102 Phil. 887

[G. R. No. L-12294. January 23, 1958]

UNITED PEPSI-COLA SALES ORGANIZATION (PAFLU), PETITIONER, VS. HON. ANTONIO CAÑIZARES, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND PEPSI-COLA BOTTLING COMPANY OF THE PHILIPPINES, INC., RESPONDENTS.

D E C I S I O N

REYES, J.B.L., J.:

This is a petition for certiorari to nullify an order of preliminary injunction issued *ex parte* by the Court of First Instance of Manila in its Civil Case No. 32397.

It appears that on April 25, 1957, the respondent Pepsi-Cola Bottling Company of the Philippines, Inc. filed a complaint for injunction in the court below against the United Pepsi-Cola Sales Organization (UPSO), the Philippine Association of Free Labor Unions (PAFLU) and Gary Miranda, UPSO President, alleging that on April 16, 1957, about 100 of its employees and laborers, who are members of the defendant unions, declared a strike and formed picket lines alongside the whole length of its premises at Aurora Boulevard and Balete Drive, completely blocking the entrance to said premises; that in the course of the picketing, certain acts of violence, intimidation, and other unlawful acts were committed; that plaintiff had requested the Quezon City Police Department to extend protection to its non-striking employees, but said police department failed to furnish the protection requested; that reasonable efforts to settle the labor dispute from which the strike arose had been made by plaintiff with the aid of the Conciliation Service of the Department of Labor; that plaintiff had no other adequate remedy in law; and that unless a temporary restraining order was issued *ex parte*, substantial and irreparable injury to plaintiff's property would be unavoidable.

On the same day that the complaint was filed, the lower court received testimony under oath of the witnesses for plaintiff and thereafter, upon the Company's filing of a bond of P1000, issued a writ of preliminary injunction, ordering defendants to:

> "(a) Refrain and desist from obstructing, stopping, blocking, coercing, intimidating or in any way or manner preventing the non-striking employees of the plaintiff company from going in and out of the company premises in pursuance of their respective work;
>
> (b) Refrain and desist from obstructing, stopping, blocking, coercing, intimidating or in any way or manner preventing or hampering the ingress and egress of the public to and from company premises; and
>
> (c) Refrain and desist from obstructing, stopping, coercing, intimidating or in any way or manner preventing plaintiff company's employees, irrespective of date of employment, from carrying on the work assigned to them by the company in its premises at Quezon City or elsewhere." (Annex "C", Petition)

Without asking the lower court for a dissolution of the injunction, the defendants filed with this Court the present petition for certiorari, two days after the issuance of the enjoining writ.

Two arguments are advanced by petitioner union against the validity of the writ of preliminary injunction in question, namely: (1) that the lower court had no jurisdiction to take cognizance of the injunction case and issue the order of injunction in view of the pendency of an unfair labor practice case between the same parties in the Court of Industrial Relations; and (2) that the writ in question was not issued in accordance with the procedure outlined by Republic Act No. 875.

In our opinion, the petition must be dismissed and the writ prayed for denied.

First, because petitioner did not bring up before the trial court, prior to asking certiorari, the issue of jurisdiction as well as the facts upon which such issue may be resolved or decided—i. e., the supposed interrelation and connection between the acts described in the complaint for injunction and the unfair labor practice case in the Court of Industrial Relations, which connection was not apparent on the face of the record; thereby depriving the trial court of the opportunity to determine for itself whether it had jurisdiction to take cognizance of the case and issue the injunction order. Settled is the rule that certiorari will not lie where the relief sought is obtainable by application in the court of origin and the attention of the court has not been called to its supposed error (Herrera *vs*. Barreto, 25 Phil., 245; Uy Chu *vs*. Imperial, 44 Phil. 27; Manila Post Publishing Co. *vs*. Sanchez, 81 Phil.

614; Alvarez vs. Ibañez, 83 Phil., 104; 46 Off. Gaz. 4233; Nicolas *vs*. Castillo, 97 Phil., 336; Ricafort *vs*. Fernan, 101 Phil., 575, 54 Off. Gaz., [8] 2534).

We see nothing in the Company's 'complaint and petition for preliminary injunction that could apprise or warn the court below that an unfair labor practice case was involved. Nor can the lack of jurisdiction of the lower court be simply assumed from the bare fact that an unfair labor practice case had been filed with the Court of Industrial Relations. The criterion, to bring the case under the jurisdiction of the Industrial Court, is whether the acts complained of in the petition for injunction arose out of, or are connected or interwoven with, the unfair labor practice case (PAFLU *vs*. Caluag, G. R. L-9104, Sept. 10, 1956), a question of fact that should be brought to the attention of the court *a quo* to enable it to pass upon the issue whether it has jurisdiction or not over the case. As defendants failed to show to the trial court that it had no jurisdiction they can not complain now that it abused its discretion in issuing the writ of preliminary injunction.

Second, the writ of preliminary injunction was issued by the lower court in accordance with the provisions of R. A. 875, sec. 9(*d*), requiring that an injunction *ex parte* be issued only "upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon hearing after notice". We find that this procedure has been followed in this case, it appearing that the allegations of the verified complaint are substantially sufficient to justify the issuance of a writ of preliminary injunction, and the court, in its order directing the issuance of the writ *ex parte*, states that plaintiffs's verified complaint was "supported by testimony of witnesses given under oath" (Annex "C", Petition).

Finally, a temporary restraining order issued *ex parte*, "shall be effective for no longer than five days and shall be void at the expiration of said five days," according to sec. 9(*d*) of Rep. Act 875. The order of injunction in question having been issued *ex parte*, it became void and of no effect after the fifth day of its issuance, by operation of law and even without any judicial pronouncement to that effect (Reyes vs. Tan, 99 Phil., 880, 52 Off. Gaz. [14] 6187; Allied Free Workers Union *vs*. Apostol, *supra*, p. 292).

Wherefore, the petition for certiorari is denied, but the writ of preliminary injunction, issued by the trial court on 25 April 1957, is declared no longer operative. No. costs. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Endencia, and *Felix, JJ.,* concur.

Date created: October 14, 2014