

SALRITSU INTERNATIONAL TRADING CORP., MAGUYAM LOGISTICS SUPPLY, INC., SALVADOR CABRERA, JOSEPHINE D. CABRERA, MARVIN D. CABRERA, MICHELLE D. CABRERA, MYLA C. ROSALES, MARICAR SA...

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INTING, S. B., J.:[*]

This is a Petition for Certiorari[1] under Rule 65 of the 1997 Rules of Civil Procedure filed by the Petitioners which seeks to reverse and set aside the December 18, 2012 Decision[2] and March 14, 2013 Resolution[3] of the National Labor Relations Commission (NLRC) in NLRC LAC Case No. 08-002466-12 NLRC Case No. NCR 01-000304-12 NCR 01-000778-12.

Petitioner Salritsu International Trading Corp. (Salritsu) is a corporation incorporated on April 4, 1994 and is primarily engaged in the business of trading, importing and exporting electronic equipment, telephone sets, intercommunication sets and other accessories. Petitioner Maguyam Logistics Supply, Inc. (Maguyam) is a corporation established sometime in 2011. Petitioner Salvador Cabrera is the President of Salritsu. Petitioner Josephine Cabrera is a director of Salritsu. Marvin D. Cabrera, Michelle D. Cabrera, Myla C. Rosales, Maricar Salve C. Coronel and Juan M. Villegas are all stockholders and members of the Board of Directors of Salritsu and Maguyam. Private respondents are former employees of Salritsu.

The facts:

The petition stems from the Complaint filed with the NLRC for illegal dismissal with prayer for reinstatement, payment of sick leave, vacation leave, service incentive leave pay, bonuses, general increases, unpaid salary, differentials, 13th month pay, holiday pay, damages and attorney's fees, by herein Private Respondents against Petitioners.

Petitioner Salritsu claims that because the company experienced a substantial decrease in its sales volume and due to the health condition of its President Salvador Cabrera who was then 67 years old, the company decided to close down its business. Memoranda[4] dated December 6, 2011 were served upon its employees (Private respondents) informing them of Salritsu's decision to close down its operations effective on January 6, 2012. Salritsu also filed an Establishment Employment Report[5] with the Department of Labor and Employment (DOLE) informing the latter of the permanent closure of Salritsu. Due to the decision to end the business operations of Salritsu, Private respondents were paid[6] their salaries until January 6, 2012, separation pay equivalent to ½ month salary for every year of service and commutation of sick leave and vacation leave equivalent to five (5) days per year multiplied by three (3) years. Subsequently, Private respondents executed their respective Affidavit[7] of Release, Waiver and Quitclaim.

Later, Private respondents lodged the aforementioned Complaint with the NLRC for illegal dismissal, with prayer for reinstatement and other monetary claims.

Private respondents in their Position Papers, claim that prior to their employment with Salritsu some of them were

employed with Rensal International Trading Corp. (Rensal), which is owned, along with other owners, by Petitioner Salvador Cabrera. Rensal was allegedly closed by the owners because of tax deficiencies. Thereafter, Salvador Cabrera established SMC Multinational Chemicals, which company name was later changed to Salritsu.

Private respondents alleged that sometime in the middle of the year 2011, they heard that Salritsu was assessed tax deficiencies since it was not paying its taxes properly and that Bureau of Internal Revenue (BIR) was allegedly running after it. Subsequently, on November 2011, their President, Salvador Cabrera, called a general meeting and informed them of the company's plan to end its operations. Private respondents allege that Salvador Cabrera cited as reasons for the planned closure, the company's huge tax obligation with BIR and the fact that the company was suffering from business losses. Private respondents argued that if Salritsu was suffering from business losses or reverses why then would the company be assessed by the BIR tax deficiencies amounting to almost Php18 million.

Private respondents further allege that Maguyam was established to take over the business of Salritsu to evade its tax obligations; that they were instructed, prior to their termination, not to receive assessment notices from the BIR; that Maguyam is still owned by the same family members who owned Salritsu except for the spouses Salvador and Josephine Cabrera; that Salvador Cabrera was still the one who manages Maguyam and not its named President, Marvin Cabrera, since the latter is residing in the United States of America; that clients and suppliers were merely informed by the management of a change of Salritsu's name but not the closure thereof; that while Maguyam's company address was in Silang, Cavite, its communications were all addressed at the office space owned by Salritsu.[8] They insisted that Salritsu and Maguyam are one and the same.

On July 16, 2012, the Labor Arbiter rendered a Decision[9], the pertinent portion of which provides:

“xxx xxx xxx

From the evidence adduced by Respondents, this Office is convinced that all the aforesaid requirements to validly terminate Complainants on the ground of closure under Article 283 of the Labor Code had been complied with by Respondent Salritsu.

xxx xxx xxx

As told Salritsu has fully paid all its monetary obligation to Complainants by reason of closure and mere commonality of the stock ownership of the two (2) corporations is not of itself sufficient ground for disregarding the separate corporate personality and hold the individual stockholders liable. Had it been the intention of Respondents, they should have not paid Complainants their separation pay and other benefits they are entitled to receive by reason of the closure.

xxx xxx xxx

In signing the quitclaim, Complainants by their express declaration in their quitclaim, has therefore relinquished their rights over their claims arising from their employment with Salritsu and is barred from pursuing further claims arising from their employment with Salritsu.

In view of the express declarations set forth in Complaints Affidavit of Waiver, Release and Quitclaim which they have voluntarily executed and subscribed before Atty. Regina Ruiz, Notary Public, the monetary claims prayed for the (sic) Complainants should therefore fail.

There being no illegal dismissal in the case at bench, Complainants' claim for moral and exemplary damages and attorney's fees should likewise be denied for lack of factual basis.

WHEREFORE, premises considered, judgment is hereby rendered ordering the DISMISSAL of the above-entitled cases for lack of merit.

SO ORDERED.”

Private respondents then filed a Notice of Appeal and Memorandum on Appeal[10] which was granted by the NLRC in a Decision[11], dated December 18, 2012. The pertinent portion of which provides:

“xxx xxx

After thorough review of the arguments and evidence on record, We find the instant appeal deserving of merit.

Under Article 283 of the Labor Code, as amended, one of the authorized causes in terminating the employment of an employee is the closing or cessation of operation of the establishment or undertaking. Xxx xxx

xxx Accordingly, under Article 283 of the Labor Code, as amended, there are three requisites for a valid cessation of business operations: (a) service of a written notice to the employees and to the Department of Labor and Employment (DOLE) at least one month before the intended date thereof; (b) the cessation of business must be bona fide in character; and (c) payment to the employees of termination pay amounting to one-half month pay for every year of service, whichever is higher. Xxx

xxx xxx xxx

In this case, one of the requisites for a valid closure of a business was lacking, specifically, the bona fide character of the closure. The grounds for closure of Salritsu were business reverses and huge tax exposure and prevention of consequent bankruptcy xxx. While these would have been valid bases for closure, it is apparent that the closure was not bona fide in character. What removed the bona fide character of the closure were the facts that the company was a family corporation and another business was put up by the family under another name immediately preceding the closure, clearly because of the huge tax deficiency that the family was trying to evade paying. Had Maguyam not been a close/family corporation or had there been other stockholders in its establishment and if there wasn't a huge tax deficiency that the BIR was persistently going after, the bona fide character would have been sustained. Therefore, the absence of one requisite makes the closure and consequently the termination of employment pursuant thereof, illegal.

xxx xxx xxx

In this case, the establishment of Maguyam is, undisputably (sic) to evade the payment of back taxes that Salritsu owned. This necessitates the piercing of the veil of their separate personalities. Thus, Salritsu and Maguyam are deemed as one and the same company.

Complainants should thus be paid backwages from the time they were terminated from service until the date of this decision. Separation pay should also be paid to them but the amounts already received in their severance package when they were terminated should be deducted otherwise it would amount to unjust enrichment.

Xxx xxx xxx

WHEREFORE, premises considered, judgment is hereby rendered finding the appeal impressed with merit. Respondents are hereby ordered to pay complainants the amount of P3,956,608.31 representing their backwages and separation pay plus ten percent thereof as attorney's fees. Accordingly, the decision of the Labor Arbiter dated July 16, 2012 is hereby VACATED and SET ASIDE.

SO ORDERED.”

Consequently, Petitioners filed a Motion for Reconsideration[12] which was denied by the NLRC in a Resolution[13] dated March 14, 2013. The dispositive portion of which provides:

“WHEREFORE, the instant motions for reconsideration and inhibition of respondents-appellees are hereby DENIED for lack of merit.

SO ORDERED.”

Hence, the instant petition.

The Issue:

WHETHER OR NOT THE PUBLIC RESPONDENT HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN VACATING AND SETTING ASIDE THE DECISION OF THE LABOR ARBITER DATED JULY 16, 2012 AND RULING THAT THE CLOSURE OF PETITIONER COMPANY SALRITSU WAS NOT BONA FIDE IN CHARACTER AND THAT THE RESPONDENTS WERE ILLEGALLY DISMISSED.

The Ruling:

The petition is impressed with merit.

Article 283 of the Labor Code provides, to wit:

Art. 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

A careful perusal of the records of the case would reveal that Petitioner Salritsu complied with all of the three (3) afore-mentioned requirements of Article 283 of the Labor Code thus, rendering the closure or cessation of operations of Salritsu valid. Firstly, Salritsu's planned permanent closure was made known by Petitioner Salritsu through the Establishment Employment Report it submitted to the DOLE and the Memoranda served to its employees, herein Private respondents. Secondly, Petitioner Salritsu paid Private respondents their separation pay equivalent to one-half (1/2) month pay for every year of service. Thirdly, contrary to Private Respondents' claim, the closure of Salritsu was bona fide in character.

The ultimate test of the validity of closure or cessation of establishment or undertaking is that it must be bona fide in character.[14]In the present case, it is shown that the closure of Salritsu was made in good in faith or was bona fide in character. While indisputably, the company had outstanding tax obligations, its existence will not automatically render the closure of Salritsu bad faith in character. In fact in the Memoranda sent to the Private respondents Petitioner Salritsu candidly admitted that it was closing the company due to the decrease in the sales volume of its business and because of its huge tax exposure. Hence, Petitioner Salritsu's closure was not in any way, tainted with bad faith.

Moreover, as held in a long line of cases and as correctly cited by the Labor Arbiter in its Decision, the decision to close down business is a management prerogative exclusive to the employer. It would indeed be stretching the intent and spirit of the law if a court were to unjustly interfere in management's prerogative to close or cease its business operations just because said business operation or undertaking is not suffering from any loss.[15] Thus, Private respondents' claim, even assuming it was true, that based on the Independent Auditor's Report[16]

Salritsu's Net Income for the years 2009 and 2010, amounted to Php3,460,519.90 and Php 4,962, 353.58, respectively, does not prove anything because the Labor Code does not require that the company should be suffering from business losses to authorize it to end its business operations.

While it is also essential that the closure is made in good faith. As long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the law or a valid agreement, such exercise will be upheld.[17]

We likewise find no basis to the Private respondents' claim that Maguyam was established to evade Salritsu's obligations to them considering that all of the said monetary obligations were paid by Salritsu.

Lastly, We also consider the waiver, release and quitclaim executed by the Private respondents to have been validly made thus, a binding compromise between the parties was created thereby. Hence, Private respondents' monetary claims should indeed fail.

Thus, applying the foregoing rulings, We find that the Private respondents were not illegally dismissed.

WHEREFORE, the petition is GRANTED. The December 18, 2012 Decision[18] and March 14, 2013 Resolution[19] of the NLRC in NLRC LAC Case No. 08-002466-12 NLRC Case No. NCR 01-000304-12 NCR 01-000778-12 are hereby REVERSED and SET ASIDE. Accordingly, the July 16, 2012 Decision[20] of the Labor Arbiter is hereby REINSTATED.

SO ORDERED.

Reyes, Jr., (Chairperson) and Galapate-Laguilles,[**] JJ., concur.

[*]Acting Senior Member vice J. Mario V. Lopez who is in Baguio for the summer session per Office Order No. 177-14-RDC dated May 2, 2014

[**]Acting Junior Member vice J. Socorro B. Inting who has been designated as acting Senior Member per Office Order No. 177-14-RDC dated May 2, 2014

[1]Rollo, pp. 3-24

[2]Rollo, pp. 36-50

[3]Rollo, pp. 52-54

[4]Rollo, pp. 67-82

[5]Rollo, pp. 83

[6]Rollo, pp. 100-115

[7]Rollo, pp. 85-99

[8]Rollo, pp. 165

[9]Rollo, pp. 235-260

[10]Rollo, pp. 261-289

[11]Supra note 2

[12]Rollo, pp. 321-331

[13]Supra note 3

[14]Ibid. Citing Mac Adams Metal Engineering Workers Union-Independent v. Mac Adams Metal Engineering. 414 SCRA 411

[15]Capitol Medical Center v. Meris, G.R. No. 155098, September 16, 2005 Citing Industrial Timber Corporation v. National Labor Relations Commission, 273 SCRA 200

[16]Rollo, pp. 145

[17]Ibid. Citing J.A.T. General Services v. National Labor Relations Commission, 421 SCRA 78

[18] Rollo, pp. 36-50

[19] Rollo, pp. 52-54

[20] Supra note 9

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