

NATIONAL POWER CORPORATION, PETITIONER, VS. IGNACIO VALERA, ETC., ET AL., RESPONDENTS

G.R. No. L-15295. November 30, 1961

Ponente: DIZON, J.

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DIZON, J.:

Respondents, except the Sheriff and Hearing Officer, filed a claim for unpaid wages against petitioner and the Central Surety and Insurance Company before Regional Office No. 8, Department of Labor, in Davao City (LSV-3). As petitioner did not appear at the first hearing held before the Hearing Officer, respondents were allowed to present their evidence, and on October 20, 1957 an award was made in their favor requiring petitioner to pay them the total sum of P17,683.10. This award, however, was set aside upon petitioner's motion, thru Atty. Dominguez, and the case was set for hearing on January 8, 1958. On that date, one Mr. Marquez, an engineer in the employ of petitioner, presented to the Hearing Officer a message received from his employer asking for the postponement of the hearing, but the postponement was denied, the hearing was held, and thereafter a similar award in favor of the claimants was made.

It appears that on November 21, 1957—more than a month prior to the date set for the second hearing (January 8, 1957)—the Corporate Counsel filed a verified motion to set aside the first award dated October 20, 1957 upon the ground that petitioner had not been duly notified of the hearing. On December 6 of the same year the Hearing Officer issued an order refraining from acting thereon upon the ground that the award aforesaid had already been set aside. Inasmuch as in spite of the appearance and motion of the Corporate Counsel, he was not served with notice of the hearing set for January 8, 1958, he filed a verified motion on January 17 to set aside the proceedings had, including the second award made. The Hearing Officer denied this motion on February 24, 1958. Although the motion for reconsideration filed by the Corporate Counsel was still pending resolution, the now respondents must have instituted the corresponding court proceedings for the execution of the award made in their favor because a writ of execution was issued and the respondents sheriff and deputy sheriff levied on some personal properties belonging to petitioner and advertised them for sale on May 26, 1958. For this reason petitioner filed in the Court of First Instance of Cebu the present action for prohibition, with a petition for a writ of preliminary injunction. On May 26, 1958 said court, through the Hon. Amador Gomez, issued an order finding the verified petition for prohibition sufficient in form and substance to justify giving to it due course, and required respondents named therein to file their answer within ten days from notice, and two days later the same court also granted the petition for preliminary injunction against the respondents sheriff and deputy sheriff, to prevent the sale of the personal properties levied upon.

Instead of an answer, respondents filed a motion to dismiss the petition upon the following grounds: (1) that the petition did not state any cause of action; (2) that the decision complained of had become final and executory and could not be stayed; (3) that the action was a collateral remedy not sanctioned by law; (4) that petitioner had not exhausted all remedies allowed by law; and (5) that the action was dilatory.

Petitioner opposed the above mentioned motion to dismiss, but after a hearing held thereon, without the

presentation of any evidence, the court, in its order of August 5, 1958, dismissed the case and set aside the writ of preliminary injunction theretofore issued. The motions for reconsideration having been denied, petitioner took the present appeal.

The first assignment of error made in petitioner's brief to this effect: "The lower court erred in dismissing petitioner's petition for prohibition based on respondents' motion to dismiss filed pursuant to Section 1 of Rule 8 of the Rules of Court" is decisive of this case.

The lower court dismissed the case relying on the following grounds; that the award of January 6, 1958 having been made after due notice of hearing had been served on the parties, the Hearing Officer had jurisdiction not only over the subject matter but also upon the National Power Corporation; that because the latter had been notified through Atty. Dominguez, it was unnecessary to serve another notice on the Corporate Counsel; that petitioner's motion for reconsideration dated May 24, 1958 was proforma, as it merely repeated the reasons already relied upon in a previous motion to set aside the proceedings of January 8, 1958; that petitioner had not exhausted the administrative remedies available to it; and finally, that prohibition is not the proper remedy because the Hearing Officer who made the award had acted within his jurisdiction and did not commit any abuse of discretion.

Section 1, Rule 65, Rules of Court, provides that the provisions of the preceding rules shall apply in special civil actions provided they are not inconsistent with, or may serve to supplement the provisions of the rules relating to such special civil actions. It cannot be denied, therefore, that Rule 8 of the Rules of Court applies to the present action for prohibition and that respondents' motion to dismiss should have been based upon one or any number of the grounds enumerated in Section 1 of said rule.

The only ground invoked in the motion to dismiss under consideration that falls within the purview of Rule 8 is respondents' contention that the facts stated in the verified petition for prohibition do not constitute a valid cause of action. The others do not. It is, therefore, improper to consider them as grounds upon which to dismiss the action without a hearing on the merits.

Regarding the sufficiency of the allegations of the verified petition for prohibition to state a cause of action, we believe with the Hon. Amador E. Gomez who issued the orders giving due course to said petition and providing for the issuance of a writ of preliminary injunction, "that the said verified petition was sufficient in form and substance to justify it being given due course for ultimate determination on the merits". But even assuming the contrary—as apparently was the opinion of the Hon. Macapanton Abbas who issued the order subject of the present appeal—still we believe that His Honor should have given petitioner an opportunity to amend its petition, instead of dismissing the case.

Wherefore, the order appealed from dated August 5, 1958, is hereby reversed and this case is remanded to the lower court for further proceedings in consonance with this decision. Without costs.

Bengzon, C. J., Padilla, Bautista Angela, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and De Leon, JJ., concur.

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