

SEVERINO TAJONERA AND/OR RINO'S SUPER CLUB AND RESTAURANT, PETITIONERS, VS. FERNANDO LAMAROZA, INOCENCIO CABALES, FEDERICO SANDOVAL, JOSE TUANO, LOLITO ESPINOSA, RUDY CANTOJAS, ...

G.R. Nos. L-48907 & 49035. December 19, 1981

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

These two (2) petitions for certiorari with writ of preliminary injunction are taken up jointly as they involve the same parties and arise from the same causes.

There were six (6) cases instituted before Regional Office No. IV of the Department (now Ministry) of Labor, five (5) of which were filed separately by private respondent workers against petitioners for "unfair labor practice, illegal dismissal, illegal deduction, underpayment, overtime pay for holiday and rest day, violation of P.D. 525, breakage deduction in salary, recovery of cash deposit and separation pay," and the other one was filed by petitioners for authority to shut down their business. These cases were consolidated on August 2, 1976 and were set for hearing on August 3, 1976. Both parties and their respective counsel were present thereat, and they agreed to reset the hearing on August 12, 1976, that private respondents will submit their position paper on or before August 9, and that counsel for petitioners will submit his answer/position paper on the date of the hearing.[1]

Private respondents submitted an affidavit[2] they executed jointly with twelve other waiters/employees of Rino's Super Club, and which states, among other things, the following:

"We, the undersigned waiters/employees of Rino's Super Club and Restaurant, all Filipinos, of legal ages with our Residence Certificates and other personal circumstances stated below, after being duly sworn to according to law hereby depose and say:

"1. That all of us were dismissed by the respondents from our employment without any notice to us nor clearance from the Department of Labor without 'just cause' in violation of P.D. 442 or the New Labor Code.

"2. That we do not know of any reason except that we were in the process of forming a UNION to be able to have a good bargaining power with the Management in order to remedy the Unfair Labor Practices which we have been suffering from the management, such as, Collection of Cash Deposits from employees, Delayed and Unpaid wages, Collection of Breakage, Collection of customer's unpaid bills from wages of the employees, by making us construction laborers, non-payment of overtime, underpayment, holiday pay, and Non-Payment of Allowance under P.D. 525 to those who are entitled and other violations.

"3. That we tried to get the explanation of the management on our dismissal but the management instead tried to coerce our representative into testifying in their favor in case we file a case against them, and that the management will charge us of abandonment if we persist on prosecuting our claims against them.

"4. That on the same day of our dismissal we were immediately replaced by a new group of personnel which

they have hired through another firm also owned by the respondents in order to escape from their liability under the law.

"5. That the amount representing our cash bonds/deposits were actually deducted from our wages as such and only the receipts were given to us instead of our salaries by the respondents and it is not true that they have no knowledge about such deposits.

"6. That we are even told that any case we filed with the Department of Labor will not prosper as the respondents have ways and means and connections with High Government officials including the Department of Labor to delay our case and obtain dismissal because most of these officials are their customers."

As per agreement, the cases were again called for hearing on August 12, 1976, but neither petitioners nor counsel appeared, nor did they submit any answer or position paper.

On October 4, 1976, Officer-in-Charge Vicente Leogardo, Jr. of Regional Office No. 4 issued his Order holding that the respondents were dismissed by reason of their union activities and without prior clearance having been issued by the Labor Department. The petitioners were ordered to reinstate private respondents to their former positions with full back-wages from the date of termination up to their actual reinstatement. The issue of illegal deductions, etc. were referred to the Labor Regulation Section of the Department (now Ministry) of Labor for determination.

Petitioners appealed the said order of October 4, 1976 to the Secretary (Now Minister) of Labor and stated in their memorandum of appeal that private respondents staged an illegal walk-out against management which in effect is an abandonment of their respective jobs; that they told the respondents to return to work otherwise a damage suit will be filed against them, but the respondents arrogantly took upon themselves to file several complaints against the management; and that management never filed any clearance to terminate the respondents because management then still clung to the belief and hope that these employees might have just been misled and find out later on that what they have done was wrong.

Petitioners likewise emphasized that they never received any position paper from complainants, so they never bothered to submit any pleading or position paper; that they were deprived of due process for they were never required to submit memorandum; and that there was no judge, no witness, no transcript of records to talk about or to be made the basis of the Order of Mr. Leogardo, Jr.

On March 31, 1977, finding the appeal to be frivolous and dilatory, then Acting Secretary Inciong denied the same and ordered the immediate issuance of a writ of execution. On July 5, 1977, when the writ of execution was being served upon petitioners, they executed a compromise agreement^[3] admitting their pecuniary liability to respondents in the amount of P37,620.00.

Instead of complying with the compromise agreement, petitioners appealed to the Office of the President and maintained their stand that they were denied due process, and that the writ of execution was based on an incomplete judgment which cannot be carried out or executed. Hon. Ronaldo Zamora, in his capacity as Presidential Assistant for Legal Affairs, ordered the stay of execution pending appeal. Petitioners, on the other hand, filed an appeal bond in the amount of P40,000.00. On January 20, 1978, the Office of the President, through respondent Zamora affirmed in toto the order of the then Acting Secretary Inciong, with the finding that the compromise agreement governed the liabilities of petitioners, but the latter failed to abide with the terms and conditions set forth therein and that petitioners, in appealing the order subject of that agreement, revived the executory character of the order appealed from pursuant to the said agreement thus rendering the appeal moot and academic.

Petitioners moved for a reconsideration of the Order of respondent Zamora and reiterated their defense of their having been denied due process and claimed that respondents injected fear and duress upon the person of Severino Tajonera in forcing him to sign the agreement.

On August 10, 1978, respondent Jacobo Clave, then Presidential Executive Assistant, denied the reconsideration prayed for and held that the issues raised in the motion were merely reiterative of the issues already passed upon and resolved by the Office of the President.

In the meantime, pending the resolution of the appeal from the order of reinstatement, the matter of money claims was set for conciliation and conference on December 21, 1976. Neither petitioner nor counsel appeared. The conference was reset to January 13, 1977 and this time, petitioners came late; but they agreed to have an ocular inspection, by some Labor officials, of the premises with assurance that the employees' service records will be made available. However, for some unknown reasons, petitioners failed to produce the records of the employees as promised.

Private respondents submitted their memorandum of claim^[4] with computations, in addition to the receipts and payroll summaries. Petitioners did not submit any evidence relative to the monetary claims.

On October 25, 1977, Regional Director Francisco Estrella awarded the money claims to private respondents in various amounts based on the evidence presented. The corresponding writ of execution was issued on February 20, 1978 bearing the amount of P47,027.00 representing the total amount of the claim to be paid to private respondents. Petitioners filed a memorandum of appeal with urgent petition to lift the writ of execution on the ground of justice and equity, claiming that they were never given the chance to rebut or present evidence contrary to private respondents' position; that they were never furnished the orders of October 25, 1977; that as borne out by the records in the Department of Labor, the one who received the order by the name of "Nelin Esquerdo" was not known to both petitioners and counsel.

Petitioners were required to file an appellants' bond in the amount of P47,027.00. Acting on the appeal, respondent Inciong decided to give petitioners a chance to be heard and summoned them by telegram for a conference on July 11, 1978 but still they failed to appear. It was on July 18, 1978 when counsel for petitioners came and it was agreed that the former will submit his position paper and evidence not later than July 24, 1978. But contrary to the agreement, said counsel submitted a supplemental position paper praying that the case be placed under arbitration. Counsel for private respondents was forced to manifest and move that the case be submitted for resolution in view of the dilatory tactics employed by petitioners. On July 28, 1978, Deputy Minister Inciong dismissed the appeal and directed the immediate execution of the order of October 25, 1977.

An alias writ of execution was issued on September 25, 1978 for failure of petitioners to comply with the directives contained therein.

The first petition for certiorari, G. R. No. L-48907, was filed prior to the resolution of the appeal from the order dated October 25 1977 of Director Estrella while the second petition, G. R. No. L-49035, was filed after the dismissal of the appeal and after the issuance of the alias writ of execution.

The first petition alleged that respondent Vicente Leogardo, Jr. went beyond his authority when he took cognizance of the consolidated cases of unfair labor practice and money claims since the only persons authorized by the code to hear cases of that nature are the Labor Arbiters and members of the National Labor Relations Commission; that assuming he has the authority to do so, his questioned order of October 4, 1976, thereby segregating the issues of reinstatement and backwages from the other issues of overtime pay, underpayment, etc., denotes no other than an incomplete judgment in contravention of governing jurisprudence in this matter; that

when a judgment is conditional or incomplete, it is not final and cannot be executed; that respondent Leogardo Jr. expressly spelled out the amount to be paid as backwages to the employees, when none of these amounts and specifications were made in his order of October 4, 1976.

The second petition also alleged lack of jurisdiction on the part of Regional Director Estrella when he ruled on the money claims which authority exclusively belong to the National Labor Relations Commission; that petitioners were never notified or at least given a hint of the so-called conference and the investigation to be conducted; that the specific and concrete computation of claims for each individual person made by respondent Estrella, denotes a glaring example of a patent violation of due process wherein petitioners would be deprived of property without an opportunity to be heard; and that the Deputy Minister of Labor's statement that petitioners failed to appear at the scheduled hearing is not true since no hearing was actually conducted but only a conference and/or ocular inspection, a conciliation and investigation; and the case was not tried on the merits.

The rule is that jurisdiction is conferred by law and the objection to the authority of the tribunal to take cognizance of a case may be raised at any stage of the proceedings. However, considering the attendant circumstances in the cases at bar, petitioners are now barred from claiming lack of jurisdiction at this stage with their active participation. They never questioned the authority of respondents Leogardo Jr. and Estrella throughout the duration of the proceedings when they have the chance to do so. They never mentioned lack of jurisdiction in their memorandum of appeal, in their motion for reconsideration or in their position paper. They are now estopped from raising such objection. It has been held that a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and after failing to obtain such relief, repudiate or question that same jurisdiction.^[5] The Court frowns upon and does not tolerate the undesirable practice of some litigants who submit voluntarily a cause and then accepting the judgment when favorable to them and attacking it for lack of jurisdiction when adverse.

As to the alleged deprivation of petitioners of the procedural due process, We find no merit in this contention. They had ample opportunity to present their evidence not only during the conciliation stage but also before then Deputy Minister Inciong who called for conference to give petitioners another fair chance to ventilate their grievances and to submit their defenses, if there are any. Although there was no actual hearing conducted, petitioners were afforded time to explain their side. There were no refutations made nor was there any hint on the record that they can present any meritorious defense which would warrant a reversal of the questioned orders.

What the law prohibits, is, not the absence of previous notice but the absolute absence thereof and lack of opportunity to be heard. Petitioners have no reason to impute lack of due process because they were "heard" on their memorandum of appeal and motion for reconsideration. They, therefore, had sufficient opportunity for them to inform the tribunal concerned of their side of the controversy. What due process contemplates is freedom from arbitrariness, and what it requires is fairness or justice, the substance rather than the form being paramount.^[6] The circumstances tend to show that the petitions were dilatory in character. And from what has been stated, the liability of petitioners appears clear, much more so with the stern but salutary requirement in the Constitution as to the promotion of social justice and protection to labor.

The Labor Code provides that proceedings before the adjudicatory bodies of the Ministry of Labor are not governed by the technical rules of evidence prevailing in courts of law or equity and are summary in nature. While a day in court is a matter of right in judicial proceedings, it is otherwise in administrative proceedings, since they are based on different principles.

There is nothing irregular or anomalous when the writ of execution contained the specific amounts of money to be paid by petitioners to private respondents. The said amounts were based on the record submitted by the employees

which were not disputed by petitioners since they failed to present their timely objection to the submission of the same.

Petitioners' assertion that the order of October 4, 1976 is a nullity for being an incomplete judgment, is not tenable. They apparently are confused as to the connotation of incomplete judgment. The said order is not an incomplete judgment but a partial judgment which is allowed under the Rules of Court. If there are several claims, a partial decision regarding one may be rendered, and decision regarding the others may be deferred. The order of October 4, 1976 totally resolves all the issues regarding the unfair labor practice charge but defers action on the respondents' monetary claim, which is an entirely distinct matter. The said order terminates the action so resolved, and relative thereto, execution may lie.

In brief, petitioners failed to disclose what evidence they have to rebut the claim of private respondents. There was no showing how they will disprove the charge of private respondents that they were unceremoniously dismissed for their attempt to form a union. They did not state the nature of their evidence to controvert the monetary claims of private respondents, and lastly, they failed to establish by preponderance of evidence that private respondents are not entitled to the relief prayed for. In view thereof, the Court is of the opinion that petitioners are guilty as charged and private respondents should be given what is due them.

It appearing that the Super Club and Restaurant has closed and ceased operation and reinstatement is no longer possible, the dismissed employees shall be entitled to separation pay equivalent at least to one month salary or to one month salary for every year of service, whichever is higher, a fraction of at least six months being considered as one whole year. The dispositive portion of the assailed order of October 4, 1976 should be modified by directing the employer Super Club and Restaurant to grant separation pay to private respondents instead of reinstating them with full backwages.

The appellants' bond in the amount of P40,000.00 filed by petitioner on August 2, 1978 shall be applied to the payment of separation pay, and the money claims awarded in the assailed order of October 25, 1977 shall likewise be charged against the bond in the amount of P47,027.00 filed by petitioner on April 17, 1978.

WHEREFORE, the petitioner Super Club and Restaurant is hereby ordered to grant separation pay to private respondents and to award the money claims adjudged in their favor in the order of October 25, 1977 in conformity with the aforesaid directive. The temporary restraining orders issued in both cases are hereby lifted. No costs.

SO ORDERED.

Makasiar, Fernandez, Guerrero, and Plana, JJ., concur.
Teehankee, (Chairman), and Melencio-Herrera, JJ., in the result.

[1] p. 80, Rollo in G. R. No. L-48907.

[2] p. 12, Ibid

[3] See reverse side of Annex D-1, p. 23, Rollo.

[4] Annex C, p. 60, Rollo.

[5] Tijam vs. Sibonghanoy, 23 SCRA 35.

[6] Maglasang vs. Ople, 63 SCRA 511-513.

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