

NATIONAL DEVELOPMENT COMPANY, PETITIONER, VS. NDC EMPLOYEES AND WORKERS' UNION AND COURT OF INDUSTRIAL RELATIONS, RESPONDENTS.

G.R. No. L-32387. August 19, 1975

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This is a petition for certiorari to review the decision and resolution respectively dated May 12, 1970 and July 6, 1970 of respondent Court of Industrial Relations in CIR Case No. 5207-ULP entitled "NDC Employees and Workers Union vs. National Development Company."

On November 12, 1968, an unfair labor practice complaint was lodged by respondent NDC Employees and Workers' Union with respondent Court of Industrial Relations charging herein petitioner National Development Company or NDC for short, with bargaining in bad faith when it failed to comply with the provisions of Section 3, Article VI of the existing Collective Bargaining Agreement executed on April 6, 1964, stipulating that:

"The Company agrees to give its employees during the years covered by this agreement Christmas bonus of seven percentum (7%) of the net profit of the company, the same to be distributed on equal basis,... provided, however, that should the President and/or Cabinet approve a higher rate of Christmas bonus for the company, the latter rate shall prevail; that in case of Christmas bonus, payment shall be made before Christmas of years covered by this agreement" (Exhibit "A-1", p. 2, Decision; p. 45, rec.).

On November 29, 1968, herein petitioner filed with respondent CIR a motion to dismiss alleging that the latter has no jurisdiction over the subject matter of the case on the ground that the complaint is "for the payment of money claims x x x which is the enforcement of a collective bargaining agreement."

As the respondent Court deferred resolution of said motion to dismiss, petitioner, on March 5, 1969, submitted its answer, alleging that there could be no basis for doling out the 7% bonus set forth in the collective bargaining agreement for the simple reason that the company incurred tremendous losses; and, by way of special and affirmative defenses, that the court has no jurisdiction over the subject matter of the action, and that, even assuming that the Court of Industrial Relations has jurisdiction, the complaint is premature as respondent union failed to invoke initially the GRIEVANCE MACHINERIES AND PROCEDURE SPELLED out in the collective bargaining agreement.

In its decision of May 12, 1970, respondent Court declared the National Development Company guilty of unfair labor practice and ordered it "to cease and desist from further committing such act of refusal to bargain; and x x x to pay its officers and employees Christmas bonus equivalent to seven percentum (7%) of the net profit of P3,252,766.21 for the fiscal years 1965-1966 and 1966-1967, in pursuance to the existing and enforceable collective bargaining agreement" (p. 11, Decision; p. 54, rec.).

On May 28, 1970, petitioner company filed a motion for reconsideration.

On July 6, 1970, respondent Court of Industrial Relations, sitting en banc, denied petitioner's motion for reconsideration.

Hence, this petition.

I

Anent the claim that the NDC as a state entity is immune from suits without its consent, in the case of National Development Company vs. Tobias (L-17467, April 23, 1963, 7 SCRA 692, 694), through then Justice now retired Chief Justice Roberto Concepcion, We held that the NDC, while an agency of the government, is suable, for it "does not exercise sovereign powers — and, hence, cannot invoke the exemptions thereof — but is an agency for the performance of purely corporate, proprietary or business functions, is apparent from its organic act (Commonwealth Act No. 182, as amended by Commonwealth Act No. 311) pursuant to Section 3 of which it 'shall be subject to the provisions of the Corporation Law in so far as they are not inconsistent' with the provisions of said Commonwealth Act 'and shall have the general powers mentioned in said' Corporation Law, and hence, 'may engage in commercial, industrial, mining, agricultural, and other enterprises which may be necessary or contributory to the economic development of the country, or important to public interest,' as well as x x x 'perform any and all acts which a corporation or natural person is authorized to perform under the laws now existing or which may be enacted hereafter'" (7 SCRA 692, 694; italics supplied; see also Batongbacal vs. National Development Company, 49 O.G. 229; National Development Company vs. CIR, L-13209, Sept. 30, 1959).

It is elementary that where the state or a government entity descends to the level of a private enterprise by entering into contracts with private individuals or firms, it divests itself of its sovereign character and its immunity from suits.

II

With respect to petitioner's second argument that the present case is one for specific performance and hence triable, not by the CIR, but by the regular courts, be it noted that the complaint primarily charges the petitioner NDC with unfair labor practice — bargaining in bad faith — praying that the NDC be declared guilty of unfair labor practice as charged and that it be ordered to cease and desist from further committing the acts complained of (p. 33, rec.), and to pay the employees of herein respondent union the 7% Christmas bonus for the fiscal years 1965-1966 and 1966-1967.

It is settled that the allegation of the complaint, not the evidence, determines the jurisdiction of the Court. Hence, the present case falls within the jurisdiction of respondent CIR since as previously held in a litany of cases starting with the landmark case of PAFLU vs. Tan (50 O.G. 5836), to the very recent case of Gonzalo Puyat & Sons, Inc. vs. Pedro Labayo and the CIR (L-32480, Feb. 25, 1975, 62 SCRA 488, 492), this Court has "consistently upheld the jurisdiction of the Court of Industrial Relations over cases involving the Eight-Hour Labor Law, the Minimum Wage Law and UNFAIR LABOR PRACTICE x x x" and "that the CIR jurisdiction over a case is determined by the allegation in the complaint or petition, or by the issues raised by the parties, and not by their success or failure in proving their comments in their respective pleadings."

A refusal to comply with the terms of a collective bargaining agreement constitutes bargaining in bad faith and an unfair labor practice (Majestic & Republic Theaters Employees Association [PAFLU] vs. CIR, et al., L-1260, Feb. 28, 1962, 4 SCRA 457, 462).

Moreover, as stated by the respondent Court, "the duty to bargain continues even to those matters which are set forth in the terms of the written contract" (Sec. 13, R.A. No. 875). Paragraph 2 of Section 13 of the Industrial

Peace Act (R.A. No. 875) provides:

"Where there is in effect a collective bargaining agreement, the duty to bargain collectively shall mean also that neither party shall terminate or modify such agreement, unless it has served written notice upon the other party of the proposed termination or modification x x x"

The above provision, taken in the light of the provisions of Section 4 (a-6) that:

"(a) It shall be unfair labor practice for an employer:

x x x x x x x x

"(6) To refuse to bargain collectively with the representatives of his employees subject to the provisions of sections thirteen and fourteen."

could only be interpreted as covering a situation where there is already an existing collective bargaining agreement and prohibits the parties from infringing the same, unless there is a written notice upon the other party to terminate or modify the same — which herein petitioner NDC never served.

III

The petitioner's contention that no bonus is available for the simple reason that the company incurred heavy losses, is refuted by the fact that the NDC General Manager, in the company's annual report to the President of the Philippines, reported PROFITS, which the NDC General Manager has not denied.

The report of the Corporate Auditor that the actual financial status of the company, after allegedly deducting taxes and operational expenses, was in a state of loss, based as it is on a different accounting procedure, does not alter the situation. As correctly analyzed by respondent CIR:

"Admittedly, the annual report of the NDC General Manager is separate and distinct from the audit report of the corporation auditor. This is so because the corporation auditor, as a representative of the General Auditing Office assigned to work in the respondent (herein petitioner) company, is separate and distinct from respondent management. While both reports were claimed to fairly reflect the financial condition of the company and its units and also the results of the operations during the fiscal years ended June 30, 1966 and June 30, 1967, and that they were prepared in accordance with the generally accepted accounting and auditing practices, procedures and principles, the two reports showed, however, different results. The annual reports of the General Manager showed net profits but the audit reports of the corporation auditor indicated net losses.

"The difference lies in the fact that in the ascertainment of the net profit of the company reported out in the NDC General Manager's reports the 'All-Inclusive or Clean Surplus' theory of accounting was applied under which procedure of net income determination the capital gains and extraordinary charges or credits are included in the income statement. In the audit reports of the Corporation Auditor the 'Current Operating Concept' of accounting was used under which procedure only the ordinary or normal income is taken up as income during the period of operation but the extraneous or extraordinary income and also expenses pertaining to prior years are credited or debited to surplus account. In other words, the difference is only in the accounting procedure. But essentially the incomes derived from different sources, whether ordinary, normal, extraordinary or extraneous, actually swell and enrich the coffer of the company" (pp. 5-6, Decision; pp. 48-49, rec.).

IV

And anent petitioner's ultimate argument that since respondent union failed to exhaust all administrative remedies available by failing to initially course the complaint to the grievance machinery provided for in the collective bargaining agreement, it should be noted that, while indeed a grievance machinery is provided for in the existing

collective bargaining agreement, this grievance machinery — or its composition — is nowhere identified nor organized in the contract. In short, the grievance machinery does not exist.

The rule regarding exhaustion of administrative remedies is not absolute (*Dauan vs. Secretary of Agriculture and Natural Resources*, L-19547, Jan. 31, 1967, 19 SCRA 223; *Gravador vs. Mamigo*, L-24989, July 21, 1967, 20 SCRA 742; *Milleres vs. Subido*, L-23281, Aug. 10, 1967, 20 SCRA 954). The rule may be relaxed where the protestant has no other recourse (*Sta. Maria vs. Lopez*, L-30773, Feb. 18, 1970, 31 SCRA 637), or where there are circumstances indicating the urgency of judicial intervention (*Gonzales vs. Hehcanova*, L-21897, Oct. 22, 1963, 9 SCRA 230; *Abaya vs. Villegas*, L-25641, Dec. 17, 1966, 18 SCRA 1034; *Mitra vs. Subido*, L-21691, Sept. 15, 1967, 21 SCRA 127).

In the present case, in the absence of a committee or panel concretely identified as the grievance machinery referred to in the collective bargaining agreement, herein respondent union resorted to no less than the NDC Manager in demanding the bonus promised. Certainly, when the NDC Manager turned down the union's demand, no other recourse was left to the union but to urgently avail of the lawful safeguard — direct resort to respondent Court of Industrial Relations.

Indeed, as correctly held by respondent CIR:

"Under such circumstances, considering that the company had closed all avenues for the union to secure favorable action on its demand, x x x primary resort to grievance procedures is not logical and proper x x x Besides, there was no showing that the grievance committee alluded to by counsel for the company, was formed or constituted" (pp. 46-47, rec.).

WHEREFORE, the petition is hereby denied, with costs against petitioner.

SO ORDERED.

Castro, (Chairman), Esguerra, Muñoz Palma, and Martin, JJ., concur.

Teehankee, J., in the result.

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