LEANDRO P. CRUZ AND RICARDO R. SALVADOR, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION), ENCHANTED KINGDOM, INC., MR. MARIO MAMON, MRS. NIMPHA MADULI AND...

Ponente: BRUSELAS, JR. J.

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BRUSELAS, JR. J.:

Herein petitioners, Leandro P. Cruz and Ricardo R. Salvador, filed the instant petition for certiorari to annul the Resolution[1] of the National Labor Relations Commission (NLRC) that reversed its earlier Decision.[2] It also assails the subsequent Resolution[3] that denied herein petitioners' motion for reconsideration.

In the first Resolution, the NLRC held:

> "WHEREFORE, premises considered, the respective Motions for Reconsideration filed by respondents are hereby GRANTED. The assailed Decision is REVERSED AND SET ASIDE. The Decision of the Honorable Labor Arbiter dated 13 October 2010 is hereby REINSTATED.
>
> SO ORDERED."[4]

Enchanted Kingdom, Inc. (EK) is a domestic corporation that operates an entertainment and amusement theme park located at San Lorenzo South, Santa Rosa, Laguna. 4[th]Dimension Multi-Purpose Cooperative (4D), on the other hand, is a duly registered cooperative.

The petitioners are members-owners of 4D assigned to EK as ride attendants and operators whose main duties involved the operation of various rides like Space Shuttle, Anchors Away, Jungle Logjam, Roller Skater, Up Up and Away, and Dogem. Petitioners Cruz and Salvador were assigned to EK on 11 February 2005 and on 22 April 2005, respectively.

By reason of the petitioners' failure to meet EK's standards on performance and attitude, their respective assignments were cancelled effective 28 June 2009 per Memorandum[5] issued by Bernadette Naling (Naling), 4D's coordinator for EK. This cancellation of assignments was later on revoked[6] by Maribel Salta (Salta) because the Memorandum issued by Naling did not bear her signature.

On 08 July 2009, the petitioners instituted a complaint for illegal dismissal; regularization; underpayment/non-payment of holiday pay, 13[th] month pay, and separation pay; illegal deduction; and indemnification for damages as well as attorney's fees against EK, Mario O. Mamon[7] (Mamon), Nympha C. Maduli[8] (Maduli), 4D, Salta and Naling.

The petitioners asserted that they were regular employees of EK because, as machine operators, they worked under the control and supervision of EK's regular employees and that their work was clearly related to the principal business of EK. They claimed that EK dismissed them without substantive and procedural due process. Furthermore, they contended that 4D was engaged in labor-only contracting.

Respondents EK, Mamon and Maduli countered that they were not real parties-in-interest because there was no employer-employee relationship between them and the petitioners. They must therefore be dropped from the suit. They added that the petitioners were members-owners of 4D, a registered and legitimate contractor with a paid-up capital of P2.264M.

For its part, 4D maintained that it is a legitimate labor contractor duly registered with the Cooperative Development Authority and the Department of Labor and Employment (DOLE). It contended that it cannot be considered as a labor-only contractor because it is engaged in a business separate and distinct from the businesses of its clients and it has sufficient capital. It added that the petitioners' assignment to EK was in accordance with a Service Contract between 4D and EK. Even assuming that the petitioners' assignments were directly related to the business of EK, it would still not make 4D a labor-only contractor relying on Neri v. NLRC. [9]

They further argued that the complaint should be dismissed because the petitioners were not actually terminated from work. Salta explained that with her revocation of the memorandum issued by Naling, the petitioners remained to be assigned at EK. Salta alleged that she continuously communicated with the petitioners but the latter refused to return to EK or to be re-assigned to other clients. As the petitioners were the ones who opted not to work, they were not entitled to reinstatement or separation pay and monetary claims.

In their Reply, the petitioners, relying on Vinoya v. NLRC,[10] averred that there is permissible job contracting when a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job or undertaking, which refers to a particular job or undertaking that is not within the regular business of the corporation. Since they performed services necessary and desirable to the principal business of EK under the direct control and supervision of the latter's employees, 4D could not therefore be considered as having engaged in permissible job contracting.

EK, Mamon and Maduli countered that while the petitioners were performing activities that were directly related to the main business of EK, there can still be no labor-only contracting because the petitioners were rendering special or technical services for which EK was concerned only with the end-result.

On 13 October 2010, Labor Arbiter Robert A. Jerez ruled that there is no employer-employee relationship between the petitioners and EK. For one, the petitioners failed to prove that EK selected and engaged them as employees, paid their wages, had the power to dismiss them, and controlled them not only as to the result of their work but also as to the means and methods of accomplishing the same. On the contrary, it was 4D who remitted the contribution of its members-owners, including the petitioners, to the Social Security System (SSS) and Philippine Health; and had right of control over their members-owners. For another, 4D is not a labor-only contractor but an independent job contractor and so, the petitioners were employees of 4D and not of EK. He added that since 4D was not a labor-only contractor and EK was not the petitioners' employer, both 4D and EK could not be held jointly and severally liable, thus:

> “WHEREFORE, premises considered, the instant labor case is DIMISSED with prejudice.
>
> SO ORDERED.”[11]

Dismayed, the petitioners appealed the decision of the LA to the NLRC. The latter reversed the decision of the LA and held:

> “WHEREFORE, the Decision of the Labor Arbiter is hereby REVERSED and SET ASIDE and a new one is ENTERED as follows:
>
> 1. Declaring respondent 4[th] Dimension Multi-purpose Cooperative (4D) to have been engaged in labor-only contracting;

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2. Declaring complainants as regular employees of respondent Enchanted Kingdom, Inc. (EK);

3. Declaring complainants to have been illegally dismissed from their employment and they should be reinstated to their previous posts without loss of seniority rights and privileges; and

4. Holding respondents Enchanted Kingdom, Inc. (EK) and 4[th] Dimension Multi-Purpose Cooperative (4D) jointly and severally liable to pay complainants the following:

a. Backwages computed from the date of complainants dismissial, i.e., on 28 June 2009, up to the finality of this Decision;

b. Five-day service Incentive leave pay, holiday pay and 13th month pay computed for the period July 8, 2006 up to the date of their termination from the service on June 28, 2009; and

c. Attorney's fees equivalent to ten (10) percent of the total monetary award.

The computation made by the Computation and Examination Unit of this Commission on the judgment award shall form an integral part of this Decision.

SO ORDERED."[12]

The NLRC held that 4D failed to present proof, such as audited financial statements, that it has substantial capital or investment. While 4D had authorized share capital of P30M, its paid-up capital of P2.264M was only 7.54 percent thereof. Further, it noted that the functions performed by the petitioners as ride operators are part and parcel of EK's main business of providing amusement and entertainment to the public. The NLRC found the case of Neri to be inapplicable because in that case, the therein respondent had substantial capital and implemented its contract according to its own manner and method, free from the control and supervision of its principal. Thus, it was convinced that 4D was involved in labor-only contracting and the petitioners were indeed employees of EK. The NLRC also found that the petitioners were illegally dismissed.

The private respondents filed their separate motions for reconsideration where they insisted that 4D was a legitimate, independent job contractor. They submitted the Cooperative Annual Performance Report of 4D as of 31 December 2010.

This time, the NLRC took an opposite view and reinstated the findings of the LA. It gave weight to the Certificate of Registration[13] issued by the DOLE and Cooperative Annual Performance Report[14] of 4D as of 31 December 2010. It then concluded that inasmuch as 4D carries a distinct and independent business and has substantial capital, the ruling in Neri becomes applicable.

The petitioners moved for a reconsideration but their motion was denied.

Aggrieved, the petitioners resorted to this petition for certiorari based on the following grounds:

"THE NATIONAL LABOR RELATIONS COMMISSION (NLRC, OR COMMISSION) COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN REVERSING ITS PREVIOUS RULING AND RULING THAT THE NERI RULING IS FOUR SQUARES IN THE INSTANT CASE

THE NLRC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RULING THAT ENCHANTED KINGDOM IS NOT THE REAL EMPLOYER OF HEREIN PETITIONERS, BUT 4D WHICH IS NOT LIABLE

THE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT PETITIONERS ARE NOT ENTITLED TO THEIR MONEY CLAIMS

> THE NLARC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RULING THAT PETITIONERS ARE NOT ENTITLED TO THE RELIEFS PRAYED FOR"[15]

What the petitioners consider and characterize as grave abuse of discretion is the finding of the NLRC that 4D is a legitimate job contractor. To be sure, whether or not 4D is a legitimate job contractor is a question of fact. It is a settled rule that findings of fact made by the labor tribunals which have acquired expertise in matters within their specific and specialized jurisdiction, and which findings are supported by substantial evidence on record, are generally entitled to and accorded great respect unless the petitioner is able to show that the NLRC simply and arbitrarily disregarded evidence before them or had misapprehended evidence of such a nature as to compel a contrary conclusion, if properly appreciated. It is thus incumbent upon the petitioners to satisfactorily establish that the NLRC acted capriciously and whimsically, in total disregard of evidence material to or even decisive of the controversy, in order that the extraordinary writ of certiorari may lie. This burden the petitioners have failed to discharge.

The petitioners claim that the NLRC misapplied the Neri ruling because it was already clarified in Vinoya and Coca-Cola Bottlers Phils., Inc. v. Agito.[16]

We note that the NLRC put emphasis on the following portion of the ruling in Neri, to wit:

> "xxx But, having established that it has substantial capital, it was no longer necessary for BCC to further adduce evidence to prove that it does not fall within the purview of "labor-only" contracting. There is even no need for it to refute petitioners' contention that the activities they perform are directly related to the principal business of respondent bank."

Neri declared that once it has been established that the contractor has substantial capital, there is no more need to controvert the allegation that the activities performed are directly related to the principal business of the principal. This, to our mind, still controls.

The statutory basis of legitimate labor contracting or subcontracting is provided in Article 106 of the Labor Code which reads –

> "ART. 106. Contractor or subcontractor. – Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
>
> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.
>
> The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.
>
> There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter

> were directly employed by him."

The prevailing implementing rule on labor-only contracting at the time of the petitioners' employment in 2005 or when EK and 4D entered into a service contract on 01 January 2009 is DOLE Department Order No. 18-02, series of 2002. Under said Department Order, labor-only contracting is defined as an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

> (i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or
>
> (ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.

For labor-only contracting to exist, any of the two elements must be present. With respect to the first element, Article 106 of the Labor Code as well as its implementing rules require that (1) the contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed, and (2) the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal. With the use of the conjunction "and," it is clear that both requisites must be proved. Absence of one of these requirements negates labor-only contracting insofar as the first element is concerned. No amount of abuse of discretion can thus be imputed to the NLRC for relying on the above-quoted pronouncement of Neri.

We are not unmindful of Vinoya which interpreted the principle in Neri in relation to the subsequent case of Philippine Fuji Xerox Corporation vs. NLRC.[17] While the Supreme Court clarified in Vinoya that it was not enough to show substantial capitalization or investment in the form of tools, equipment, machineries and work premises, among others, to be considered as an independent contractor, it did not set aside Neri. In fact, in Sasan v. NLRC,[18] the Supreme Court still adhered to Neri and stated:

> "We have expostulated that once it is established that an entity such as in this case, HI has substantial capital, it was no longer necessary to adduce further evidence to prove that it does not fall within the purview of "labor-only" contracting. There is even no need for HI to refute the contention of petitioners that some of the activities they performed such as those of messengerial services are directly related to the principal business of E- PCIBank." (Citation omitted)

Granting, for the sake of argument, that the NLRC erred in applying Neri, such would only constitute an error of judgment which is not within the province of a special civil action for certiorari. The rule is settled that a petition for certiorari is merely confined to issues of jurisdiction or grave abuse of discretion.

Significantly, the NLRC's conclusion that 4D has substantial capital is not without basis.

To prove that 4D has substantial capital, 4D and EK presented before the LA its Articles of Incorporation, which indicated that it had authorized share capital of P30M, 25% thereof has been subscribed and P2.264M was fully paid. Upon their motion for reconsideration of the first decision of the NLRC, 4D and EK submitted 4D's Annual Performance Report as of 31 December 2010 with assets of P34.030M and a paid-up share capital of P6.305M.

Section 13 of the Corporation Code of the Philippines provides that the amount of capital stock to be subscribed at the time of incorporation shall be at least 25% of the authorized capital stock as stated in the articles of incorporation and at least 25% of the total subscription must be paid upon subscription and in no case shall the paid-up capital be less than P5,000.00. The same requirements are also found in the Cooperative Code of the

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Philippines except that the paid-up capital shall be no less than P2,000.00.[19] Based on 4D's Articles of Incorporation, 4D had a total subscription of P7.5M and a paid-up capital of P2.264M which is 30.19% of the total subscription.

Under DOLE Department Order No. 18-A, series of 2011, substantial capital refers to paid-up capital stocks/shares of at least Three Million Pesos (P3,000,000.00) in the case of corporations, partnerships and cooperatives. This, however, may not be strictly applied to 4D because there was no such requirement at the time of its incorporation in year 2003. Besides, as of 31 December 2010, 4D had increased its paid-up capital to P6.305M, which is already 84.07% of the total subscription and more than twice the minimum requirement of P3M. There is therefore no doubt that 4D, as found both by the LA and the NLRC, has substantial capital.

The petitioners also insist that the NLRC committed grave abuse of discretion in finding that 4D is a legitimate job contractor because the following elements were not duly established by 4D and EK, to wit:

> "(i) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility, according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;
>
> "(ii) The contractor or subcontractor has substantial capital or investment; and
>
> "(iii) The agreement between the principal and contractor or subcontractor assures the contractual employees' entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits."

We must stress, however, that the foregoing conditions were found in Department Order No. 10, series of 1997 which had already been revoked by Department Order No. 03, series of 2001. These requirements were not also reinforced in Department Order No. 18-02, series of 2002. Thus, 4D and EK may not be expected to present evidence to establish those conditions in order to prove that 4D is a legitimate job contractor. As a matter of fact, after the LA found that 4D was a legitimate job contractor, the petitioners never invoked those requirements in their Appeal Memorandum before the NLRC. These matters were only discussed by the petitioners in the instant petition for certiorari.

Even if we are to consider the above-mentioned elements, we still find no grave abuse of discretion on the part of the NLRC in concluding that 4D is a legitimate job contractor.

First, based on the Certificate of Registration issued by the DOLE to 4D, the latter had complied with the requirements provided under the Labor Code, as amended, and its implementing rules. As noted by the NLRC, 4D also provided various services to a wide range of clientele including Speedo, Sky Cable and Philippine Airlines. Moreover, 4D exercised the power to issue, transfer, or revoke assignments of its members-owners to any of its clients. In fact, 4D paid the salaries of its members-owners, including the petitioners, and remitted the latter's SSS, Pag-ibig and PhilHealth contributions. These circumstances clearly indicate that 4D carried on a distinct and independent business and undertook to perform the service on its own account and under its own responsibility.

Second, as discussed above, 4D has substantial capital. As of 31 December 2010, it had a paid up capital of P6.305M, which is more than twice the minimum requirement of P3M.

Third, paragraph 6.3 of the service contract between 4D and EK expressly provides that the former shall be responsible for and ensure the proper pay of its members-owners assigned to the latter. This provision considerably complies with the last condition.

The court has ample discretion to reject and dismiss a petition for certiorari (1) when the petition fails to

demonstrate grave abuse of discretion by any court, agency, or branch of the government or (2) when it fails to show any procedural errors, like violations of the Rules of Court or of Supreme Court Circulars.[20] Having failed to show grave abuse of discretion on the part of the NLRC in rendering the assailed resolutions, the petitioners are not entitled to a writ of certiorari. The finding by both the LA and the NLRC that 4D is a legitimate job contractor has substantial support.

Anent the issue of whether or not the petitioners were illegally dismissed, we are prevented from dwelling on the matter just as both the LA and the NLRC had been similarly constrained. The petitioners' Position Paper simply claimed that EK was their employer, that 4D was a labor-only contractor, and that they were illegally dismissed by EK. There was no sufficient allegation of illegal dismissal against 4D. Thus, there can be no factual or legal basis for us to rule on the matter as well as on the petitioners' respective monetary claims.

WHEREFORE, the instant petition for certiorari is DISMISSED.

IT IS SO ORDERED.

Bueser and [*]Paredes, JJ., concur.

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[*] Actg. Third Member per Office Order No. 55-15-ABR dated 23 February 2015.

[1] Issued by Commissioner Angelo Ang Palana, concurred by Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena, on 21 February 2012, Rollo, pp. 434-451.

[2] Written by Commissioner Angelo Ang Palana, concurred by Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena, on 15 November 2011, Rollo, pp. 291-310.

[3] Also issued by Commissioner Angelo Ang Palana, concurred by Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena, on 15 May 2012, Rollo, pp. 479-480.

[4] Rollo, p. 450.

[5] Rollo, p. 219.

[6] Rollo, p. 220.

[7] Chairman/President of EK

[8] Head of Human Resources of EK

[9] G.R. Nos. 97008-09, 23 July 1993, 224 SCRA 717.

[10] G.R. No. 126585, 02 February 2000, 324 SCRA 469.

[11] Rollo, p. 258.

[12] Rollo, pp. 309-310.

[13] Rollo, p. 212.

[14] Rollo, pp. 362-369.

[15] Petition for Certiorari, pp. 1-2, Rollo, pp. 3-4.

[16] G.R. No. 179546, 13 February 2009, 579 SCRA 445.

[17] G.R. No. 111501, 05 March 1996, 254 SCRA 294.

[18] G.R. No. 176240, 17 October 2008, 569 SCRA 670.

[19] Increased to P15,000.00 pursuant to Republic Act No. 9520, known as the Philippine Cooperative Code of 2008.

[20] Serrano v. Galant Maritime Services, Inc., G.R. No. 151833, 07 August 2003408 SCRA 523.

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