

TIONG SAN EMPLOYEES UNION AND FEDERATION OF HOTELS, RES-TAURANT AND GENERAL WORKERS UNION OF THE PHILIPPINES, PETITIONERS, VS. ANDRES LAO, SR., DOING BUSINESS UNDER THE NAME AND...

G.R. No. L-28389. March 15, 1971

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

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

G.R. No. L-28389 is a petition for review of the injunction-order issued by the Court of Industrial Relations on 25 July 1967 (in its Case No. 219-Inj.), affirmed by resolution of the court en banc of 4 December 1967; while G.R. No. L-29079 is an original petition filed in this Court to prohibit the respondent judge of the Court of First Instance of Manila from taking cognizance of Civil Case No. 71186 of said court. The parties in both instances being practically the same, and the issues involved therein having arisen from the same set of facts, We are taking up the two cases together.

It appears from the records that on account of the strike staged by some of its employees on 10 July 1967, Tiong San Bazaar, located in Baguio City and owned and operated by Andres Lao, Sr., petitioned the Court of Industrial Relations on 18 July 1967 (Case No. 219-Inj) for a writ of preliminary injunction to restrain the respondents Tiong San Employees' Union (hereinafter referred to as the Union), to which the striking employees were affiliated, and the Federation of Hotels, Restaurants and General Workers Union of the Philippines[1] (hereinafter referred to as the Federation), from picketing the establishment and premises of petitioner; from preventing, by means of coercion, violence, force and intimidation, the entering into the establishment of employees who were willing to go to work, and from unlawfully impeding, obstructing or hampering the ingress and egress of its customers. Petitioner, likewise, prayed that respondents be ordered to pay damages; that after hearing the injunction be made permanent, the strike be declared illegal, and petitioner be authorized to dismiss the employees or workers who participated in the said illegal strike.

After an ex-parte hearing, during which the petitioner's evidence was received, the hearing judge issued an order, dated 25 July 1967, enjoining the respondents, among other things, from obstructing or blocking the free and customary ingress and egress of customers in petitioner's store; from disrupting the business operations of petitioner by means of stationary human blockade at the entrances to the establishment; and from instilling fear to the non-striking workers.

On 26 July 1967, the respondent Unions moved for the dismissal of the petition for lack of jurisdiction, contending that as the petition did not mention any unfair labor practice, then the action is a simple case of injunction properly cognizable by the regular courts. On the same day, said Unions also filed with the court en banc a motion for reconsideration of the injunction-order, on the ground that the requisites for the issuance thereof ex-parte, as provided in Section 9, paragraph (d) of Republic Act 875, were not complied with. It was pointed out that the fact that the police officers made arrests of the picketers indicated that the police authorities were not

unable nor unwilling to provide adequate protection to petitioner as to entitle the latter to a writ of preliminary injunction without respondents' evidence.

The records also show that under date of 29 July 1967 (four days after issuance of the preliminary injunction), Tiong San Bazaar and/or Andres Lao, Sr., filed charges of unfair labor practices against the Union, the Federation, and 14 individuals.[2] It was there alleged that on 27 April 1967, complainant received a letter from the respondents demanding the reinstatement of Teresita Mortera in its employ; that when said demand was refused because Mortera's contract of employment had terminated on 31 January 1967, and she had already found employment in another firm as of February, 1967, the respondent workers staged a strike on 10 July 1967 without previous notice; that the strike and picketing in the establishment were causing losses to said complainant at the rate of P6,000.00 a day. On 3 August 1967, the formal complaint for unfair labor practice based on the aforementioned charges was filed by the Acting Assistant Chief Prosecutor of the Court of Industrial Relations (Case No. 4766-ULP).

The respondents moved for the dismissal of this case for lack of cause of action, claiming that the complainants' charges of 29 July 1967, as well as the complaint of 3 August 1967, were apparently "after thoughts" filed to bestow jurisdiction on the court, after the want of such jurisdiction became manifest in Case No. 219-Inj.

On 2 September 1967, the hearing judge issued in this Case No. 4799-ULP a writ of preliminary injunction, restraining respondents Union and Federation, their agents and representatives, from unlawfully obstructing, blocking and preventing the free and customary ingress and egress of complainant's employees desiring to work, and the customers wanting to do business with them; from coercing and threatening the non-striking employees and from maintaining a picket so close to the premises as to prevent the passage of employees, customers and the transit of goods.

Upon the other hand, it appears that as early as 18 April 1967 a complaint for unfair labor practice was already filed against Tiong San Bazaar, Andres Lao, Sr., Rosario Lao, and Cesar Mendoza (Case No. 4736-ULP) for the dismissal of Teresita Mortera allegedly on account of union activities. And on 7 August 1967, another complaint for unfair labor practice (Case No. 4803-ULP) was filed in the Court of Industrial Relations against Andres Lao, Sr., in connection with the dismissal of union members Erlinda Genove, on 9 May 1967; Josefina Dalibuso, on 14 June 1967; Patricia Balanag, on 15 May 1967; Mercedes Mallek, on 17 May 1967; and Lydia Calderon, on 30 May 1967, allegedly for union activities.

In a single decision rendered on 16 September 1967 in Cases Nos. 4736-ULP, 4799-ULP and 4803-ULP, which were consolidated, the court made the findings that the separation of Teresita Mortera from Lao's employ on 31 January 1967 was due to the expiration of her contract of employment and not because of union activities, as claimed in Case No. 4736-ULP; that the dismissals of Erlinda Genove, Patricia Balanag, Josefina Calibuso, Mercedes Mallek and Lydia Calderon were all for cause, ranging from dishonesty, inefficiency, to discourtesy, and not by reason of union membership, as charged in Case No. 4803-ULP. The Court, therefore, ruled that since none of the reasons given in the Federation's notice of strike, dated 15 May 1967, had been substantiated, then the strike was for trivial causes. Then, taking into consideration the evidence introduced by the employer in Case No. 4799-ULP, to the effect that the strikers and their sympathizers, in carrying out the strike, not only picketed the premises of the establishment by standing immobile at the entrances to the store, thereby preventing the free ingress and egress of customers, but even verbally threatened with harm non-strikers and customers alike, the court concluded that the picketing was conducted in an illegal manner. Consequently, Cases Nos. 4736-ULP and 4803-ULP were dismissed; the Union, as a direct affiliate of the Federation, was declared to have committed an illegal strike which commenced on 10 July 1967; and respondents Dionisia Balanon, Fe Deioferio, Rosalina Carreon, Catalina Flores, Violeta Gurion, Charito Milana, Leticia Dumpit, and Mila Bacuites were declared to

have lost their status as employees of Andres Lao, Sr.

Meanwhile, in Case No. 219-Inj., the Industrial Court en banc, by resolution of 4 December 1967,[3] denied the respondents' motion for reconsideration of the 25 July injunction-order, with two judges con-curring on the ground that it has become moot and academic, and one judge not taking part therein. From this resolution, the respondents took an appeal to this Court, which was docketed as G.R. No. C-28389.

On 6 November 1967, Andres Lao, Sr., commenced in the Court of First Instance of Manila Civil Case No. 71186, for damages, for alleged losses that he sustained on account of the strike and picket conducted by the defendants, which were declared illegal by final de-cision of the Court of Industrial Relations in consolidated Cases Nos. 4736-ULP, 4799-ULP, and 4803-ULP. Plaintiff, whose given postal and business address was 313 Vermont, Malate, Manila, demanded from the defendants[4] payment of the aforesaid actual damages for loss of gross income from 10 July to 10 October 1967, at the rate of from P5,000.00 to P6,000.00 a day; for loss of income at the rate of P1,000.00 a day, from 10 July to 10 October 1967; the sum of P200,000.00, as moral damages; P50,000.00, as nominal and exemplary damages; P5,000.00, for transportation and court expenses; P10,000.00, as attorneys' fees; and for costs of the suit.

Against the complaint, defendants filed a motion to dismiss, alleging improper venue, lack of cause of action, absence of jurisdiction by the court, and untimeliness of the action. It was defendants' claim that in the various cases brought to the Court of Industrial Relations, plaintiff's postal and business address had always been Nos. 48-50 Magsaysay Baguio City; that pursuant to Section 15 of Republic Act 875, the violation by a labor organization of its duty to bargain collectively, which includes going on strike without first bargaining collectively with the employer, shall cause only the denial to the striking union members of their rights and privileges under the Act; that mere membership in a labor union is not suf-ficient reason to hold one liable for the acts of individuals carried out for the union; that there still remained unresolved by the Court of Industrial Relations a motion connected with the case.[5] Furthermore, the de-fendants referred to the appeal taken to this Court from the resolution of the Industrial Court en banc in CIR Case No. 219-Inj. (G.R. No. L-28389) as additional support to their allegation that the action for damages was premature.

On 1 April 1968, the motion to dismiss was denied, the court holding that plaintiff's present residence being at 616 Vermont, Malate, the filing of the action in the Manila Court of First Instance was proper; that the allegations of the complaint were sufficient to constitute a cause of action, because the 16 September 1967 decision in CIR Case No. 4799-ULP, upon which the action was based, was already final; and that the objection against the timeliness of the action, being evidentiary, can only be determined after hearing on the merits. The motion for reconsideration of this order having been denied, the defendants filed in this Court the present prohibition proceeding, which was docketed as G.R. No. L-29079.

The issue in case G.R. No. L-28389 actually is very simple, i.e., whether or not the hearing judge was correct in issuing an ex-parte writ of preliminary injunction on 25 July 1967, to restrain the picketing of Tiong San Bazaar by herein petitioners, and the court en banc, in affirming said injunction in its resolution of 4 December 1967.

It needs no emphasis that an ex-parte writ of preliminary injunction such as the one issued by the hearing judge on 25 July 1967, which was the subject of herein petitioners' motion for reconsideration in the court en banc, lost its efficacy five days thereafter.[6] This fact was admitted by petitioners themselves in their motion of 5 August 1967.[7] In short, even assuming arguendo that, as charged by the petitioners, the requisites for issuance thereof were not present when the preliminary injunction of 25 July 1967 was ordered, the question of the validity or invalidity of such order had become moot and academic upon expiration of the prescribed five-day period. The court en banc, therefore, could not really have done more than what it did - to deny review or reconsideration of

the disputed order. It follows that an appeal now either from that resolution of the court en banc or from the hearing judge's order of 25 July 1967 would also be moot and academic, and serve no legitimate purpose at all.

In G.R. No. L-29079, on the other hand, the objections of petitioners to the exercise by the Manila Court of First Instance of jurisdiction over the action for damages stem from the argument that the demand should have been made in the unfair labor practice case in the Court of Industrial Relations where the alleged illegality of the strike was declared; that the pendency of the appeal from the 25 July 1967 order of injunction (G.R. No. L-28389) indicates that petitioners are holding on to their employee status, thus making the case fall beyond the competence of courts of general jurisdiction; and that the heavy expenditures and troubles to petitioners that the trial in Manila will entail can be avoided because the Industrial Court can hold hearings anywhere in the Philippines.

The present petition is devoid of merit. The action filed in the court below is a simple case for recovery of damages arising from certain illegal acts allegedly committed by therein defendants. It has nothing to do at all with the relationship between an employer and his employees, nor with any labor dispute pending in the Court of Industrial Relations. It must be remembered that the decision in consolidated Cases Nos. 4736- ULP, 4799-ULP and 4803-ULP had already become final, and there is no showing that said cases were not thus closed and terminated. Neither would the pendency of herein petitioners' motion for reconsideration in Case 219-Inj., and the subsequent filing of the appeal to this Court from the re-solution denying the same, provide support to the contention that jurisdiction over the demand for damages belongs to the Court of Industrial Relations, or that the said action is premature. The issue raised in that motion for reconsideration, besides having become moot and academic after 30 July 1967, has nothing to do at all with the alleged commission by defendants (herein petitioners) of illegal acts until 10 October 1967.

The jurisprudential rule prevailing at the time was that the Court of Industrial Relations could not validly make in an unfair labor practice case an award for damages sustained by the employer. For the issue would then be one purely civil in nature, a pure money matter, which is cognizable by the Court of First Instance, as ruled by this Court in *Cueto vs. Ortiz*, 108 Phil. 538, 541 (citing *Allied Free Workers' Union vs. Apostol*, 102 Phil. 292). And in *Erlanger & Galinger, Inc. vs. Erlanger & Galinger Employees Association*, 104 Phil. 17,21, it was said:

"While there is merit in petitioner's claim that the lower court should not have dismissed its entire petition on the ground of lack of jurisdiction, because said petition also asks for payment of the damages suffered by the company on account of the alleged acts of violence and coercion committed by the respondent union in the course of its picket-ing of petitioner's premises, whether or not such damages are recoverable, and to what extent, would still have to depend on the evidence in the unfair labor practice case between the parties pending in the Court of Industrial Relations, and its final outcome. As the dismissal of the present action by the lower court was made without prejudice, such dismissal does not cause petitioner any substantial injury or damage, as it may institute another action for damages against the respondent union if its right to do so is held to exist by the Industrial Court."

The fact that the filing of the damages case would cause inconveniences to therein defendants would not justify the dismissal of the action. In the first place, it is not one of the grounds provided for the purpose under the Rules, and, secondly, such inconveniences on the part of the defendants can not defeat the right specifically granted by the Rules[8] to the plaintiff, to select the proper venue for his action.

FOR THE FOREGOING CONSIDERATIONS, the appeal from the order of 25 July 1967 and resolution of the court en banc of 4 December 1967, in Case G.R. No. 28389, are hereby affirmed; and the petition in Case G.R. No. L-29079 is dismissed with costs against the petitioners in both instances.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Ruiz Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Fernando, J., did not take part.

[1] The Union is an affiliate of this federation.

[2] Named respondents, together with the Union and the Federation, were Dionisia Balanon, Fe Deoferio, Rosalina Carreon, Catalina Flores, Violeta Gurion, Patricia Balanag, Erlinda Genove, Josefina Calibuso, Charito Milana, Leticia Dumpit, Mila Bacuites, Mercedes Mallek, Lydia Calderon, and Teresita Mortera.

[3] Copy of this resolution was received by the respondents on 5 December 1967.

[4] The action was filed against the Federation, its president, Leon Rabot, its counsel, Atty. Pedro Claravall, and members Teresita Mortera, Dionisia Balanon, Mercedes Mallek, Erlinda Genove, Fe Deoferio, Leticia Dumpit, Violeta Gurion, Patricia Balanag, Josefina Calibuso, Catalina Flores, Rosalina Carreon, Charito Milana and Lydia Calderon.

[5] Motion for reconsideration of the order of the Industrial Court denying the unions' motion to cite Andres Lao, et al. for contempt.

[6] Section 9, paragraph (d), sub-paragraph (5), Republic Act No. 875.

[7] Page 56, CIR folder.

[8] Section 2 (b), Revised Rule 4, Rules of Court.

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