

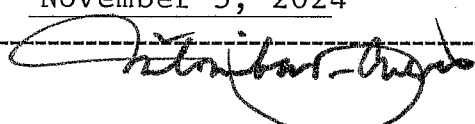
EN BANC

G.R. No. 248680 — MIGRANTE INTERNATIONAL, FELIZA B. BENITEZ, JENNIFER BORBE, MARIA LOVINA CASTRO, MICHELLE CUSTODIO, ERVIE FUENTES, FATIMA MAMPO, ELVIRA MONTERO, ROSARIO J. VALDESCO, VERNA VILLANCIO, NERICOLMENARES, CARLOS ISAGANIT. ZARATE, FERDINAND GAITE, EUFEMIA CULLAMAT, BAYAN MUNA PARTYLIST REPRESENTATIVES; ARLENE D. BROSAS, GABRIELA WOMEN'S PARTY REPRESENTATIVE; FRANCISCA L. CASTRO, ACT-TEACHERS PARTYLIST REPRESENTATIVE; and SARAH JANE I. ELAGO, KABATAAN PARTYLIST REPRESENTATIVE, Petitioners, v. SOCIAL SECURITY SYSTEM, represented by CARLOS G. DOMINGUEZ III, in his capacity as Chairman, AURORA C. IGNACIO, SSS President and Vice-Chairman, DEPARTMENT OF FOREIGN AFFAIRS, represented by TEODORO LOCSIN, JR., in his capacity as Secretary, and DEPARTMENT OF LABOR AND EMPLOYMENT, represented by SILVESTRE H. BELLO III, in his capacity as Secretary, and PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION, represented by its Administrator BERNARD OLALIA, Respondents.

Promulgated:

November 5, 2024

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SEPARATE CONCURRING AND DISSENTING OPINION

LEONEN, J.:

I agree with the *ponencia* that the mechanism in Rule 14, Section 7 (iii) of the Implementing Rules and Regulations of Republic Act No. 11199, which is designed to collect contributions for the Social Security System (SSS) from land-based Overseas Filipino Workers (OFW) through the issuance process of Overseas Employment Certificates (OEC), is *ultra vires* and must be struck down. Nevertheless, I do not concur with the conclusion that there is a substantial distinction between land-based and sea-based OFWs that justifies the difference in their treatment under the statute, because land-based OFWs are forced to make SSS contributions solely on their account.

I agree with the petitioners that the collection mechanism introduced by Rule 14, Section 7 (iii) of the Implementing Rules and Regulations is beyond the terms of the statute.<sup>1</sup> To recall, the relevant portions of Republic Act No. 11199 are:

<sup>1</sup> *Ponencia*, p. 23.



Section 9-B. Compulsory Coverage of Overseas Filipino Workers (OFWs)

(a) Coverage in the SSS shall be compulsory upon all sea-based and land-based OFWs as defined under Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995, as amended by Republic Act No. 10022: *Provided*, That they are not over sixty (60) years of age.

All benefit provisions under this Act shall apply to all covered OFWs. The benefits include, among others, retirement, death, disability, funeral, sickness and maternity.

...

(c) Land-based OFWs are compulsory members of the SSS and considered in the same manner as self-employed persons under such rules and regulations that the Commission shall prescribe.

(d) The Department of Foreign Affairs (DFA), the Department of Labor and Employment (DOLE) and all its agencies involved in deploying OFWs for employment abroad are mandated to negotiate bilateral labor agreements with the OFWs' host countries to ensure that the employers of land-based OFWs, similar to the principals of sea-based OFWs, pay the required SSS contributions, in which case these land-based OFWs shall no longer be considered in the same manner as self-employed persons in this Act. Instead, they shall be considered as compulsorily covered employees with employer and employee shares in contributions that shall be provided for in the bilateral labor agreements and their implementing administrative agreements: *Provided*, That in countries which already extend social security coverage to OFWs, the DFA through the Philippine embassies and the DOLE shall negotiate further agreements to serve the best interests of the OFWs.

(e) The DFA, the DOLE and, the SSS shall ensure compulsory coverage of OFWs through bilateral social security and labor agreements and other measures for enforcement.

(f) Upon the termination of their employment overseas, OFWs may continue to pay contributions on a voluntary basis to maintain their rights to full benefits.

On the other hand, the provision in question in the Implementing Rules and Regulations states:

Section 7. *BILATERAL SOCIAL SECURITY AND LABOR AGREEMENTS AND OTHER MEASURES FOR ENFORCEMENT.* - The DFA, the DOLE and the SSS shall ensure compulsory coverage of OFWs through bilateral social security and labor agreements and other measures for enforcement. [Sec 9-B, (e)]

...

iii. For land-based OFWs in countries without any SSA or BLA with the Republic of the Philippines, the measures for enforcement of compulsory coverage shall include, among others, the collection of contribution payments by the Philippine Overseas Employment Administration (POEA) and/or the concerned attached DOLE agencies, through its applicable documentation and deployment processes such as the issuance of Overseas Employment Certificate (OEC), as follows:

- a) For new hires, direct/name hires and government-to-government hires - one (1) monthly contribution; and
- b) For re-hires/returning workers/Balik-Manggagawa - three (3) monthly contributions.

The questioned provision equates the Philippine Overseas Employment Administration's processes for the issuance of OECs as one "measure for enforcement" mentioned in Section 9-B, paragraph (e) of Republic Act No. 11199. However, as pointed out by the *ponencia*, this cannot be a correct interpretation, following the principle of *ejusdem generis*.

Paragraph (e) speaks of "bilateral social security and labor agreements" which may be pursued by the Department of Foreign Affairs, the Department of Labor and Employment, and the SSS to ensure compulsory coverage. In line with this, the "other measures for enforcement" mentioned should also belong to the same kind or class. The immediately preceding paragraph (d) further supports this interpretation, where the Department of Foreign Affairs and the Department of Labor and Employment are expressly mandated to negotiate these labor agreements with host countries for further protection of land-based OFWs. In ensuring the compulsory coverage of land-based OFWs, the burden is placed on the government, through the agencies mentioned in the law, to negotiate favorable terms for our workers.

Thus, when the law places on the State the obligation to ensure compulsory coverage, it does not mean that this duty is already discharged if, through one way or another, payments for mandatory contributions are made. The provision highlights the mandate on the State to negotiate these bilateral agreements with urgency; it does not shift the burden to the land-based OFWs.

In any case, the processes for the issuance of OECs within the labor agencies cannot be used to collect these mandatory SSS contributions. An OEC, under the relevant rules, refers to "the document issued to Overseas Filipino Workers, which serves as proof that the worker has been processed by the [Philippine Overseas Employment Administration] or [Philippine Overseas Labor Office]."<sup>2</sup> It only certifies that an OFW has already undergone the processes of the Philippine Overseas Employment Administration. On the other hand, it is the SSS which is duty-bound to

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<sup>2</sup> Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Filipino Workers of 2016, POEA Governing Board Resolution No. 07-16 (2016), Rule II, sec. 26.

implement the provisions of Republic Act No. 11199. As also noted by the *ponencia*, the law does not authorize the SSS to delegate collections to other government agencies,<sup>3</sup> nor is the collection of SSS contributions covered by the processes certified by the OEC. Therefore, this mechanism is clearly beyond the limits placed by the law.

The increasing trend in allowing administrative agencies wide latitude to implement legislation they specialize in is not an unbridled license to come up with ways that are not germane to the law. Construing “other measures for enforcement” in Republic Act No. 11199, Section 9-B, paragraph (e) to include only those measures that are related to the other items mentioned in the enumeration within the same paragraph is a matter of reasonable interpretation.<sup>4</sup> It is not meant to arbitrarily and narrowly restrict a government measure, especially when such measure is found to be beyond what is contemplated by the statute. Practicality and feasibility are not substitutes for legal authority.

Besides the question of whether the provision in the Implementing Rules and Regulations is *ultra vires*, there is also a question of its validity as a police power measure on its own. For the exercise of police power to be valid, jurisprudence holds that:

It must appear that the interests of the public generally, as distinguished from those of a particular class, require an interference with private rights and the means must be reasonably necessary for the accomplishment of the purpose and not unduly oppressive of private rights. It must also be evident that no other alternative for the accomplishment of the purpose less intrusive of private rights can work. More importantly, a reasonable relation must exist between the purposes of the measure and the means employed for its accomplishment, for even under the guise of protecting the public interest, personal rights and those pertaining to private property will not be permitted to be arbitrarily invaded.<sup>5</sup>

The subject of the legislation is not in question here. What is scrutinized is the means employed by government to achieve its purpose. On this note, I find that the Implementing Rules and Regulations’ expansion of the statute to include the OEC issuance process as an avenue to collect mandatory SSS contributions is unreasonable. It unjustifiably shifts the financial burden completely onto land-based OFWs to involuntarily fill the gap caused by the absence of labor and security agreements that are supposed to be for their interest. Worse, their compulsory SSS contributions are made a prerequisite to securing their OECs, which as discussed, involves a completely different process and serves a completely different purpose. The peculiar situation of land-based OFWs, whose employers are outside Philippine jurisdiction, should not be taken as sufficient justification to

<sup>3</sup> *Ponencia*, p. 33.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *White Light Corporation v. City of Manila*, 596 Phil. 444, 448 (2009) [Per J. Tinga, *En Banc*].

compel land-based OFWs to take on an additional financial burden under the guise of their protection and administrative practicality. Land-based OFWs, who are private persons, cannot be made to give up their hard-earned money to fulfill a deficiency on the part of government. That the means employed by government is the most practical and efficient way to enforce compulsory coverage does not make it legal and constitutional.

On the allegation of the violation of the right to travel, I agree with the *ponencia* and petitioners that the unreasonable requirement of paying mandatory SSS contributions before the issuance of the OEC unduly restricts the right to travel. This right and its limitations are expressed in the Constitution:

Section 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety or public health, as may be provided by law.<sup>6</sup>

Thus, the right to travel can only be impaired when (1) there is a law, and (2) such law furthers the interests of national security, public safety, or public health. In this case, the requirement to pay compulsory contributions prior to the issuance of the OEC is only found in the Implementing Rules and Regulations. Nowhere in Republic Act No. 11199 is the OEC issuance process mentioned as a mechanism to collect mandatory contributions. The OEC is a requirement for all departing workers that permits a land-based OFW to travel abroad to commence their employment.<sup>7</sup> This is clearly not just an administrative requirement, but an impairment of the constitutional right.

Even more fundamental to this case is the issue of whether land-based OFWs should make mandatory SSS contributions on their sole account at all. Petitioners raise an equal protection issue, questioning the difference in their treatment as opposed to local employees and sea-based OFWs.<sup>8</sup>

The *ponencia* finds that there is no violation of the equal protection clause when land-based OFWs are made to pay their entire SSS contribution, including their employer's supposed share. It states that "there is reasonable basis to warrant differential treatment among local employees, self-employed persons, land-based OFWs, and sea-based OFWs."<sup>9</sup>

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<sup>6</sup> CONST., art. III, sec. 6.

<sup>7</sup> Revised POEA Rules and Regulations Governing the Recruitment and Employment of Landbased Filipino Workers of 2016, POEA Governing Board Resolution No. 07-16 (2016), Rule IX, sec. 72. Departure of Workers. — All departing Overseas Filipino Workers shall present their OECs to the Immigration Officer. For this purpose, the Administration, in coordination with the Bureau of Immigration, shall establish a one-stop validation procedure in all exit points for all departing Overseas Filipino Workers.

<sup>8</sup> *Ponencia*, p. 8.

<sup>9</sup> *Id.* at 27.

In our Constitution, the right to equal protection of the laws<sup>10</sup> guarantees that persons in similar circumstances and who fall in the same class should be treated the same “in terms of privileges conferred and liabilities enforced.”<sup>11</sup> It prohibits “undue favor and individual or class privilege, as well as hostile discrimination of the oppression of inequality.”<sup>12</sup> Nevertheless, Congress is not prohibited from making necessary distinctions and classifications in legislation, as long as they are made reasonably and not arbitrarily.<sup>13</sup>

Thus, the test for a reasonable classification has been expressed as follows: first, it must rest on substantial distinctions; second, it must be germane to the purposes of the law; third, it must not be limited to existing conditions only; and fourth, it must apply to all members of the same class.<sup>14</sup>

As pointed out by the *ponencia*, the issue of whether Section 9-B of Republic Act No. 11199 violates the equal protection clause was touched upon in the *En Banc* case of *Joint Ship Manning Group, Inc. v. Social Security System*.<sup>15</sup>

In that case, petitioners manning agencies of sea-based OFWs raised the equal protection clause because Republic Act No. 11199, particularly Section 9-B, paragraph (b), provided for their solidary liability with their principals with respect to civil liabilities for violations of the law.<sup>16</sup> They argued that recruitment agencies of land-based OFWs are not similarly treated despite performing the same functions; land-based OFWs are instead treated as self-employed members whose employers are not held liable in any way.

Thus, what petitioners in *Joint Ship Manning Group* were essentially raising was a question on the nature and extent of their liability. This was the context of the equal protection issue and the pronouncements in that case. It was whether there was valid justification to treat the manning agencies of sea-based OFWs and the recruitment agencies of land-based OFWs differently.

*Joint Ship Manning Group* indeed states that “there is a substantial distinction between sea-based OFWs and land-based OFWs,”<sup>17</sup> and proceeds

<sup>10</sup> CONST., art III, sec. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws

<sup>11</sup> *Sameer Overseas Placement Agency v. Cabiles*, 740 Phil. 403, 434 (2014) [Per J. Leonen, *En Banc*]. Citations omitted.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 450.

<sup>14</sup> *Id.* at 435.

<sup>15</sup> 876 Phil. 596 [Per J. Gesmundo, *En Banc*].

<sup>16</sup> Republic Act No. 11199 (2018), sec. 9-B, par. (b). Manning agencies are agents of their principals and are considered as employers of sea-based OFWs.

For purposes of the implementation of this Act, any law to the contrary notwithstanding manning agencies are jointly and severally or solidarity liable with their principals with respect to the civil liabilities incurred for any violation of this Act.

The persons having direct control, management or direction of the manning agencies shall be held criminally liable for any act or omission penalized under this Act notwithstanding Section 28(f) hereof.

<sup>17</sup> *Joint Ship Manning Group v. Social Security System*, 876 Phil. 596, 618 [Per J. Gesmundo, *En Banc*].

with a discussion on how sea-based OFWs have only one standard contract because of their similar working conditions, as opposed to land-based OFWs who have no uniform employment contract because their jobs vary greatly.<sup>18</sup>

However, a closer reading of the case reveals that the Court made these statements in relation to the question of whether the law was justified to hold manning agencies of sea-based OFWs solidarily liable with their principals when recruitment agencies of land-based OFWs were not. The distinction made was to ultimately highlight the differences between these two kinds of agencies, and not between the two kinds of OFWs. After all, the petitioners in *Joint Ship Manning Group* were manning agencies that wanted to be put in the same circumstance as their counterpart recruitment agencies for land-based OFWs, who were free from liability. The dispositive portion of that case only upheld the constitutionality of Section 9-B “insofar as sea-based Overseas Filipino Workers are concerned.”<sup>19</sup>

This is not the case here. The issue on equal protection in this case is raised because petitioners directly question the difference in the treatment of land-based OFWs compared to sea-based OFWs and local employees, in relation to the former’s compulsory inclusion in the law’s coverage and the corresponding mandatory contributions they must pay.

Looking at the issue through this lens, I disagree with the *ponencia*’s finding that there is a substantial distinction between land-based OFWs and sea-based OFWs that justifies the difference in their treatment in relation to their compulsory coverage under Republic Act No. 11199.

The *ponencia* points to the unique situation of land-based OFWs, where “the absence of social security and bilateral labor agreements leaves the Philippine government without means to compel foreign employers to contribute the employer’s share of SSS premiums,”<sup>20</sup> resulting in land-based OFWs having to shoulder even their supposed employers’ shares out of “practical necessity.”<sup>21</sup> To me, this is not sufficient basis for a reasonable classification that passes the equal protection test. A real and substantial distinction between land-based OFWs and sea-based OFWs, in relation to their compulsory coverage and mandatory payment of SSS contributions, does not exist.

I say this because once this practical necessity is removed by the successful negotiation of a bilateral social security and labor agreement between the Philippine government and the host country, the difference in

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 639. The dispositive portion states:

**WHEREFORE**, the petition is **DENIED**. Section 9-B of Republic Act No. 11199, or the Social Security Act of 2018, insofar as sea-based Overseas Filipino Workers are concerned, is **CONSTITUTIONAL**.

<sup>20</sup> *Ponencia*, p. 28.

<sup>21</sup> *Id.*

treatment of land-based OFWs concerning their mandatory contributions likewise ceases. Land-based OFWs, much like sea-based OFWs and those locally employed, will now have employers who can share in their contributions to the SSS, but the nature of their employment does not change, the roles and risks they take remain the same.

The unique situation, therefore, of land-based OFWs is not that they have no employers who can share in their contributions or that the jobs they perform vary greatly compared to sea-based OFWs, but that there is no existing legal mechanism to compel their employers to contribute their shares. Until that ideal situation is achieved, which is the obligation of the State, I do not think there is a basis to discriminately burden land-based OFWs with mandatory, solo, and full payments of their SSS contributions. In other words, until there is a mechanism to compel land-based OFWs' employers to contribute, like in the case of sea-based OFWs and those locally employed, it would be a violation of the equal protection clause to compel them to shoulder their employers' share precisely because of the lack of the same enforcement mechanism.

Thus, considering their circumstances, the real situation of land-based OFWs is more akin to Filipino permanent residents of their host countries, who are covered by the SSS only on a voluntary basis.<sup>22</sup> This is because they are not strictly self-employed *per se* because they hold valid employment abroad. At the same time, without an enforcement measure contemplated by Section 9-B, paragraph (e) of Republic Act No. 11199, the SSS does not have jurisdiction to compel contributions from land-based OFWs' foreign employers.

In any case, Section 9-B, paragraph (f) allows OFWs to continue paying their contributions on a voluntary basis following the termination of their overseas employment,<sup>23</sup> so there is a recognition that voluntary contribution is not contradictory to the nature of overseas work in relation to payment of premiums. It also shows that the supposed substantial distinction between land-based and sea-based OFWs when it comes to their contributions is not decisive and persisting.

To end, I wish to note that the *ponencia* quotes *Olarte v. Nayona*<sup>24</sup> to paint a grim picture of what pushes an OFW to go overseas. While I agree

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<sup>22</sup> See Republic Act No. 11199 (2018), sec. 9-B, par. (g). Filipino permanent migrants, including Filipino immigrants, permanent residents and naturalized citizens of their host countries may be covered by the SSS on a voluntary basis.

<sup>23</sup> See Republic Act No. 11199 (2018), sec. 9-B, par. (f). Upon the termination of their employment overseas, OFWs may continue to pay contributions on a voluntary basis to maintain their rights to full benefits.

<sup>24</sup> 461 Phil. 429, 431 (2003) [Per J. Sandoval-Gutierrez, Third Division]. The quoted portion states, "Our overseas workers belong to a disadvantaged class. Most of them come from the poorest sector of our society. Their profile shows they live in suffocating slums, trapped in an environment of crimes. Hardly literate and in ill health, their only hope lies in jobs they find with difficulty in our country. Their unfortunate circumstance makes them easy prey to avaricious employers. They will climb mountains,

that this may be the case for some of our modern-day heroes, I assert that the reality faced by an OFW is fundamentally one about dignified choice. Every OFW makes that hopeful but heartbreaking decision to leave behind their families and country to seek better economic opportunities in a foreign land. This is not an easy or comfortable choice, but it is a dignified one because it is an exercise of one's agency often accompanied by selfless personal sacrifices. Just the same, there is some rejection of this dignity when the State compels OFWs to contribute more than what is due from them under the guise of a practical necessity that the OFW has no control over. Removing the compulsory nature of SSS coverage and contribution for land-based OFWs in countries without bilateral social security and labor agreements with the Philippines would make their participation voluntary and also done out of personal choice.

**ACCORDINGLY**, I vote to **GRANT** the Petition. Republic Act No. 11199, Section 9-B, paragraphs (a), (c), and (e), insofar as they make Social Security System coverage and contributions compulsory for land-based Overseas Filipino Workers in the absence of bilateral social security and labor agreements, are **UNCONSTITUTIONAL**. Likewise, Rule 14, Sections 1, 5, 5.a, 5.b, 6, 7 (iii), and 7 (iv) of the Implementing Rules and Regulations of Republic Act No. 11199, insofar as they compel contributions from land-based Overseas Filipino Workers in the absence of bilateral social security and labor agreements, are **UNCONSTITUTIONAL**. Rule 14, Section 7 (iii) is also *ultra vires* and is **NULL AND VOID**.



**MARVIC M.V.F. LEONEN**  
Senior Associate Justice

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cross the seas, endure slave treatment in foreign lands just to survive. Out of despondence, they will work under sub-human conditions and accept salaries below the minimum. The least we can do is to protect them with our laws.”

