

TIONG KING PETITIONER VS. COURT OF INDUSTRIAL RELATIONS AND THE NATIONAL TAILORS ASSOCIATION, RESPONDENTS.

G. R. No. L-3587. December 21, 1951

Ponente: PARAS, C.J.

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PARAS, C.J.:

Gaw Pun So owned and operated a tailor shop known as the Army Shirt Factory, located in his own house at Nos. 231-245 Soler Street, Manila. In January, 1948, he had a labor dispute with his personnel and, pending the case in the Court of Industrial Relations, Gaw Pun So, irked and worried by the incidents of litigation, thought of dissolving the business and selling the sewing machines. Aware of the plan of Gaw Pun So, Tiong King offered to take over the business by leasing the place and the sewing machines. The transfer was put in writing. Tiong King continued the Army Shirt Factory from the month of February with the same employees had by Gaw Pun So. This transfer was known to the personnel, so much so that the latter, as petitioner in the pending dispute in the Court of Industrial Relations, Case No. 117-V, entitled National Tailors Association vs. Army Shirt Factory et al., prayed that Tiong King be included as a respondent. In due time, the National Tailors Association entered into an agreement with Tiong King alone, to the effect that all cases were terminated against the respondents. This agreement was duly approved by the Court of Industrial Relations.

Tiong King put up a capital of P7,000.00. On April 27, 1948, Tiong King filed a petition in the Court of Industrial Relations Case No. 117-V-3, alleging that since he operated his shop in February, 1948, he had continually suffered losses; that as there remained only very little of the capital originally invested, Tiong King thought it advisable to close the business to avoid further irreparable losses; and that he was definitely closing the shop on May 30, 1948. Tiong King accordingly prayed that he be allowed to close his tailor shop and business from six o'clock in the afternoon of May 29, 1948. On the same date, April 27, 1948, Tiong King gave out a notice of the projected closing of the Army Shirt Factory, with the announcement that his personnel would be paid their salaries and wages on May 29, 1948, at six o'clock in the afternoon. On May 29, 1948, Presiding Judge Arsenio C. Roldan of the Court of Industrial Relations issued an order enjoining Tiong King not to close his factory and not to dismiss, suspend or lay off any laborer or employee without previous authority of said court.

After hearing, Presiding Judge Roldan rendered a decision dated January 13, 1949, dismissing the petition of Tiong King and ordering him to pay his personnel from the last week of May, 1948, up to the date of the decision, at the rates specified therein.

Upon petition for reconsideration filed by counsel for Tiong King, the Court of Industrial Relations promulgated a resolution dated May 27, 1949, allowing Tiong King to close his business and shop, subject to the condition that, upon reopening the same, his former personnel would be taken back. This resolution was concurred in by Judges Jose S. Bautista, Modesto Castillo and Juan L. Lantin. Presiding Judge Arsenio C. Roldan and Judge Vicente Jimenez Yanson dissented in a separate opinion dated June 30, 1949.

Upon motion for reconsideration filed by counsel for the National Tailors Association, the Court of Industrial

Relations, thru Presiding Judge Roldan and Judges Castillo and Yanson, promulgated a resolution dated October 31, 1949, reaffirming their stand on the resolution of the Court of Industrial Relations under date of July 1, 1949. Judges Lantin and Bautista dissented in a separate opinion dated November 10, 1949.

The present appeal by certiorari was taken by Tiong King against the last resolution of the Court of Industrial Relations.

The principal ground invoked by Presiding Judge Roldan in his decision dated January 13, 1949, dismissing the petition of Tiong King and ordering him to pay the salaries and wages of his personnel, is that Tiong King was not in fact the lessee, much less the true owner, of the Army Shirt Factory, and that the alleged transfer of the business to Tiong King was a mere device to ease out the workers of Gaw Pun So. As a matter of fact, in the dissenting opinion dated June 30, 1949, obviously referred to in the appealed resolution of the Court of Industrial Relations dated October 31, 1949, Presiding Judge Roldan and Judge Yanson stated as follows: "It is regretted that the majority opinion failed to note that the trial court never denied the right of any party to file a petition to close its business. What the Court has maintained was that, said petition should be made, following certain fundamental rules of procedure (Rule 3, sec. 2, Rules of Court), in the name of the real owner, who could be affected by whatever decision the court may render in the case at bar, and not by any person whose claim is a mere pretension that could cast doubt regarding the veracity of his fictitious rights.

The decisive question before us, therefore, is not whether Tiong King had no more capital with which to continue the Army Shirt Factory, but whether he was the owner or operator thereof and had the right to file the petition in the Court of Industrial Relations to close the same. Upon this point, it is only sufficient to recall that the National Tailors Association entered into a stipulation with Tiong King alone whereby they agreed that all cases against the former owners of the business were terminated. As correctly observed in the resolution of the Court of Industrial Relations dated May 27, 1949, granting the petition of Tiong King, "Este traspaso del negocio a favor de Tiong King no se hizo a escondidas. Lo sabia la misma peticionaria; de ahi que esta pidio primero al Tribunal que se la incluyera a aquel como uno de los recurridos en estas actuaciones." That Tiong King was conceded to be the owner,¹ and operator of the Army Shirt Factory at the time his petition to close it was filed, is conclusively borne out by the fact that Presiding Judge Roldan in his decision of January 13, 1949, ordered Tiong King, and not Gaw Pun So, to pay the salaries and wages of the personnel.

It is contended, however, that "If at all the Court has approved of the agreement between the National Tailors Association and Mr. Tiong King it was because 'this arrangement is a very good solution to the present conflict as it is advantageous not only to the union but also the management, and, is in consonance with the contract entered into between the management and the new workers.'" This contention is followed with the remark that the approval of said agreement did not include a finding that Tiong King was either the owner or the lessee of the Army Shirt Factory. We are unable to agree. In entering into the agreement with the National Tailors Association, Tiong King acted in his own behalf, regardless of the former owners of the business. Indeed, it was covenanted that all the cases against the latter were deemed terminated. Considerations of fair play and justice demand that Tiong King be given the full legal effect of said agreement which bore the sanction of the Court of Industrial Relations.

On the surface it may be argued that we have reversed, in violation of section 2, Rule 44, of the Rules of Court, the Court of Industrial Relations on its finding of fact that Tiong King was neither the owner nor the lessee of the business in question. At bottom, however, the argument must fall because, regardless of said result, we have merely passed upon and determined the legal effect of the agreement entered into between the National Tailors Association and Tiong King, to the complete exclusion of the former owners, and duly approved by the Court of Industrial Relations. In other words, we have in essence only held that the Court of Industrial Relations erred in

construing the legal implications of said agreement.

There being no question that Tiong King's capital invested in the Army Shirt Factory was almost exhausted at the time of the filing of his petition to close it, said petition must necessarily be granted. It is admitted by all the Judges of the Court of Industrial Relations that an employee may close his business, provided the same is done in good faith and is due to causes beyond his control. To rule otherwise, would be oppressive and inhuman.

Wherefore, reversing the resolution of the Court of Industrial Relations dated October 31, 1949 we hereby affirm the resolution of said court dated May 27, So ordered without costs.

Bengzon, Montemayor, Jugo, and Bautista Angelo, JJ., concur.

Reyes, J., concurs in the result.

DISSENTING

FERIA, J.,

I dissent from the decision of the majority because it is absolutely wrong from the beginning to the end. It begins by declaring as a matter of fact that the petitioner Tiong King was the owner and operator of the Army Shirt Factory, contrary to the finding of fact of the Court of Industrial Relations to the effect that, according to the evidence, "Tiong Bang is not a lessee, as claimed, much less the true and real owner of the tailorshop the closing of which is being sought in the present proceeding, but Gaw Fun So, and that all contracts executed between Gaw pun So and his wife Ng Ki on one side and Tiong King on the other, were pure and simple devise to indirectly compel the members of the petitioning association to abandon the work and be dismissed from the service." And the decision ends by reversing the resolution of the Court of Industrial Relations dated October 31, 1949, and affirming the resolution of said Court dated May 27, 1949, signed then by Judges Bautista, Lantín and Castillo, which became functus officio not only because, upon a motion for reconsideration thereof, Judge Castillo withdrew his conformity therewith by concurring in the dissenting resolution of Judges Roldán and Jiménez of June 30, 1949, which was converted into a majority resolution by resolution of October 31, 1949; but Judges Lantín and Bautista abandoned said resolution of May 27, 1949, by writing a separate dissenting opinion dated November 10, 1949.

Section 2 of Rule 44, relating to appeal from an award, order or decision of the Court of Industrial Relations to the Supreme Court, provides that only question of law may be raised on appeal by certiorari, and this Court has also so ruled in several cases among them in case of *Leyte Land Transportation Co., Inc. vs. Leyte Laborers Union*,^[1] G. R. No. L-1377, promulgated on May 20, 1930. In accordance therewith, attorney for the petitioner Tiong King did not assign in his petition for certiorari as erroneous the finding of the Court of Industrial Relations "that Tiong King is not a lessee much less the true owner or operator of the tailorshop sought to be closed in the present proceeding, and that all contracts executed between Gaw Pun So and his wife on one side and Tiong King on the other were pure and simple devise to indirectly compel the members of the respondent National Tailors Association to abandon the work or to be dismissed from the service."¹¹ The resolution appealed from does not declare Gaw Pun So and Ng Qui jointly liable with Tiong King for the payment of the petitioners' salaries and wages; and therefore the only questions raised in the petition are the following:

"(1) That herein petitioner Tiong King could not legally close his tailor shop or tailoring business, from May 30, 1948, notwithstanding the fact that his P7,000.00 working capital had become exhausted;

"(2) That petitioner Tions King was under obligation to pay the wages of his laborers and seamstresses, alleged

members of the National Tailors' Association, numbering more than forty (40), from May 30, 1948, in the amount of over 540,000.00, 'which Tiong King did not have;" (Petition for certiorari, p. 10)

This case was set for hearing on September 18, 1950. On September 16 attorney for the petitioner-appellant moved that he be given 10 days with/which to submit a brief memorandum in lieu of oral argument; and the attorney for the respondent also prayed that he be given 10 days from receipt of the memorandum for the petitioner to make/reply thereto. Both petitions were granted; but neither the petitioner appellant nor the respondent appellee filed their memoranda. "What the petitioner filed is a constancia which reads as' follows;

"NOW COMES the undersigned attorney for the petitioner Tiong King, and before this Honorable Supreme Court respectfully makes of record the following:

"1. That after a careful study and examination of the memorandum brief filed by the respondents, it is deemed unnecessary to file any extensive memorandum of oral argument, in reply thereto, and submits the case for decision.

"2. And that petitioner merely reiterates his contention that no person can be compelled to continue in business and pay his laborers, once his capital has been exhausted, as shewn in the authority s cited in our memorandum dated April 12, 1950, filed in this case."

"So this case was submitted for decision and the only question raised or reiterated by the petitioner-appellant is his contention that "no person can be compelled to continue in business and pay his laborers, once his capital has been exhausted."

No question is raised or may be raised in this appeal by certiorari that Tiong King is not the owner or operator as lessee of the Army Shirt Factory, because that is a question of fact decided conclusively by the lower court against the appellant. But the majority decision, contrary to what appears in the record, says the following:

"The decisive question before us, therefore, is not whether Tiong King had no more capital with which to continue the Army Shirt Factory, but whether he was the owner or operator thereof and had the right to file the petition in the Court of Industrial Relations to close the same. Upon this point, it is only sufficient to recall that the National Tailors Association entered into a stipulation with Tiong King alone whereby they agreed that all cases against the former owners of the business were terminated. As correctly observed in the resolution of the Court of Industrial Halations dated Lay 27, 1949,. granting the petition of Tiong King, '3ste traspaso del negoeio a favor de Tiong King,no se hizo a escondidas. Lo sabia la misma peticionaria; de alii qua esta pidio primero al Tribunal que se la incluyera a aquel como uno de los recurridos en estas actuaciones.' That Tiong King vias conceded to be the owner and operator of the Army Shirt Factory at the time his petition to close it was filed, is conclusively borne out by the fact that Presiding Judge Roldan in his decision of January 15, 1949, ordered Tiong King, and not Gaw Pun So, to pay the salaries and wages of the personnel."

As to the question of fact whether or not Tiong King was the owner and operator of the Army Shirt Factory, the Court of Industrial Relations in its resolution appealed from, found as already stated above, "that Tiong King is not a lessee much less the true owner or operator of the tailor shop sought to be closed in the present proceeding", and therefore that question can not be raised on appeal by certiorari in this Supreme Court in accordance with the provision of Section 2 of Rule 44. Besides, the fact that the resolution of the trial Judge Roldan of January 17, 1949, affirmed by the Court of Industrial Relations in bane in its resolutions of June 30 and October 31, 1949,"ordered Tiong to pay the salaries and wages of-the personnel," does not prove that he is the true owner or operator of the factory, because Tiong King is liable for the payment of said salaries and wages for having acted in collusion with. Gaw Pun So"according to the finding of fact of court below. If the lower court did not declare Gaw Pun So jointly and severally liable with Tiong King for the payment of said salaries and wages, it is because the former was not a party in this proceeding.

But the decision of the majority in order to circumvent the provisions of section 2 of Rule 44, adds; "On the surface it may be argued that vie have reversed, in violation of section 2, Rule 44, of the Rules of Court, the Court of Industrial Relations on its finding of fact that Tiong King -was neither the owner nor the lessee of the business in question. At bottom, however, the argument must fall because, regardless of said result, vie have merely passed upon and determined the legal effect of the agreement entered into between the National Tailors Association and Tiong King, to the complete exclusion of the former owners, and duly approved by the Court of Industrial Relations. In other words, we have in essence only held that the Court of Industrial Relations erred in construing the legal implications of said agreement."

There is nothing in the record to show what were the facts in controversy which were the object of the agreement (approved by the lower court on February 17, 1948) entered iiito between the petitioner National Tailors Assooiation and Tions King in which it was stipulated that "This agreement is between the National Tailors Association and Tiong King, and all oases are terminated" (against, Gaw Pun So and his wife Ng Ki), except what appears in the resolution appealed from, -which says the following:

"Said agreement only referred to the demands appearing in the petition of the National Tailors' Association subject of Case No. 117-7, as there was then no other case or ca'ses pending between the petitioner National Tailors' Association and tha respondents.Tiong King, and Gaw Pun So. Cases No. 117-7(1), 117-7(2) and 117-V(3) which are incidents of Case No. 117-7 were filed with this Court, as the records show, after said agreement has been signed.

* * * * *

"It is true as a part of the quoted order, it was stated that the agreement was between National Tailors' Association and Mr. Tiong King. There was no finding of the Court, however, that Mr. Tiong King was the owner, neither a finding that he was the lessee. * * *

* * * * *

"Further more, although it is true that the agreement between the National Tailors' Association and respondents Gaw Pun So and Tiong King in Case No. 117-7 which was recognized by the Court on February 17, 1948, absolved Gaw Pun So ana Tiong King of whatever responsibility they might have in connection with the case, it did not contemplate to relieve Gaw Pun So or any obligation that might be the result of his later acts, as that created by collusion between him and Tiong King."

This findings of fact of the majority of the lower court in its resolution of June 30, 1949, appealed from is not contradicted but admitted by the minority, for Judges Lanting and Bautista who abandoned their resolution of May 27, 1949," from which the excerpt quoted in the decision was taken, wrote a dissenting opinion dated Nov. 10, 1949, in which said judges say" "That the question of ownership of the business or that of its lease has never bean squarely presented to and decided by this Court before it is true, but that is no protof at all that Tiong King is not the right party to represent the respondent Army Shirt Factory. Not even in the instant incidental case has that issue been squarely presented by the petitioner. It was only in the decision of Jan. 13, 1949, that the trial judge concluded that there was collusion between Tiong King and Gaw Pun So and that the former is neither the owner of the business nor the lessee of its premises and the sewing machines used in connection therewith."

The ownership of the business or that of its lease not having been in question between the parties, the above mentioned agreement approved by the lov.er court on February 17, 1948, can not have the legal implication of recognizing that Tiong King was the lessee much less the owner or operator of the business, contrary to the findings of fact of the Court of Industrial Relations. Besides, even assuming that said agreement had recognized Tiong King as the lessee or operator of the business and that question became res adjudicata by its approval by the

lower court on February 17, 1948, the legal effect of such agreement was limited to the question then in controversy before and up to the tide of approval of the agreement by the court. But the petitioners, one of the signatory parties were not in estoppel to show by the subsequent acts of Tiong King and Gaw Pun So, and the Court of Industrial Relations to declare on Jan. 11, 1949, or about one year afterwards, that said agreement was entered into and the approval thereof by the court was obtained through fraud, for Tiong King was a mere dummy of Gaw Pun So, and "all contracts executed between Gaw Pun So and his wife Ng Ki on one side, and Tiong King on the other side, were pure and simple devise to indirectly compel the members of the petitioning association to abandon the work or to be dismissed from the service." And furthermore, even if the legal effect of the agreement is that Tiong King was the owner, lessee or operator of the Army Shirt Factory, vafcl no evidence was presented afterwards to show the collusion between Tiong King and Gaw Pun So in entering into said agreement and obtaining the approval of the lower court, and such question is purely of law, this Supreme Court can not pass upon that question because it is not raised by the petitioner-appellant as already shown at the beginning of this opinion.

The remaining question is, whether Tiong King was neither the owner nor the lessee or operator of the Army Shirt factory, had the right to close said factory, for according to the decision of the majority above quoted, "The decisive question before us, is not whether Tioag King had no more capital with which to continue the Army Shirt Factory, but whether he was the owner and operator thereof and had the right to file the petition in the Gourt of Industrial Relations to close the sane." But the majority, in discussing and deciding this second question, forgetting what the decision has previously stated, and we have just copied and underlined, says "There being no question that Tiong King's capital invested in the Army Shirt Factory was almost exhausted at the time of the filing of his petition to close it, said petition must necessarily be granted. It is admitted by all the Judges of the Court of Industrial Relations that an employer may close his business, provided the same is done in good faith and is due to causes beyond his control. To rule otherwise, would be oppressive and inhuman."

In reply to the above, it is sufficient to say that, it having been found by the Court of Industrial Relations in its resolution appealed from that Tiong King was not the lessee, much less the true owner or operator of the Army Shirt Factory, but a mere dummy of Gaw Pun So and his wife, Tiong King cannot be the true owner of the capital invested in said factory. Therefore the above quoted ruling or conclusion has no basis on fact or law, and therefore not applicable to the petitioner appellant Tiong King in the present case.

The reason why the constant ruling of the Court of Industrial Relations that "an owner or employer may close his business, provided the same is done in good faith and is due to causes beyond his control" has not been applied to Tiong King in this case, is because he was found by the lower court to be, not the true owner or operator of a business, but a dummy of Gaw Pun So. It would be useless or of no effect to permit a person, who is not the true owner but a dummy for another, to close the business on the condition, almost always imposed by the Court of Industrial Relations upon an employer authorized to close his business, that he should readmit his former laborers and employees should he reopen his business in the future; because the true ower and not the dummy is the one who may reopen the business, and the true owner would not be bound to comply with such condition should he reopen his business. To authorize Tiong King to close the business in the present case would be tantamount to giving countenance to the plot devised by Gaw Pun So and Tiong King to indirectly compel the members of the Rational Tailors Association to abandon their work or to be dismissed from the service.

The resolution appealed from should therefore be affirmed.

Padilla and Tuason JJ., concur.

The resolution of the court of Industrial Relations of Oct. 31, 1949 is reversed and the resolution of May 27, 1949

of the same court is affirmed.

[1] 80 Phil., 842.

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