

MARITIME COMPANY OF THE PHILIPPINES (MCP); MARINE OFFICERS’ ASSOCIATION OF THE PHILIPPINES (MOAP); AND GEN-ERAL MARITIME STEVEDORES’ UNION OF THE PHILIPPINES (GMSU), PETITIONE...

G.R. No. L-24811. March 03, 1967

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

Because of certain labor disputes between the crew members of the M/V "Doña Aurora" and M/V "Doña Alicia", belonging to the Philippine Maritime Industrial Union, hereinafter referred to as PMIU, on the one hand; and the Maritime Company of the Philippines, hereinafter re-ferred to as MCP, operator of the two vessels, on the other hand, on March 16, 1965, the PMIU served notice to strike to the MCP. The next day, March 17, 1965, the crew members of the "Doña Aurora", which was then docked at Kobe, Japan, struck. At that time the other vessel, the "Doña Alicia", was docked at Cebu City, but the crew of this vessel did not actually go on strike as did the crew of the "Doña Aurora." On March 25, 1965, the PMIU filed charges of unfair labor practice against the MCP before the Court of Industrial Relations, hereinafter referred to as CIR. Supplemental charges of unfair labor practice were subsequently filed on April 19, 1965 by the PMIU against the MCP.

On May 24, 1965, the President of the Philippines, pursuant to the provisions of Section 10 of Republic Act 875, certified the above-mentioned labor dispute to the CIR, particularly the strike of the members of the crew of the "Doña Aurora." This certified case was doc-keted in the CIR as Case No. 60-IPA and was assigned to Judge Ansberto P. Paredes, one of the respondents in the instant case now before this Court.

Also on May 24, 1965, an agreement was entered into between the MCP and the PMIU denominated as "Memorandum Agreement for the Return to Manila of the 'Doña Aurora.'" This agreement, which was attested to by Secretary of Labor Jose B. Lingad and approved by the CIR on May 31, 1965, provides as follows:

“I. The strike of the 'Do164a Aurora' crew only shall be certified to the CIR by the President.

“II. ‘Doña Aurora' vessel shall be sailed back to Manila by its striking crew.

“III. The return to work order issued by the CIR in the certified case of the 'Doña Aurora' crew shall decide the terms and condi-tions thereof; provided that

"The strikers shall continue to serve in the 'Doña Aurora', without prejudice to whatever may be ordered by the Court in its return to work order in the certification case. No dismissal or lay-off shall be made by management during the pendency of the aforesaid certified case.

"The disputed cost of living al-lowance of P40.00 per month and the claim for overtime payment from the transfer of the 'Doña Aurora' vessel to the Maritime Company until the signing of this Agreement, shall be deposited upon the arrival of the 'Doña Aurora' in Manila with the Dept. of Labor, subject to the de-cision of the

CIR on the question of whether or not the strikers are entitled thereto.

“IV. The salaries of the crew of the 'Doña Aurora' from March 17, to the date of this Agreement shall be delivered to the R.P. Consul-General or the Secretary of Labor Jose Lingad in Japan, but this shall be without prejudice to the decision of the CIR in the certified case of the 'Doña Aurora' on the question of whether or not said crew are entitled to said payment.

“V. This Agreement shall be without pre-judice to the raising by any interested party of any proper question in the certified case of the 'Doña Aurora', like the illegality of the strike and the unfair labor practices and any right of other unions affected by the certified case under their existing contracts.”

On June 10, 1965, the PMIU, in its behalf, and in representation of the crew of the "Doña Aurora", filed a verified petition in CIR Case No. 60-IPA, which was captioned "CREW MEMBERS, DOÑA AURORA, PHILIPPINE MARITIME INDUSTRIAL UNION (PMIU), Petitioners, versus MARITIME COMPANY OF THE PHILIPPINES (MCP), Respondent", alleging, among other things, that the PMIU filed a notice to strike for the crews of both the "Doña Aurora" and "Doña Alicia" on March 16, 1965; that on March 17, 1965, the crew members of the "Doña Aurora" struck; and that charges of unfair labor practice against the MCP were filed by the PMIU on March 25, 1965 and were supplemented on April 18, 1965. The petitioner prayed, among others, that the strike of the members of the crew of the "Doña Aurora" be declared legal. The MCP filed its answer alleging that the strike staged and conducted by the members of the PMIU on board the "Doña Aurora" while it was in Kobe, Japan, was illegal, malicious, tortious and unlawful. On June 21, 1965, the Marine Officers' Association of the Philippines, hereinafter referred to as MOAP, and the General Maritime Stevedore Union of the Philippines, hereafter referred to as GMSU, as intervenors, filed their respective answer to the verified petition of the PMIU, likewise alleging that the strike staged by the members of the PMIU was illegal.

The CIR Case No. 60-IPA was set for hearing on June 10 and 11, 1965, and was assigned to a Commissioner of the Court who tried to conciliate the differences among the parties. In the meantime, by reason of supervening incidents, the PMIU filed three motions, as follows:

(1) Motion, dated June 17, 1965, entitled "Advice and Motion", wherein PMIU manifested to the court that the "Doña Aurora" had already arrived in Manila, was unloading her cargo and was ready to resume her sailing schedule; that replacement of some members of the crew was necessary; that because the prerogative of making the necessary replacement was vested in the PMIU, it was advising the court of the proposed replacements. The PMIU prayed that during the pendency of the case it be authorized to effect the proposed replacements and changes of the crew members.

(2) Motion, dated June 17, 1965 entitled "Motion to Require Respondent to Pay Members of Petitioner Union Unpaid Salaries and Other Monies Due Without Delay", wherein PMIU alleged that the MCP violated the "Memorandum Agreement" by not paying the 50% of the salaries of the crew of the "Doña Aurora" from March 17 to May 24, 1965; that the crew was not paid the salary corresponding to March 16, 1965 although they worked on that day; that 50% of the salaries due to the crews' families corresponding to the period from May 26 to May 31, 1965 had not been paid; that the 50% due to the families of "Doña Aurora" and "Doña Alicia" crews for the periods February 16 to February 28 and March 1 to March 15, 1965 had not been paid; that the MCP was not willing to pay the salaries due to the crew of the "Doña Aurora" from June 1, 1965 to June 15; and prayed the Court to order the MCP to pay said monies.

As the two above-cited motions dated June 17, 1965 involved issues of fact, the incidents were set for hearing before the Commissioner on June 22, 1965, but the hearing was later suspended.

(3) Motion, dated June 22, 1965, wherein PMIU alleged that at about 9:30 p.m. on June 21, 1965, a group of

around 35 men, some armed with pistols, boarded the "Doña Aurora" as a "cleaning gang"; that the PMIU crew members, coming from home visits to their families, were not allowed to board the vessel, and that the vessel left for Cebu at about 2:00 p.m. on June 22, 1965, leaving behind in Manila a considerable number of the PMIU crew, and that the sailing of the "Doña Aurora" enlisting a new set of crew was a violation of the Memorandum Agreement. The motion prayed that the CIR orders the MCP and intervening MOAP and GMSU to bring back the "Doña Aurora" to Manila and to disembark the "cleaning gang"; that the MCP, MOAP and GMSU be restrained from doing any act designed to take the vessel without the petitioning PMIU crew, or any act forcing petitioning PMIU crew to disembark against their will, or preventing them from having access to the vessel during the pendency of the case; and that the officials of the MCP, GMSU, and MOAP be cited for contempt of the court's order dated May 31, 1965, approving the Memorandum Agreement.

It is to be noted that before the filing of the motion of June 22, 1965, respondent Judge issued an order, dated June 22, 1965, enjoining the parties, under pain of contempt, to maintain the status quo, that is, "the crew members of the M/V Doña Aurora before the strike, should not be disembarked without previous Court approval."

Respondent Judge heard the motions filed by the PMIU while the MCP, MOAP and GMSU urged the respondent Judge to proceed with the hearing of the issue of the legality or illegality of the strike. While respondent Judge was hearing the motion for injunction dated June 22, 1965, the PMIU filed additional motions, as follows:

(4) Motion, dated June 29, 1965, entitled "Motion for Judgement on the Pleadings' Re Motion to Require Respondents to Pay Monies Due to Petitioners", which motion was denied.

(5) Motion, dated July 3, 1965, entitled "Motion to Order Respondent to Return Doña Aurora to Manila Pending Injunction Incident" in order that the crew members might withdraw their personal belongings left on board.

(6) Motion, dated July 3, 1965, entitled "Motion to Cite for Contempt of Court" the officials of the MCP, GMSU and MOAP for various violations of the orders dated May 31, 1965 and June 22, 1965.

(7) Pleading, dated July 6, 1965, entitled "Urgent Supplemental Manifestation Re Goings on Aboard Doña Aurora at Cebu" wherein PMIU manifested to the CIR that some regular crew members of the "Doña Aurora" were ordered by the Captain to disembark at Cebu; that other crew members were under severe pressure, threat and constant fear of harassment, and were being asked to disaffiliate from the PMIU. PMIU thereby reiterated its prayer for an order enjoining the MCP and the intervening unions from disembarking crew members against their will, and prayed further that the MCP, MOAP and GMSU be cited for contempt.

(8) Motion, dated July 8, 1965, entitled "Supplemental Motion Requiring Respondent to Desist from Acts of Discrimination, Acts of Vexation, Prejudice Against Petitioners," alleging that the MCP, MOAP and GMSU were doing acts designed to compel the PMIU crew members to disembark from the "Doña Aurora" and to destroy the union in the two Doña vessels (Aurora and Alicia) as an exclusive independent appropriate bargaining unit.

While the foregoing motions were being heard by the CIR, the MCP, MOAP and GMSU filed on July 9, 1965 an urgent motion entitled "Urgent Motion to Suspend Hearings on All Motions Filed by Petitioners Subsequent to its 'Petition' Filed on June 10, 1965, and for this Honorable Court to Proceed with the Hearing of the Legality or Illegality of the Strike Conducted and Staged by Members of Petitioner Squarely Presented by the Pleadings of All the Parties in the Case." The PMIU filed its opposition to said motion, and the movants their reply. Respondent Judge, in his order dated July 19, 1965, denied, for reasons stated therein, the urgent motion, and resolved to continue or proceed to hear and resolve the motions dated June 22, 1965 and June 17, 1965; the pleading "Advice and Motion", dated June 17, 1965; the motions of June 29, 1965 and July 3, 1965 "and such other motions that are pending before the Court where the right to return to work is not in issue."

Upon receipt of said order of July 19, 1965, the MCP, MOAP and GMSU filed a motion, dated July 23, 1965, praying the CIR that the hearing on the motions of the PMIU be held in abeyance because they would file a motion for reconsideration of said order. The motion was denied and the respondent Judge proceeded with the hearings of the motions as scheduled, pursuant to a prior admonition that he would proceed with the hearing unless restrained by a higher court. The MCP, MOAP and GMSU then jointly filed, on July 23, 1965, a verified motion for reconsideration of the order dated July 19, 1965 addressed to the CIR en banc.

Without awaiting the resolution of the CIR en banc of their motion for reconsideration of the order of respondent Judge Ansberto P. Paredes dated July 19, 1965, the MPC, MOAP and GMSU filed before this Court on July 31, 1965 a petition for certiorari, prohibition and mandamus with preliminary injunction, naming as respondents the Hon. Judge Ansberto P. Paredes of the CIR and the PMIU, and praying: (1) that the order of respondent Judge of July 19, 1965 in CIR Case No. 60-IPA be declared illegal, null and void; (2) that the respondent Judge, or any other Judge of the CIR to whom the CIR Case No. 60-IPA and its incidents may be assigned, be ordered to immediately proceed to hear the issue of legality or illegality of the strike squarely presented by the pleadings of the parties in said case and to suspend further hearings on all remaining motions filed by the respondent PMIU etc.; and (3) that upon the filing of a bond to be fixed by this Court an order issue enjoining respondent Judge Ansberto P. Paredes, or any Judge of the CIR to whom Case No. 60-IPA and its incidents may be assigned, from enforcing his order of July 19, 1965 and from proceeding further with the hearing of the remaining motions of respondent PMIU pending before the Court presided by said respondent Judge as well as other motions that respondent PMIU may later file which are not relevant to the issue of the legality or illegality of the strike.

This Court, upon the petitioners' filing of a bond of P10,000.00, issued the preliminary injunction prayed for.

The issues raised by the parties in the present case boil down to the following:

1. Is the instant petition premature?
2. Did the respondent Judge commit a grave abuse of discretion, or had acted without or in excess of jurisdiction, in denying petitioners' motion to give priority to the hearing and resolution of the issue regarding the legality or illegality of the strike in CIR Case No. 60-IPA over the motions presented by the respondents in said case?

1. Respondents contend that the present petition is premature because there is as yet no decision which may be reviewed by this Court. It is the stand of respondents that what can be appealed to this Court is not the decision of any judge of the CIR but the decision of the Court en banc as ruled in *Broce et al. v. Democratic Labor Association, et al.*, G. R. No. L-12367, October 28, 1959.

Respondents further aver that the impression created by the petitioners in their petition is that at the time of the filing of their petition before this Court there was no quorum among the Judges of the CIR and that there would be a long delay if the resolution of the Court en banc had to be awaited, when the truth is that at the time of the filing of the petition, there was already a quorum. The respondents point to the certification made by the Acting Clerk of Court of the CIR to the effect that "as of July 26, 1964, the court en banc has a quorum." (p. 96, Record)

Petitioners, on the other hand, maintain that their petition is not an appeal by certiorari but an original special action for certiorari, prohibition, and mandamus under the provisions of Sections 1, 2 and 3 of Rule 65 of the Rules of Court, hence, the case of *Broce, et al. v. Democratic Labor Association, et al.*, supra, relied upon by respondents, is inapplicable.

We find merit in the contention of respondents. Under Section 1 of Rule 65 of the Rules of Court the writ of certiorari lies if the following requisites are present: (1) that it is directed against a tribunal, board or officer

exercising judicial functions; (2) that such tribunal, board or officer has acted without or in excess of jurisdiction or with grave abuse of discretion, and (3) that there is no appeal nor any plain, speedy and adequate remedy in the ordinary course of law.

We find that these three requisites are not present in the instant case. The presence of the first requisite cannot be gainsaid - the CIR being a tribunal exercising judicial functions. As to the second requisite, it is not disputed that the CIR has jurisdiction over the labor dispute in question, the same having been certified by the President as affecting an industry indispensable to the national interest (Section 10, Republic Act 875). Even assuming, for the sake of argument, that the respondent Judge committed an error in denying the motion to give preference to the hearing and resolution of the issue of the legality of the strike, said error is not an error of jurisdiction which may be reviewed in certiorari proceedings (*Henderson v. Tan*, G.R. No. L-3223, October 10, 1950). Said error would be at most one of judgment or of procedure. But errors of judgment or of procedure, not relating to the court's jurisdiction or amounting to grave abuse of discretion, are not reviewable by certiorari (*Bimeda v. Perez, et al.*, G.R. No. L-5588, August 26, 1953). This Court has also held that where the issue or question involved affects the wisdom or soundness of the decision, not the jurisdiction of the court to render said decision or its validity, the same is beyond the province of the special civil action for certiorari (*Philippine Surety and Insurance Co. v. Jacala, et al.*, G.R. No. L-12766, May 25, 1960). Error of judgment can be reviewed only by appeal (*Paringit v. Masakayan*, G.R. No. L-16578, July 31, 1961; *De los Santos v. Mapa*, 46 Phil., 398; *Castro v. Peña*, 80 Phil., 488). As to whether the trial court committed grave abuse of discretion, the question will be discussed later.

The third requisite, i.e. the absence of appeal or any speedy and adequate remedy in the ordinary course of law, cannot be said to be present in the instant case. Petitioners claim in their petition that they filed before the CIR on July 23, 1965 a motion for reconsideration of the questioned order of July 19, 1965. The present petition was filed before this Court on July 31, 1965, although it is dated July 28, 1965. It is during the pendency of their motion for reconsideration before the CIR, therefore, that the instant petition was filed. It is an admitted fact that the motion for reconsideration was not resolved before the instant petition was filed. It has been held by this Court in *Mayol v. Blanco*, 61 Phil., 547, that if there is an appeal or other adequate remedy, like a motion for reconsideration which is still pending in the court below, the writ shall be denied. In *Plaza, et al. v. Mencias*, G.R. No. L-18253, October 31, 1962, this Court had occasion to state that:

"One of the grounds raised by the respondents against the present petition for certiorari is that it has been prematurely filed. We find this objection to be well taken. The rule is that before a petition for certiorari can be brought against an order of a lower court, all remedies available in that court must first be exhausted. In the case at bar the petitioners filed a petition without waiting for a resolution of the court on the motion for reconsideration, which could have been favorable to the petitioners. The rule also provides that actions for certiorari may only be brought in case there is no adequate remedy available to the petitioner in the court below and against which the petition for certiorari is filed. In the case at bar the adequate remedy was the motion for reconsideration and the resolution thereon, which was expected to be a more speedy remedy than the present petition for Certiorari."

Petitioners' claim that there is no speedy remedy because there was lack of quorum of the judges of the CIR to rule on the motion for reconsideration cannot be given credit in the face of the allegation of respondent Judge, in his answer, that there was such a quorum and the certification of the Acting Clerk of Court of the CIR that there was such a quorum as of July 26, 1964.

2. Regarding the second issue, We find that respondent Judge did not commit a grave abuse of discretion, or had acted without or in excess of jurisdiction, when he denied petitioners' motion to give priority to the hearing and resolution of the issue regarding the legality or illegality of the strike.

In proceeding to hear or investigate any matter before it, the CIR is conferred discretion in procedural matters (Section 7, Com. Act 103, as amended). Procedure is the means whereby the court reaches out to restore rights and remedy wrongs, and includes every step which may be taken from the beginning to the end of a case (72 C.J. S., p. 473). The court may, subject to the requirement of due process, give all such directions and orders as it may deem necessary or expedient in the determination of the dispute before it. It may refrain from hearing the dispute or part thereof, or dismiss any matter or part of any matter, where further proceedings are not necessary or desirable. Certainly, it may also defer the hearing of any motion or hear one motion in preference to others, when in its judgment such is necessary to settle an industrial dispute which disrupts industrial peace and economic order of the country. This discretion granted by law is not to be interfered with unless it is gravely abused.

It cannot be said in the instant case that the respondent Judge committed a grave abuse of discretion when he issued the questioned order of July 19, 1965. Grave abuse of discretion, which is also a requirement in order that the instant petition for certiorari may prosper, "implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction (*Abad Santos v. Province of Tarlac*, 38 O.G., 830), or, in other words, where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law" (*Alafriz v. Nable, et al.*, 72 Phil., 278).

The respondent Judge's order is not claimed to have been motivated by passion and personal hostility. It is not despotic or arbitrary. It was prompted by justifiable grounds. A perusal of the questioned order is sufficient to show its basis. In a paragraph of the order the respondent Judge says:

"However, there are some issues brought out of the hearings thus far held which should be first resolved before the Court is ready for the reception of evidence and resolution of the strike illegality issue x x x."

And those issues were (1) the disagreement as to the import or interpretation of the Memorandum Agreement, whether it was only for the return of the "Doña Aurora" or a return to work agreement ending the strike; (2) the payment of the "salaries to the crew of the Doña Aurora from March 17 to the date of this Agreement x x x" and enforcement of the items agreed upon in the Agreement like the deposit upon arrival of the disputed cost of living allowance of P40.00 per month, and the claim for overtime pay from the transfer of the "Doña Aurora" to the Maritime Company until the signing of the Agreement. And the order continued:

"It is clear then that from all these facts, the strike illegality issue should first be relegated to the background and the enforcement of the items agreed upon by the parties in that Agreement should first be decided one way or the other, especially where the items would appear to be clear and non-compliance therewith would manifestly work undue hardship to labor."

The reason given by the Court gains added weight when it is considered that the condition provided in the agreement of the raising of the issue of legality or illegality of the strike did not affect the effectivity of the other terms and conditions laid down in said Memorandum Agreement. This same reason explodes the contention of the petitioners herein that all the issues raised in the motions of respondents depend upon the issue of the legality or illegality of the strike.

The respondent PMIU did not file those motions for delay but for the protection of the immediate rights affecting the status of the employees and their wages - matters that are vital to their livelihood and to the livelihood of their dependents.

Neither can it be said that the respondent Judge is guilty of positive evasion of duty in not giving preference to the issue of the legality of the strike. The case of *Philippine Can Co. v. CIR, et al.*, G. R. No. L-3021, July 31, 1950, relied upon by petitioners is not applicable to the case at bar, as can be seen in the facts and ruling in said

case.

The facts in that case are: On March 14, 1949, a number of laborers belonging to the Liberal Labor Union and working in the can factory of Philippine Can Company, staged a strike and established a picket line around the company's compound. According to the company, the strikers and picketers used threat and intimidation to prevent the other laborers from continuing to work. The same morning the company posted notices at the gate of the company compound notifying the strikers that those who would not return to work at one o'clock in the afternoon would be dismissed; in fact those who did not return to work were declared dismissed and dropped from the payroll. Five days later, i.e. on March 19, 1949, the Liberal Labor Union filed a petition with the CIR alleging that from February 26, 1949, the Philippine Can Company had reduced the wages of seven laborers and that after the corresponding negotiations had failed the strike was declared, and prayed the CIR to order, after due hearing, the Philippine Can Company to restore the former rate of wages and to refund all deductions made in their salaries. In its answer, the company denied the reduction of the wages, and alleged that the strike was illegal and unjustified; that in spite of the notice to the strikers to report to duty, they did not, so they were discharged; and that the company had been steadily losing in its business and that in view of the great financial losses, the laying-off of laborers not necessary in the operation of the can factory had become imperative to save the company from bankruptcy. The company prayed that the petition of the labor union be denied, and that the court order the lay-off of the laborers not necessary in the operation of the factory by confirming the discharge from the service of the strikers who did not return to work. On the second day of the hearing, counsel for the labor union asked that the strikers be ordered back to work. The attorney for the can company vigorously objected to this request, saying that the illegality of the strike had been raised squarely in issue before the court and consequently, it would be highly unfair to compel the can company to readmit the strikers without first deciding whether or not said strike was legal and whether or not the dismissal of the strikers was proper. The same day, April 8, 1949, Judge Jose S. Bautista of the CIR issued an order directing the laborers of the labor union to immediately return to work and the can company to admit them under the same conditions which prevailed before the conflict arose. A motion for reconsideration filed by the can company was denied by a resolution of three judges of the CIR. The Philippine Can Company filed a petition for certiorari. The Supreme court held:

"We hold that where an employer claims that the strike of some of its laborers was illegal and so it has dismissed said laborers for refusing to return to work, and raises such illegality squarely in issue in a case pending before the Court of Industrial Relations, and further asserts that because of the loss in its business, it does not presently need the services of said strikers nor of substitutes to take their places in the employer's factory, the Court of Industrial Relations instead of ordering the strikers back to work, should first determine whether or not the strike was legal and whether or not the strikers had been properly and lawfully discharged, and for this purpose the lower court should give priority to the hearing and determination of the case, so as to avoid committing any possible injustice to the employer. This, especially in a case where like the present, as we understand it, only a portion of the workers had gone on strike thereby not unduly interrupting, much less, paralyzing the work and production of the Company, which production by the way, does not, because of its nature, involve public interest." (Emphasis supplied)

We find that between the Philippine Can Company case and the case at bar there is only one significant similarity, and it is that the question of the legality or illegality of the strike had been raised squarely in issue before the Court. There are, however, many significant and material differences, namely: (1) the instant case involves public interest; the Philippine Can case did not; (2) the strikers here have not been formally dismissed, or at least it was not so alleged in the pleadings; the strikers in the Philippine Can case were dismissed by the employer; (3) there is a Memorandum Agreement in this case for the strikers to continue serving in the "Doña Aurora", and the strikers pursuant to the agreement did return to work; in the Philippine Can case there was no such agreement; (4) in the instant case, the PMC does not allege that it was losing and could not afford to readmit dismissed

employees, or that it did not need any more the service of the crew of the "Doña Aurora"; in the Philippine Can case the company complained of tremendous losses and did not need the services of the dismissed employees back. The incurring by the can company of business losses was the injury that the Supreme Court sought to remedy when it decided that the issue of the legality of the strike be heard first; and (5) the most significant difference lies in the fact that in the Philippine Can case, the CIR ordered the strikers to return to work before deciding the legality of the strike; in the case at bar, the strikers had already returned to work by virtue of the Memorandum Agreement executed by the parties and confirmed by the Court. Assuming that the crew members had been disembarked, the hearing of the motions of respondent would not lead to a return to work order before the legality of the strike is settled because the questioned order expressly stated that the court will proceed to hear "such other motions where the right to return to work is not in issue." We, therefore, hold that the doctrine laid down by this Court in the Philippine Can case is not controlling in the present case.

IN VIEW OF THE FOREGOING, the instant petition should be, as it is hereby, dismissed, and the writ of preliminary injunction issued in the present case on August 5, 1965 is dissolved, with costs to the petitioners.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Regala, Makalintal, Bengzon, Sanchez, and Castro, JJ., concur.

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