

NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, PETITIONER, VS. NWSA SUPERVISORS ASSOCIATION AND COURT OF INDUSTRIAL RELATIONS, RESPONDENTS.

G.R. NO. L-30051. July 31, 1974

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for review of the decision dated November 22, 1968 of the respondent Court of Industrial Relations in its Case No. 71-IPA, entitled NWSA Supervisors Association vs. National Waterworks and Sewerage Authority granting three demands of the Association, namely: (1) a 35% general increase of salaries to all supervisors of the Authority staggered for three years; (2) changing the effective date of the promotional appointments of Messrs. Modesto Blando and Rodolfo Ayalde to September 1, 1966; and (3) allowing all lawyers of the Authority commutable transportation allowances under the same terms and conditions as those given to the other NWSA officials effective September 1, 1966. It appearing, however, that actually this appeal of petitioner was filed out of time, the Court has to consider this case as a special civil action for certiorari assailing the finding of respondent court sustaining respondent Association's contention that indeed said appeal is late and that the decision being appealed is already final and executory.

It is alleged in the petition for relief from judgment filed with the respondent court and annexed to the present petition as Exhibit D, service of the aforementioned decision was made upon petitioner under the following circumstances:

"1. On Friday, November 22, 1968, at 4:50 p.m., the Office of the Government Corporate Counsel was served by the CIR Court Bailiff with a copy of the Decision rendered by this Court in the above-entitled case dated November 22, 1968;

2. The following Saturday and Sunday, November 23 and 24, 1968, are non-working days for government offices including the Office of the Government Corporate Counsel;

3. On November 25, 1968, the Government Corporate Counsel who has to read and initial all court pleadings, decisions and orders, was out of town on official business and consequently he was not able to act on the Decision of this Court of November 22, 1968 which was placed on his table;

4. On November 26, 1968, Mr. Victor Delman, our Record Clerk, delivered to Miss Isabelita P. Cabigting, Secretary of Atty. Lorenzo R. Mosqueda, the aforementioned Decision of this Court in the above-entitled case for delivery to Atty. Lorenzo R. Mosqueda so that the necessary Motion for Reconsideration could be prepared and thereafter filed with this Court;

5. However, in view of the illness of Miss Isabelita P. Cabigting on November 26, 1968, she went home and kept inside her drawer the aforementioned Decision of this Court in the above-entitled case dated November 22, 1968 without delivering the same to Atty. Lorenzo R. Mosqueda, the attorney-in-charge of the case. Attached hereto, marked as Annex A and made an integral part of this petition, is her affidavit of illness;

6. This petition for review is filed in order that respondent may be relieved from whatever action this Court may take for not filing a Motion for Reconsideration within the reglementary period;"

The affidavit of Isabelita P. Cabigting referred to above reads as follows:

"I, ISABELITA P. CABIGTING, of legal age, a resident of 445-A Constancia St., Sampaloc, Manila, being duly sworn, depose and say:

1. That I am presently employed in the Office of the Government Corporate Counsel as Sr. Stenographer with duty assignments as Secretary to Atty. Lorenzo R. Mosqueda, Asst. Government Corporate Counsel;

2. That on the early morning of November 26, 1968, I was already suffering from high fever but in spite of it I reported for work in the office;

3. That on November 26, 1968 at about 9:00 o'clock in the morning while Atty. Mosqueda was attending court hearing in the Court of Industrial Relations in Case No. 81-IPA entitled "NPC Employees and Workers Association vs. National Power Corporation", I received from Mr. Victor Dalman, our Record Clerk, copy of Decision rendered by the Court of Industrial Relations in Case No. 71-IPA entitled "NWSA Supervisors Association vs. National Waterworks and Sewerage Authority", and as my fever was already very high and I had a terrible headache, I went home and the Decision of the CIR in Case No. 71-IPA, hereinabove mentioned was placed by me among the papers inside my drawer and I forgot to place it on the table of Atty. Mosqueda;

4. That it was only on the early morning of November 27, 1968 that I delivered the Decision of the CIR in said Case No. 71-IPA to Atty. Mosqueda who informed me that the last day to file Motion for Reconsideration of the same was November 26, 1968.

Affiant further sayeth not.

IN WITNESS WHEREOF, I have hereunto signed this Affidavit on this 27th day of November 1968 at Manila, Philippines.

(Sgd.) ISABELITA P. CABIGTING"

Parenthetically, as pointed out by respondent Association's counsel, in the petition herein as well as in petitioner's brief, the circumstance of illness relied upon is stated thus: "In view of the fact that the Clerk in the Office of the Government Corporate Counsel who received the Decision of November 22, 1968 was sick, the Motion for Reconsideration of the Decision of November 22, 1968 was filed on the fifth day from receipt thereof, or on November 27, 1968, accompanied by a verified Petition for Relief from judgment, Order or Decision," (Par. V, Petition; pp. 3-4, Petitioner's Brief) thus giving the impression that it was the receiving clerk, not Stenographer-Secretary Cabigting who was sick.

In any event, it is undisputed that under the rules of the Industrial Court in force during the material dates of this case, a party aggrieved by a decision thereof must file its motion for reconsideration, as an indispensable prerequisite of its right to appeal, within four (4) days from notice of the decision. And this Court has held that this requirement is jurisdictional and failure to comply therewith is fatal. Thus:

"2. But has that judgment reached that stage of finality in the sense that it can no longer be disturbed?

CIR Rules of Procedure, as amended, and the jurisprudence of this Court both answer the question in the affirmative.

Section 15 of the CIR Rules requires that one who seeks to reconsider the judgment of the trial judge must do so within five (5) days from the date on which he received notice of the decision, subject of the motion. Next follows Section 16 which says that the motion must be submitted with arguments supporting the same. But if

said arguments could not be submitted simultaneously with the motion, the same section commands that 'the movant shall file the same within ten (10) days from the date of the filing of his motion for reconsideration'. Section 17 of the same rules admonishes a movant that '[f]ailure to observe the above-specified periods shall be sufficient cause for dismissal of the motion for reconsideration or striking out of the answer and/or the supporting arguments, as the case may be'.

Not that the foregoing rules stand alone. Jurisprudence has since stabilized the enforceability thereof. Thus, in *Bien vs. Castillo*, (97 Phil. 956) we ruled that where a pro forma motion for reconsideration was filed out of time its denial is in order pursuant to CIR rules, regardless of whether the arguments in support of said motion were or were not filed on time. *Pangasinan Employees, Laborers & Tenants Association (PELTA) vs. Martinez*, (L-13846, May 20, 1960) pronounced that where a motion to reconsider is filed out of time, the order or decision subject of reconsideration becomes final. And so also, where the arguments in support of the motion for reconsideration are filed beyond the ten-day reglementary period, the pro forma motion for reconsideration although seasonably filed must nevertheless be denied. This is essence in our ruling in *Local 7, Press & Printing Free Workers (FEW) vs. Tabigne*. (L-16093, November 29, 1960.) See also: *Cebu Portland Cement Company vs. Savellano (Sr.)*, L-10781, May 29, 1959, 105 Phil. 856, 859.) The teaching in *Luzon Stevedoring Co., Inc. vs. Court of Industrial Relations*, (L-16682, July 26, 1963. See also: *Manila Metal Caps and Tin Cans Manufacturing Company, Inc. vs. Court of Industrial Relations*, L-17578, July 31, 1963) is that where the motion for reconsideration is denied upon the ground that the arguments in support thereof were filed out of time, the order or decision subject of the motion becomes 'final and unappealable'.

We find no difficulty in applying the foregoing rules and pronouncements of this Court in the case before us. On August 6, petitioner received a copy of the judgment of Judge Arsenio I. Martinez aforesaid. Petitioner's motion to reconsider - without arguments in support thereof - of August 12 was filed on time. For, August 11, the end of the five-day reglementary period to file a motion for reconsideration, was a Sunday. (See: *Manila Electric Company vs. Public Service Commission*, 18 Supreme Court Reports Anno. 651, 659-660; *Viray vs. Court of Appeals (Resolution)*, 16 Supreme Court Reports Anno. 412.) But, actually, the written arguments in support of the said motion were submitted to the court on August 27. The period from August 12 to August 27 is a space of fifteen (15) days. Surely enough, said arguments were filed out of time - five (5) days late. And the judgment had become final.

3. There is, of course, petitioner's motion of August 21, 1963 seeking extension of time within which to present its arguments in support of its motion. Counsel in his petition before this Court pleads that the foregoing motion was grounded on the 'extremely busy and difficult schedule of counsel' which would not enable him to do so within the stated ten-day reglementary period. (Par. 6, Petition; Rollo, p. 3.) The arguments were only filed on August 27 - five (5) days late, as aforesaid.

The foregoing circumstances will not avail petitioner any. It is to be noted that the motion for expansion of time was filed only on August 21, that is, one day before the due date which is August 22. It was petitioner's duty to see to it that the court act on this motion forthwith or at least inquire as to the fate thereof not later than the 22nd of August. It did not. It merely filed its arguments on the 27th.

To be underscored at this point is that 'obviously to speed up the disposition of cases', CIR 'has a standing rule against the extension of the ten-day period for filing supporting arguments'. (*Luzon Stevedoring Co., Inc. vs. Court of Industrial Relations*, supra.) That no-extension policy should have placed petitioner on guard. It should not have simply folded its arms, sit by supinely, and relied on the court's generosity. (See: *King vs. Joe*, 20 Supreme Court Reports Anno. 1117, 1120.) To compound petitioner's neglect, it filed the arguments only on August 27, 1963, knowing full well that by that time the reglementary period had expired.

Petitioner cannot complain against CIR's ruling of September 16, 1963 dismissing the motion for reconsideration on the ground that the supporting arguments were filed out of time. That ruling in effect denied

the motion for extension. (See: Ong vs. Fonacier, 17 Supreme Court Reports Anno. 616, 622.)

We rule that CIR's judgment has become final and unappealable. We may not review the same. (Philippine Long Distance Telephone Company vs. Medina, 20 Supreme Court Reports Anno. 659, 671-672.)" (25 SCRA 58 at pp. 61-63.)[1]

As regards the explanation given by petitioner for its admitted tardiness in filing the requisite motion for reconsideration, the Court finds and holds that the circumstances relied upon do not constitute excusable neglect entitling petitioner to relief. In a case involving almost identical circumstances with those alleged by herein petitioner, because it was alleged therein that "the motion for reconsideration had only come to the knowledge of . . . counsel on July 11, 1963 'due to accident, mistake or excusable negligence', in that, as stated in the ... affidavit of merit, Leonardo Magat, clerk of the law office of Santos' attorneys, after receiving the said order, and because of the absence of Atty. de la Cruz, affiant placed the aforementioned order in his desk', that because said clerk was stricken with influenza and 'was absent from office the next week or from April 20 to May 4, 1963' and failed to give said order to Atty. de la Cruz", We held that "the excuse offered ... is the most hackneyed and habitual subterfuge employed by litigants who fail to observe the procedural requirements prescribed by the Rules of Court. The uncritical acceptance of this kind of common-place excuses, in the face of the Supreme Court's repeated rulings that they are neither credible nor constitutive of excusable negligence (Gaerlan vs. Bernal, L-4039, 29 January 1952; Mercado vs. judge Domingo, L-19457, 17 December, 1966) is certainly such whimsical exercise of judgment as to be a grave abuse of discretion." (Philippine Air Lines, Inc. vs. Arca, 19 SCRA 300.)

It does not matter that it is a government corporation's financial liability that is involved. In *In re P. J. Kiener Co. Ltd.*, 21 SCRA 605, wherein the Solicitor General failed to file the printed record on appeal, in connection with a decision sentencing the Government to pay over two million pesos to P. J. Kiener Co. Ltd. for a construction job done in the Mactan International Airport, the Court refused to consider as excusable negligence the alleged neglect of the receiving clerk of the office of the Solicitor General in inadvertently misplacing the notice to file the printed record on appeal, citing precisely the Philippine Air Lines case just referred to and other precedents of similar tenor.

It only need be added here that the allegations of the petition for relief aforequoted to the effect that what might have contributed to the unfortunate turn of events in the office of the Government Corporate Counsel was the absence from said office, on the material dates or occasions, of the Corporate Counsel himself "who has to read and initial all court pleadings, decisions and orders", that "Saturday and Sunday are non-working days for government offices, including the Office of the Government Corporate Counsel" and that Atty. Lorenzo Mosqueda, who was presumably the lawyer personally assigned to handle the instant case "was attending a court hearing" at the time his secretary could have delivered to him the copy of the subject decision, actually add to rather than detract from the demonstrated lack of diligence and due care of the Corporate Counsel's Office in its dealing with the court and their orders and processes. Very little acquaintance or familiarity with the elementary rudiments of office management and of practice and procedure is required to avoid the pitfalls and gaps suffered by said office in the case at bar. Nothing could have prevented the taking of adequate measures so that court processes may be promptly and properly attended to even on non-working days and in the absence of the head of the office or the attorney assigned to the case. And when it is considered that what are being handled by the lawyers in that office involve matters directly affecting public funds and properties, not to speak of those concerning the interests of the government and the people, one cannot but demand a more exacting sense of responsibility from those concerned. In order that undue prejudice may not be suffered by litigants who might have meritorious causes due only to the failure of their lawyers to adopt adequate steps insuring proper handling of court processes, the Court expects all concerned to see to it that the incidents herein deplored are not repeated.

Before closing, it may be stated that at the outset, the Court denied private respondent's motion to dismiss the herein petition, predicated precisely on the same theory that the judgment of the Industrial Court is already final and executory, but the only reason for such action was because We wanted to have a fuller discussion by the parties of the issues related to the excuse given by petitioner for its tardiness in taking the requisite steps for appeal, and not as a final resolution of the ground of dismissal alleged. Now, We are satisfied, after considering all the pertinent points in the briefs of the parties, that petitioner's pose of excusable neglect of its counsel cannot be sustained in law and reason. Incidentally, We took the opportunity to look into petitioner's assignments of errors related to the merits of the decision in question, and, without intending to make a positive binding ruling thereon, which We are not in a position to do, the said decision being already final and executory, We can say that the possibilities of successfully maintaining that the findings therein are not supported by substantial evidence or might be contrary to law and equity appear to be rather remote.

PREMISES CONSIDERED, the petition is dismissed and the decision of the Court of Industrial Relations of November 22, 1968 in its Case No. 71-IPA is hereby declared final and executory. No costs.

Zaldivar, (Chairman), Fernando, Antonio, Fernandez, and Aquino, JJ., concur.

[1] In *Philippine Blooming Mills Employees Organization et al. vs. Philippine Blooming Mills Company, Inc. et al.*, L-31195, June 5, 1973, 51 SCRA 189, the Court disregarded the lateness of the filing of the motion for reconsideration because of what the majority felt was a grave constitutional error of the Industrial Court resulting in the denial to the employees of their guaranteed right to peaceably assemble and petition for redress of grievances which in their mind voided the judgment, but that decision is not yet final. Moreover, at the time the present case arose, the rules of Industrial Court had already been amended reducing the five-day period to file motions for reconsideration to only four days.

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