

**SAMEER OVERSEAS PLACEMENT AGENCY, INC., PETITIONER, VS.
HONORABLE NATIONAL LABOR RELATIONS COMMISSION, SECOND
DIVISION, HONORABLE LUTRICIA QUITEVIS-ALCONCEL, IN HER
OFFICIAL CAP...**

Ponente: COSICO, J.

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COSICO, J.:

This is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure which seeks to annul and set aside the following:

- the Resolution[1] dated August 31, 2005 issued by public respondent National Labor Relations Commission (NLRC) in NLRC IC 0001180-02 (POEA-00-09-2676-96);
- the Order[2] dated June 30, 2003 issued by public respondent Labor Arbiter Lutricia F. Quitevis-Alconcel in OFW NLRC Case No. 00-09-2676-96; and
- the Notice of Garnishment[3] issued by the NLRC in NLRC-NCR Case No. 00-09-2676-96.

The Facts

The instant case stems from a complaint[4] for underpayment of salaries/wages, illegal deductions, attorney's fees and litigation expenses instituted by herein private respondent Domingo Roxas against Sameer Overseas Placement Agency, Inc. (Sameer Overseas, for brevity), which was docketed as NLRC OCW Case No. 00-09-2676-96. The facts established in the said case, as narrated by Labor Arbiter Arthur L. Amansec in his Decision[5] dated July 16, 1998 are as follows:

“Records show that complainant Domingo Roxas worked as heavy duty driver at the Kingdom of [Saudi] Arabia with Arabian Fal Company for Contracting and Trading (AFALCO, for brevity) as the foreign employer. Complainant was hired through the facilities of respondent Sameer Overseas Placement (Sameer, thereafter) under the following terms: Position: [Heavy] Equipment Driver

Salary: US \$ 420.00

Duration: one (1) year

“In his complaint/Position Paper, complainant stated that he worked at Rahima, KSA for [AFALCO] with a salary of US \$420.00 a month for one (1) year contract and extendible for another year. He started working on June 25, 1994 and for a duration of his one year employment, complainant received a monthly salary of SR 775.00 which is equivalent to only \$200.00 [and] that his total claim for salary differentials amount to P140,875.00.

“Complainant further stated that he has no knowledge of the change of accreditation of his employer AFALCO from, respondent Sameer to IDG Trading & General Services.

“Respondent Sameer, in its Answer, denied the claims for underpayment of salaries and illegal deductions

because complainant was paid his salaries every month in accordance with the Contract of Employment. It further alleged that while complainant was originally recruited, hired and deployed by Sameer for its [accredited] foreign principal AFALCO, the accreditation of the latter was however transferred to IDG Trading and General Services, whereby the latter thru its President/General Manager, Mr. Alberto F. Reyes, Jr. executed an affidavit of Assumption of Responsibility stating among others, to wit:

- x x x

- That Arabian Fal Company for contracting and Trading, our principal (foreign), a company duly organized and existing under the laws of the Saudi Arabia with principal office at P.O. Box 88, Restanura 3194 K.S.A. has designated our company as its lawful representative in the Philippines;

- That as agent of the above-principal in the Philippines our company is willing to assume any and all liabilities that may arise or that may have arisen with respect to the workers recruited and deployed by Sameer Overseas Placement Agency, Inc.

“That pursuant thereto the Landbased Projects Accreditation Division of POEA issued a Certification to the effect that the principal AFALCO is accredited to IDG Trading and General Services effective March 6, 1995 and valid until March 6, 1997.

“That henceforth the transferee local agency is the third party respondent IDG Trading.

“Respondent Sameer maintained that the instant case should be dismissed against it.

“Subsequently, respondent Sameer filed a Motion to Admit Third Party Complaint citing the aforementioned allegations as grounds therefor and prayed that summons be issued to IDG Trading.

“Summons was issued to IDG Trading but the same was returned unserved indicating that it cannot be located.”[6]

In his Decision, Labor Arbiter Amansec ordered Sameer Overseas to pay Roxas salary differentials for twenty-four (24) months computed at US\$200.00. Sameer Overseas was considered liable for such amount on the following basis—

“Although IDG appears to have assured the liabilities of respondent Sameer, the latter cannot, in justice, escape liability considering that IDG appears to have eluded our summons and the lack of notice to, consent and/or knowledge by complainant of the change in accreditation.”[7]

Sameer Overseas’ appeal from the decision of the labor arbiter to the NLRC was dismissed; thus, it filed a petition for certiorari[8] with this Court, which was docketed as CA-G.R. SP No. 55990. In the meantime, the decision declaring herein petitioner liable to the private respondent became final and executory, prompting the latter to file with the NLRC an ex-parte motion for the issuance of a writ of execution[9]. Accordingly, the NLRC issued the corresponding writ of execution, and a notice of garnishment[10] covering the bank account of petitioner Sameer Overseas in United Coconut Planters Bank (UCPB), Makati Avenue Branch.

Feeling aggrieved by these issuances, Sameer Overseas filed separate motions to quash/recall the writ of execution and notice of garnishment.

The Ruling of the Labor Arbiter

The motion to quash/recall writ of execution was denied via an Order dated October 28, 2002. The motion to quash/recall notice of garnishment, on the other hand, was denied by public respondent Labor Arbiter Lutricia F. Quitevis-Alconcel in her Order[11] dated June 30, 2003, the pertinent portions of which read –

“In our Order dated October 28, 2002, the undersigned had exhaustively discussed on why respondent Sameer’s October 4, 2002 Motion to Quash was denied. We hereby reiterate the same again adopting it as we DENY its December 19, 2002 aforementioned Motion to Quash, etc.

“WHEREFORE, the December 19, 2002, Motion to Quash is hereby DENIED for utter lack of merit.

“Let an Alias Writ of Execution be issued.

“SO ORDERED.”[12]

The Ruling of the NLRC

Sameer Overseas’ appeal from the Order of the labor arbiter was denied for lack of merit by the NLRC via a resolution dated June 30, 2003. Its motion for reconsideration was denied in a resolution[13] dated August 31, 2005, the dispositive portion of which provides –

“WHEREFORE, in the light of the foregoing this Motion for Reconsideration is hereby DENIED for lack of merit. “No further Motion for Reconsideration shall be entertained. “SO ORDERED.”

Hence, the instant petition for certiorari.

The Issue

The lone issue for this Court’s resolution is: Whether or not herein public respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying petitioner’s motion to quash/recall the notice of garnishment.

This Court’s Ruling

After due study, this Court finds the instant petition for certiorari bereft of merit. Public respondents did not commit grave abuse of discretion amounting to lack or excess of jurisdiction because factual and legal bases supported their resolution of petitioner Sameer Overseas’ motion. We emphasize that by “grave abuse of discretion” is meant such capricious and whimsical exercise of judgment which is equivalent to an excess or a lack of jurisdiction, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[14] Herein public respondents did not act in such manner.

In questioning the issuance of the subject notice of garnishment, herein petitioner relies heavily on the allegation that foreign employer AFALCO, a Saudi Arabian principal, has already transferred agency accreditation with the Philippine Overseas Employment Administration (POEA), from petitioner Sameer Overseas to IDG Trading and General Services. Mr. Alberto F. Reyes, Jr., president and general manager of IDG Trading and General Services, has allegedly executed an affidavit of assumption of responsibility and liability, stating, among other things, that as agent of AFALCO, it is willing to assume any and all liabilities that may arise or that may have arisen with respect to the worker recruited and deployed by Sameer Overseas Placement, Inc. When private respondent Domingo Roxas filed his monetary claim with the arbitration branch of NLRC, IDG Trading and General Services was allegedly already the accredited recruitment agency in the Philippines of AFALCO.[15]

At the outset, it bears stressing that the instant petition for certiorari concerns primarily the validity and propriety of public respondents’ denial of petitioner’s motion to quash/recall the notice of garnishment over its bank account in UCPB. The matter of whether or not herein petitioner, as the supposed former agent of principal AFALCO, can still be held liable for the claims of the private respondent is a matter that is the proper subject of

the petition for certiorari already filed by herein petitioner with the Court of Appeals and docketed as CA-G.R. SP No. 55990, which specifically assails the decisions of the labor arbiter and the NLRC declaring herein petitioner liable to the private respondent.

As to the merits of the instant petition, we take note that the ex-parte motion for the issuance of a writ of execution^[16] dated April 11, 2000 filed by private respondent Roxas provides that the decision in the action for underpayment of wages has already become final and executory. The subject notice of garnishment was issued by the NLRC on October 3, 2002, only after the writ of execution had been issued. This notice of garnishment conforms fully to the final and executory judgment declaring herein petitioner as the entity liable for the monetary claim of Roxas. The issuances of the public respondents are thus in accord with Articles 223 and 224 of the Labor Code, which provide that the decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties, and that within five (5) years from such date, the Commission or any labor arbiter, among other persons, may issue a writ of execution on the judgment. Petitioner Sameer Overseas does not effectively assail in the instant petition the circumstances leading to the finality of the Commission's decision as it is contemplated under the Code, but mainly questions its liability for the monetary claims of the private respondent. Unfortunately for the petitioner, however, we have ruled that the instant petition is not the most appropriate vehicle for the ventilation of such argument.

The filing by petitioner Sameer Overseas with the Court of Appeals of the petition for certiorari docketed as CA-G.R. SP No. 55990, which seeks to nullify and set aside the issuances of the labor arbiter and the NLRC declaring it liable for the payment of Roxas' salary differentials, could not have prevented the judgment of the NLRC from being final and executory because the petition for certiorari is an action independent from the main case for underpayment of wages, and that Section 7, Rule 65 of the 1997 Rules of Civil Procedure expressly provides that a petition for certiorari "shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceeding in the case."

Notably, Rule VIII, Section 6 of the Rules of Procedure of the National Labor Relations Commission (as amended by Resolution No. 01-02, Series of 2002) reiterates this principle, and thus expressly reads as follows –

"Section 6. EFFECT OF FILING OF PETITION FOR CERTIORARI ON EXECUTION. A petition for certiorari with the Court of Appeals or the Supreme Court shall not stay the execution of the assailed decision unless a temporary restraining order is issued by the Court of Appeals or the Supreme Court."

It does not appear that an injunctive writ has been issued by the Court of Appeals in CA-G.R. SP No. 55990 restraining the execution of the judgments assailed in the said case. On the contrary, the petition therein was dismissed by the Court on December 29, 2000. This being the case, public respondents were only acting in accordance with law when they granted private respondent's motion for execution and accordingly, issued the writ of execution and questioned notice of garnishment. After finding that the assailed issuances are in full accord with pertinent provisions of law and established jurisprudence, we find no grave abuse of discretion committed by the public respondents.

WHEREFORE, in view of the foregoing, the instant petition is hereby DISMISSED.

SO ORDERED.

Sundiam and Dimaampao, JJ., concur.

[1] Rollo, p. 26.

[2] Id. at 28.

[3] Id. at 30.

[4] Id. at 32.

[5] Id. at 73.

[6] Id. at 73-76.

[7] Id. at 76.

[8] Id. at 84.

[9] Id. at 79.

[10] Id. at 30.

[11] Id. at 28.

[12] Id. at 29.

[13] Id. at 26.

[14] *Duero v. Court of Appeals*, 373 SCRA 11 (2002).

[15] Memorandum, pp. 7-8; Rollo, pp. 163-164.

16 Rollo, p. 79.

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