

**NATIONAL MINES & ALLIED WORKERS' UNION
(NAMAWUMIF), PETITIONER, VS. HONORABLE GABRIEL V. VALERO,
PRESIDING JUDGE OF BRANCH I OF COURT OF FIRST INSTANCE OF
CAMARINES NORTE, AND C...**

G.R. No. L-32216. October 23, 1984

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

This petition for certiorari and prohibition seeks to annul the order dated June 3, 1970 of the former Court of First Instance of Camarines Norte, Branch I, restraining petitioners from preventing private respondent from loading its logs from the log-pond at Mercedes, Daet, Camarines Norte, to the vessel, "Dai Leung", and the order dated June 18, 1970 of said court modifying its previous order of June 3, 1970 and restraining petitioner from preventing private respondent from loading its logs to any vessel during the pendency of the case.

Private respondent Camarines Norte Mahogany, Co., Inc. is a corporation engaged in the business of exporting logs and has its shipping point at Mercedes, Daet, Camarines Norte where it stocks logs at its log pond. Petitioner is a labor organization, with a local branch known as NAMAWU LOCAL 206 in Mercedes, Camarines Norte, whose members are composed of dock workers and stevedores performing stevedoring work and/or loading export logs at the port of Mercedes, Camarines Norte.

It appears that in a letter dated May 20, 1970, petitioner requested private respondent that it be recognized as the exclusive bargaining representative of all stevedores rendering work at the port of Mercedes and that the company give preference to the members of the union to perform stevedoring works (p. 20, rec.). Said proposals, however, were rejected by private respondent as it had already authorized the Mercedes Arrastre to load its logs for export (p. 21, rec.).

On May 23, 1970, petitioner and Philippine Island Arrastre, an alleged contractor of respondent company, entered into an agreement recognizing petitioner as the sole and exclusive bargaining representative of the workers and/or stevedores in the loading of export logs, and set forth therein the terms and conditions of employment (pp. 22-23, rec.).

On June 2, 1970, the vessel "Dai Leung" arrived at the port of Mercedes, Camarines Norte to load the logs of respondent company. On even date, petitioner filed a notice of strike with Region 6 of the then Department of Labor (p. 24, rec.) and prevented private respondent from loading its logs on the vessel. As a consequence, private respondent, on June 3, 1970, filed a complaint for injunction with the former Court of First Instance of Camarines Norte, alleging among others, that it has no relation or, in any way, is not connected with petitioner; that every day of delay, it will lose Eight Hundred Dollars (\$800.00) equivalent to Four Thousand Eight Hundred Pesos (P4,800.00) more or less as demurrage; and praying, that petitioner be restrained from preventing the loading of the logs to the vessel "Dai Leung" (pp. 26-30, rec.).

On the same date, respondent Judge, due to the alleged irreparable injury that would be caused to the company, issued the questioned writ of preli-minary injunction enjoining petitioner from preventing respondent company from loading its logs to the vessel "Dai Leung." Private respondent posted a cash bond of Three Thousand Pesos (P3,000.00) to answer for all damages that petitioner may suffer in case the lower court finds that the former is not entitled to the issuance of the writ. Petitioner sought to reconsider and recall the order issuing the writ of preliminary injunction and prayed for the dis-missal of the complaint on grounds that the writ was issued without any hearing and that there being a labor dispute due to unfair labor practice resorted to by the company, the case falls within the juris-diction of the former Court of Industrial Relations.

On June 9, 1970, private respondent filed a petition to amend and/or modify the said writ of preliminary injunction to include not only the vessel "Dai Leung" but also any other vessel that will arrive at the port of Mercedes where the logs of the company are to be loaded. On June 18, 1970, respondent court issued the second questioned order denying petitioner's motion for reconsideration and motion to dismiss the complaint on the ground that there is no privity of contract between petitioner union and respondent company, hence, no unfair labor practice could have been committed by the latter; and modifying the previous writ by prohibiting peti-tioner union from preventing the loading of logs of the company to any vessel at the port of Mercedes during the pendency of the action.

For failure of petitioner to file answer with-in the reglementary period, the lower court, in its order dated July 8, 1970, upon motion of private re-spondent, declared petitioner union in default and allowed the company to present its evidence before the branch clerk of court. On July 10, 1970, the present case for certiorari and prohibition with preliminary injunction was instituted before this Court.

The issues before Us for resolution are whether respondent Judge acted without or in excess of jurisdiction in issuing the questioned orders, and who between the defunct Court of Industrial Relations and the former Court of First Instance has jurisdiction over the case.

On the propriety of the issuance of the writ of preliminary injunction dated June 3, 1970, peti-tioner argues that the said writ was issued without a hearing, in violation of the fundamental principle of due process.

On the other hand, private respondent points out that while the general rule is that no prelimi-nary injunction shall be granted without notice and hearing, said rule is not without exception as Section 5, Rule 58 of the Rules of Court, provides:

"SECTION 5. Preliminary injunction not granted without notice; exception. -- No prelimi-nary injunction shall be granted without notice to the defendant unless it shall appear from facts shown by affidavits or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice. The judge to whom the application was made, must cause an order to be served on the defendant, re-quiring him to show cause, at a specified time and place, why the injunction should not be granted."

Private respondent alleges that the vessel "Dai Leung" was already anchored and waiting at the port and for every day of delay, respondent company stood to lose Eight Hundred Dollars (\$800.00) equivalent to Four Thousand Eight Hundred (P4,800.00) Pesos more or less, as demurrage; that by reason of the illegal picket line, the loading was delayed for one and one-half days. Respondent company submits that there was a clear showing that great and irre-parable injury would have resulted to the company, as in fact it suffered damages by reason of the delay in loading the logs, if no injunction was issued against petitioner. Thus, respondent Judge did not abuse his discretion in issuing the questioned writ of preliminary injunction.

WE find that the questioned writ of preliminary injunction dated June 3, 1970 was not improvidently issued. The pertinent provision of Rule 58 of the Rules of Court governing the issuance of a prelimi-nary injunction reads:

"SECTION 3. Grounds for Issuance of Preliminary Injunction. -- A preliminary injunction may be granted at any time after the commencement of the action and before judgment, when it is established:

"(a) That the plaintiff is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in the performance of an act or acts, either for a limited period or perpetually;

"(b) That the commission or continuance of some act complained of during the litigation or the non-performance thereof would probably work injustice to the plaintiff; or

"(c) That the defendant is doing, threatens, or is about to do, or is procuring or suffering to be done, some act probably in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual."

The verified complaint dated June 3, 1970 (pp. 26-30, rec.) contained sufficient allegations that herein private respondent was entitled to the relief demanded as it was stated therein that the members of petitioner union, which allegedly has no connection with respondent company, without any justifiable ground, illegally, unlawfully and by means of force and intimidation, prevented the employees of the latter from loading the logs to the vessel "Dai Leung"; and that the union members even went to the extent of threatening said workers with bodily harm if the company's employees will continue to perform their tasks.

It is true that a writ of preliminary injunction should be issued in proper cases only after notice served upon the party sought to be enjoined, but the aforesaid Section 5 of Rule 58 of the Rules of Court gives the court discretion to issue the writ ex parte upon showing that the party seeking injunction will suffer great or irreparable injury should the writ be not issued immediately. Otherwise stated, a writ of preliminary injunction may be granted ex parte in cases where the delay made necessary by the giving of notice would prevent effective relief and might be productive of serious damage (43 C.J.S. 839, 840, 841).

The questioned writ was issued in this case on the strength of the aforesaid allegations embodied in the complaint as well as the averment therein that respondent company would suffer great damage and pre-judice if no injunction was issued before the matter could be heard considering that for every day of delay in the loading of the logs from the port to the vessel, private respondent was required to pay Eight Hundred Dollars (\$800.00) equivalent then to Four Thousand Eight Hundred Pesos (P4,800.00) more or less, as demurrage. Anyway, private respondent had posted a bond of Three Thousand Pesos (P3,000.00) to answer for the damages which petitioner may sustain by reason of the injunction if the court should finally decide that private respondent was not entitled thereto.

Petitioner cannot complain that in the issuance of the writ of preliminary injunction, it was deprived of its day in court. The records show that petitioner filed an urgent motion for reconsideration and recall of the writ of preliminary injunction with motion to dismiss the complaint (p. 37, rec.) and supplemental motion for reconsideration (p. 41, rec.). In said pleadings, petitioner exhaustively presented all its arguments and legal authorities as to why the preliminary injunction should not be issued and that the case should instead be dismissed as the subject matter allegedly falls within the jurisdiction of the defunct Court of Industrial Relations. Petitioner therefore was heard and not denied due process.

On the question of jurisdiction, petitioner contends that the case is cognizable by the former Court of Industrial Relations because of the existence of a labor dispute between the parties herein. As provided in Section 2(j) of Republic Act No. 875, otherwise known as the Industrial Peace Act, labor dispute is defined as follows:

"(j) The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or

seek-ing to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

Petitioner maintains that based on the said provision, although no employer-employee relation-ship exists, there is a labor dispute if there is a controversy concerning terms, tenure or conditions of employment, or concerning the representation of persons in negotiating or seeking to arrange terms or conditions of employment, as in the instant case; that, at any rate, an employer-employee relationship has been established between petitioner and private respondent because even earlier on May 18, 1970 when it was excluded from work by respondent company as a result of which it declared a strike, Region 6 of the Department of Labor settled the dispute through con-ciliation and mediation, and members of petitioner union were allowed to load the logs aboard the vessel YAKAL. Petitioner argues that since its members had been allowed to load the logs of the company on board the vessel YAKAL, an employer-employee relationship has been established although not on a permanent basis. It was for this reason, petitioner says, that it requested the company in a letter dated May 20, 1970, that the union be recognized as the sole and exclusive bargaining agent of all the stevedores in the port, which request, as previously stated, was turned down by the company on the ground that the latter has already authorized the Mercedes Arrastre to load its logs on the vessel.

Moreover, petitioner alleges that there is a privity of contract between the respondent company and the union because of the agreement executed on May 23, 1970 between the union and Philippine Island Arrastre, a contractor of the respondent company; and that Philippine Island Arrastre executed the agreement in its capacity as con-tractor of private respondent.

Respondent company stresses, however, that there is neither employer-employee relationship nor any other relationship between the company and the union; that since the employer-employee relationship is absent, no labor dispute can be said to be existing in the present case to justify the defunct Court of Industrial Relations to take cognizance of the same. Private respondent avers that it is not aware of the existence of the alleged settlement by the then Department of Labor of the labor dispute between the union and the company sometime in May, 1970.

Private respondent claims that it has not authorized the Philippine Island Arrastre to nego-tiate with petitioner, much less gave it authority to recognize said petitioner union as the exclusive bargaining agent for the workers and/or stevedores employed in the loading operations at the port of Mercedes; thus, any agreement entered into by the said Philippine Island Arrastre cannot bind the company. As a matter of fact, private respondent contends it has turned down the request of petitioner for its recognition as the sole bargaining unit of all workers and/or stevedores at the port of Mercedes.

As has been stated, petitioner anchors its arguments on the provision of Section 2(j) of Re-public Act No. 875 in claiming that the defunct Court of Industrial Relations has jurisdiction over the case. Petitioner insists that even if no employer-employee relationship exists between the parties herein, as long as there is a controversy concerning terms, tenure or conditions of employment, or representation of persons in negotiating or seeking to arrange terms or conditions of employment, there is a labor dispute which the defunct Court of Industrial Relations can take cognizance of.

WE do not agree.

This Court has consistently adhered to the ruling that in order that the Court of Industrial Relations may acquire jurisdiction over a controversy in the light of Republic Act No. 875, the following circumstances must be present: (a) there must exist between the parties an employer-employee relationship, or the claimant must seek his reinstatement; and (b) the contro-versy must relate to a case certified by the President to the Court of Industrial Relations as one involving national interest, or must have bearing on an unfair labor practice charge, or must arise

either under the Eight Hour Labor Law, or under the Minimum Wage Law (Lat vs. Philippine Long Distance Telephone Co., Inc., 67 SCRA 425; Campos vs. Manila Railroad Company, 5 SCRA 93). The test of the existence of "employer and employee relationship" is whether there is an understanding between the parties that one is to render personal services to or for the benefit of the other, and recognition by them of the right of one to order and control the other in the performance of the work and to direct the manner and method of performance (Madrigal Shipping Co. vs. Del Rosario, L-13130 [October 31, 1959]).

Well-embedded, likewise, is the principle that, what determines jurisdiction of the court is the allegations in the complaint (Gonzalo Puyat & Sons, Inc. vs. Labayo, 62 SCRA 488; Filipro Inc. vs. CIR, 46 SCRA 621; Progressive Labor Association vs. Atlas Consolidated Mining and Development Corp., 33 SCRA 349). Private respondent expressly alleged in the complaint filed before the court a quo that it has no connection whatsoever with petitioner, and that respondent company never availed itself of the services of the members of petitioner union and it had in fact turned down there quest of petitioner to load to the vessel the company's logs for export because the Mercedes Arrastre had already been authorized to do the job. These allegations in the complaint clearly negate the existence of employer-employee relationship between the parties herein and therefore, the former Court of First Instance had authority to assume jurisdiction over the instant case.

It is true that petitioner, in its motion for reconsideration and recall of the preliminary injunction as well as in the supplemental motion for reconsideration, alleged that there was a labor dispute and that through an agreement entered into by petitioner union and respondent's contractor, Philippine Island Arrastre, a relationship was established between the parties herein. These mere allegations did not serve to automatically deprive the respondent court of its jurisdiction conferred by the allegations of the complaint. For whatever worth the allegations may be, the same must first be threshed out at the trial of the case.

Private respondent points out that it was not a party to the aforesaid agreement and had consistently denied as having authorized the said Philippine Island Arrastre to enter into an agreement with petitioner and to recognize it as the sole and exclusive bargaining representative of the workers in the port of Mercedes.

WHEREFORE, THE PETITION IS HEREBY DISMISSED. NO COSTS.

SO ORDERED.

Aquino, Guerrero, Abad Santos, Escolin, and Cuevas, JJ., concur.

Concepcion, Jr., J., no part.

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