges against it, and its right to be held liable only upon substantial evidence, have both been gravely violated.

WHEREFORE, premises considered, the petition is **GRANTED**. Accordingly, the Decision dated July 9, 2013 and Resolution dated December 6, 2013 of the Court of Appeals in CA-G.R. SP No. 123565, are **REVERSED** and **SET ASIDE**.

SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

²⁸ Section 1. Advertisement for Actual Job Vacancies. Licensed agencies may advertise for actual job vacancies without prior approval from the Administration if covered by manpower requests of registered/accredited foreign principals and projects. The advertisements shall indicate the following information:

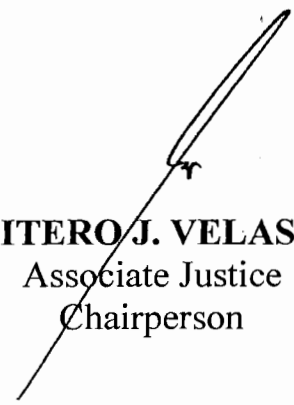
- a. Name, address and POEA license number of the agency;
- b. Work site of prospective principal/project;
- c. Skill categories and qualification standards; and
- d. Number of available positions.

Section 2. Advertisement for Manpower Pooling. Licensed agencies may advertise for manpower pooling without prior approval from the Administration subject to the following conditions:

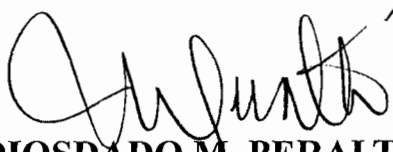
- a. The advertisement should indicate in bold letters that it is for manpower pooling only and that no fees will be collected from the applicants; and
- b. The advertisement indicates the name, address and POEA license number of the agency, name and worksite of the prospective registered/accredited principal and the skill categories and qualification standards.

²⁹ *Office of the Ombudsman v. Beltran*, 606 Phil. 573, 590 (2009).

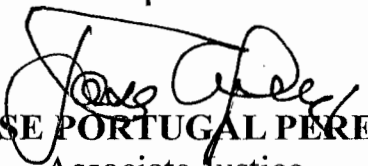
WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice




JOSE PORTUGAL PEREZ
Associate Justice



FRANCIS HJARDELEZA
Associate Justice

ATTESTATION

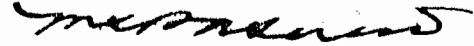
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

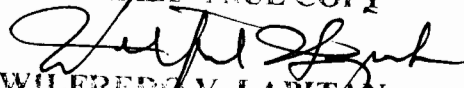
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

MAY 26 2016