

**WENCESLAO PLAZA, MANUEL SABERON, ARTURO BERNARDINO,
RICARDO BERNARDINO, ET AL., PETITIONERS, VS. THE HON. JUDGE
EULOGIO MENCIAS AND FILIPINAS MOTOR SERVICES, INC.,
RESPONDENTS.**

G. R. No. L-18253. October 31, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

A petition for certiorari with preliminary injunction seeking the annulment of a restraining order issued by the respondent Judge Eulogio Mencias of the Court of First Instance of Rizal, and of the proceedings had before his court in Civil Case No. 6562, and enjoining respondents from enforcing the said restraint order.

It appears from the record that petitioners, who are members of the petitioning union (PAFLU), served on March 17, 1961 to the respondent Filipinas Motor Services, Inc. (FILMOCO), a set of bargaining demands. Within twenty-four hours after such receipt of the demands, the respondent FILMOCO severed employment and stopped work of over twenty members and officers of the PAFLU. As a result the petitioners on March 20, 1961, staged an unfair labor practice strike and picketing, filed unfair labor charges with the Court of Industrial Relations against respondent FILMOCO, and sent a written request to the Conciliation Service of the Department of Labor to mediate and conciliate the labor dispute.

On March 22, 1961, respondent FILMOCO filed with the Court of First Instance of Rizal a complaint for damages with preliminary injunction against the petitioners. In said complaint, FILMOCO alleges that the defendants, now petitioners, being independent contractors and not employees of the plaintiff and there being no labor controversy or dispute between them, staged a strike and illegally picketed the premises of the plaintiff, exhibiting ugly, libelous and obnoxious placards thereby preventing the free movement of the other independent contractors, employees who are willing to work, officers, and customers of the plaintiff entering the premises of the said plaintiff; that defendants have harrasted, threatened intimidated and coerced and are continuing to harras, threaten, intimidate and coerce other independent contractors, employees, officials and customers of the plaintiff when entering the said premises, and praying among other things, that a writ of preliminary injunction be issued enjoining the defendants from continuing the acts complained of. This last prayer was granted in a restraint order dated March 23, 1961.

In an "Urgent Motion for Reconsideration and Immediate Lifting of the Restraint Order", filed on March 24, 1961, defendants (petitioners herein) assailed the jurisdiction of the Court of First Instance in issuing the said order. They alleged that they being employees of the plaintiff, and there being a labor dispute between them pending in the Court of Industrial Relations, the latter has acquired jurisdiction over all matters, including the case filed by plaintiffs, which are mere incidents to the labor dispute case, to the exclusion of other courts. They further pointed out that the Court in issuing the restraint order without hearing violated the provisions of Sec. 9, R.A. No. 875, which outlines the procedure in the issuance of a restraint order.

On March 27, 1961, before the motion for reconsideration could be resolved by the Court, the instant petition for certiorari was filed, setting forth allegations contained in the motion for reconsideration with the additional averment that the respondent judge refused immediate resolution of the motion for reconsideration.

In their answer to the petition, respondents allege that (1) the petition was prematurely filed because the same was filed without giving opportunity to the court to reconsider its restraining order as prayed for in the motion for reconsideration; (2) the respondent judge in issuing the restraining order was guided by Rule 60 of the Rules of Court, because it was clear from the plaintiff's complaint that it was entitled to the relief demanded, because an illegal strike and picketing was being staged by persons who are not employees of the plaintiff, thereby causing irreparable injury and damages to plaintiff's business; (3) so the court below had no occasion to apply the provisions of Sec. 9, of R.A. No. 875 because it appeared from contracts duly signed by defendants and plaintiff and submitted to the court, that the former are not employees of the latter, and because the case is an action for damages, a case outside the jurisdiction of the Court of Industrial Relations. Hence, it is alleged, the lower court acquired exclusive jurisdiction over the case and the parties. They also allege that they are not aware of any unfair labor practice case filed with the Court of Industrial Relations until they received a copy of defendants' motion for reconsideration.

We do not find in the record the alleged copies of contracts executed between petitioners and the respondent company which, according to respondent company in its answer, would show that the petitioners are not employees but independent contractors. From the allegations of the petition before us, it would seem that they are not independent contractors, but are workers or laborers, although paid according to amount and quality of work. The mere statement in the contract that they are independent contractors would not change their status as employees of the respondent company in the contemplation of the labor laws.

Another allegation in the answer is that the respondent company could not have known of the existence of the case for unfair labor practice against it as the record shows that said case was filed on March 20, 1961 and their complaint for damages was filed on March 22.

The record further discloses that upon being notified of the restraining order issued by the respondent Judge Mencias, dated March 23, 1961, petitioners filed an urgent motion for reconsideration dated March 24, 1961. But before the motion for reconsideration could be passed upon by the court below the petitioners filed the present petition for certiorari in this Court on March 27, 1961.

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 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 more speedy remedy than the present petition for certiorari.

The above objections are fatal to the present petition. Considering, however, that if the present petition were dismissed and the case remanded to the Court of First Instance of Rizal to give it opportunity to decide the motion for reconsideration, as the rules demand, considerable time and expense will be wasted to no avail, on the part of the petitioners and of the respondents, and of the courts, we have, therefore, decided to grant the petition for certiorari and set aside the preliminary injunction of the court below issued by the judge thereof.

Writ granted; the preliminary injunction granted by Us is made permanent. No costs allowed.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

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