

BIBIANO C. LASPUNA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (SIXTH DIVISION), ASIAN INTERNATIONAL COMMUNITY INFORMATION INC./MA. ISABEL TESORO/MARCO M. LAGDAMEO/ EL...

Ponente: SALAZAR-FERNANDO, J.

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SALAZAR-FERNANDO, J.:

Before this Court is a Petition for Certiorari under Rule 65 of the 1997 Revised Rules of Civil Procedure assailing the Decision[1] dated October 30, 2013 and Resolution[2] dated December 18, 2013 of public respondent National Labor Relations Commission (NLRC), Sixth Division, in NLRC LAC No. 07-002162-13, NLRC NCR Case No. 10-15736-12 entitled “BIBIANO C. LASPUNA, Complainant/s-Appellant/s, vs. ASIAN INTERNATIONAL COMMUNITY INFORMATION INC./MA. ISABEL TESORO/MARCO M. LAGDAMEO/ELSIE KALAW-SANTOS/BALDOMERO SP GATBONTON JR./ARTHUR G. TAN, Respondent/s-Appellee/s.”, the dispositive portions of which read:

Decision dated October 30, 2013

“WHEREFORE, premises considered, the appeal is DENIED for lack of merit and the June 11, 2013 Decision is hereby AFFIRMED.

SO ORDERED.”[3]

Resolution dated December 18, 2013

“WHEREFORE, premises considered, the Motion for reconsideration is DENIED for lack of merit.

No further motion of the same nature shall be entertained.

SO ORDERED.”[4]

The facts are:

On October 19, 2012, petitioner Bibiano C. Laspuna (Laspuna for brevity) filed a complaint for illegal dismissal, non-payment of overtime pay, holiday pay, holiday premium, rest day premium, service incentive leave, and 13th month pay against private respondents Asian International Community Information Inc. (AICII) and Mr. Hirochicka Noguchi (Noguchi for brevity) or collectively, private respondents.[5]

In his Position Paper,[6] petitioner Laspuna averred that: on January 3, 1995, he was hired by private respondent AICII as a delivery man or carrier; his duties and responsibilities included the delivery and distribution of a newspaper called The Daily MANILA SHIMBUN, subscribed by Japanese; he delivered and distributed said newspaper daily, from Mondays to Sundays, in Quezon City; his duties were usually necessary and desirable in the ordinary course of business of private respondent AICII as a newspaper company; he was able to satisfactorily perform his duties and responsibilities as he remained employed with private respondent AICII for 17 long years;

his latest salary was P11,000.00 per month; he usually started to report between 3:00 and 4:00 o'clock in the morning and finished his delivery by 11:00 o'clock in the morning; when he asked private respondents to limit his assignment to half of Quezon City, additional personnel was assigned to cover the other half of the area; as a result, petitioner Laspuna was able to finish delivering newspapers by 9:00 o'clock in the morning; since petitioner Laspuna was not paid his holiday pay, service incentive leave pay, and 13th month pay, he inquired from private respondents why he was being deprived of such benefits; in the process, he got the ire of private respondents who treated him in a hostile manner; on September 30, 2012, at age 63, he was informed by private respondents that his services were no longer needed by the company; and, despite summary termination from his employment, he was not paid any retirement benefits.

In its position paper,^[7] private respondent AICII alleged that: it is engaged in the business of newspaper publication; sometime in January 1995, petitioner Laspuna was hired or engaged as an independent part-time news carrier contractor/freelancer to deliver its news publication on a daily basis; petitioner Laspuna's area of delivery was Quezon City, and due to the unrealistic cost of delivering the newspaper to an area with few subscribers, private respondent AICII discontinued said service and cancelled/no longer renewed all subscriptions therein; petitioner Laspuna started his day at 4:00 o'clock in the morning where he would pick up the newspapers for delivery in Makati City and then proceeded to deliver them to regular subscribers in Quezon City; petitioner Laspuna worked part-time for approximately two (2) hours a day; he also was not required to observe office hours or report to the office everyday, except for purposes of collecting his delivery fee paid on a weekly basis; he was paid a variable delivery fee comprised of his delivery fee and additional incentives depending on his job performance, paid in full without any deductions or contributions to the Social Security System, Pag-ibig Fund, etc., save any withholding tax applicable to subcontractors; after delivering newspapers, petitioner Laspuna was free to do as he pleased, as there was no prohibition from working elsewhere, including rival newspaper companies; he did not have to devote his time exclusively to private respondent AICII, nor was he required to account for his time or submit a record of his activities; in fact, after running his daily route, petitioner Laspuna would proceed to deliver other local newspapers to his other clients in some other areas; by the end of 2011, private respondent AICII determined that the expense to deliver newspapers in Quezon City was no longer feasible and decided to discontinue and cancel the remaining 14 subscribers therein; private respondent AICII notified the remaining subscribers that beginning October 1, 2012, their subscriptions would be permanently stopped/cancelled; hence, on September 1, 2012, petitioner Laspuna was informed in writing that his services would no longer be renewed beginning October 1, 2012; petitioner Laspuna was not private respondent AICII's regular or casual employee as the latter did not exert full control and discretion on the means and manner by which the former would deliver the newspapers; and, the relationship between petitioner Laspuna and private respondent AICII was that of an independent part-time job contractor, hence petitioner Laspuna's claim for reinstatement and other monetary benefits must fail.

Petitioner Laspuna thereafter filed his Reply.^[8]

On June 11, 2013, Labor Arbiter Madjayran H. Ajan rendered a Decision^[9] dismissing petitioner Laspuna's complaint. The Labor Arbiter found that petitioner Laspuna was never an employee of private respondent AICII and was in fact an independent contractor. Using the most important criterion in determining whether an employer-employee relationship exists, the Labor Arbiter found that private respondents did not exercise the right to control the means, method, and manner by which petitioner Laspuna would perform his work, the sole concern of private respondents being the prompt and regular delivery of its newspaper to its regular subscribers. Furthermore, the Labor Arbiter noted that petitioner Laspuna was never paid a fixed salary but was instead paid a variable delivery fee inclusive of incentives, was never included in the private respondent AICII's payroll, nor was his fee deducted to account for SSS and Pag-ibig premiums. Instead, petitioner Laspuna worked part-time and was

free to do other deliveries for other publishing companies. His fee was also taxed in the same way subcontractors are taxed. Thus, the Labor Arbiter concluded that not being an employee, his claim for illegal dismissal and monetary claims cannot be given merit.

Aggrieved, petitioner Laspuna filed his Notice of Appeal with Memorandum of Appeal[10] before public respondent NLRC.

On October 30, 2013, public respondent NLRC rendered the assailed Decision,[11] denying petitioner Laspuna's appeal and affirming the ruling of the Labor Arbiter. Public respondent NLRC observed that since the power of control is lacking, petitioner Laspuna cannot be considered an employee of private respondent AICII, but rather an independent contractor. Since there was no employer-employee relationship between petitioner Laspuna and private respondents, the former cannot be said to have been illegally dismissed, nor is he entitled to benefits pertaining to regular employees.

Undaunted, petitioner Laspuna filed his Motion for Reconsideration,[12] which was denied in the Resolution[13] dated December 18, 2013.

Hence, this Petition for Certiorari raising the following issues:[14]

1. WHETHER OR NOT THE HON. NLRC 6[th] DIVISION GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT THE PETITIONER IS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE OF THE PRIVATE RESPONDENTS INSPITE THE FACT THAT HE HAD BEEN UNDER THE DIRECT CONTROL AND SUPERVISION OF THE PRIVATE RESPONDENTS AND HAVING BEEN EMPLOYED BY THE LATTER FOR SEVENTEEN (17) LONG YEARS AND HE HAS NO SUBSTANTIAL CAPITAL OR INVESTMENT IN THE FORM [OF] TOOLS OR EQUIPMENT.
2. WHETHER OR NOT THE HON. NLRC 6[th] DIVISION GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED THE PETITIONER'S ENTITLEMENT FOR HOLIDAY PAY, SERVICE INCENTIVE LEAVE PAY, 13[th]MONTH PAY AND RETIREMENT BENEFIT AS WELL AS MORAL AND EXEMPLARY DAMAGES, NOMINAL DAMAGES AND ATTORNEY'S FEES.

The petition is unmeritorious.

After a careful and thorough review of the facts and the evidence on record, this Court finds that public respondent NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Decision and Resolution.

It must be stressed that for a Petition for Certiorari to prosper, there must be a showing that the tribunal exercising judicial or quasi-judicial functions must act without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[15] Grave abuse of discretion exists when an act of a court or tribunal is performed with a capricious or whimsical exercise of judgment equivalent to lack of jurisdiction.[16] The abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty, 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 personal hostility.[17]

In this case, grave abuse of discretion cannot be imputed upon public respondent NLRC when it found that no employer-employee relationship exists between petitioner Laspuna and private respondents.

The issue of whether or not an employer-employee relationship exists in a given case is essentially a question of fact.[18] In ascertaining whether the relationship is that of employer-employee or one of independent contractor,

each case must be determined by its own facts and all features of the relationship are to be considered.[19] In order to establish an employer-employee relationship, the following elements must be present: 1) selection and engagement of the employee; 2) payment of wages; 3) power of dismissal; and 4) the power to control the employee's conduct.[20]

In this case, the totality of the evidence presented by both parties weighs heavily in favor of private respondents that indeed, petitioner Laspuna was not its employee but merely an independent contractor or freelance carrier. An independent contractor carries on an independent business and undertakes the contract work on his own account, under his own responsibility, according to his own manner and method, and free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof.[21] This embodies what has long been jurisprudentially recognized as the control test.[22]

The "control test" is commonly regarded as the most crucial and determinative indicator of the presence or absence of an employer-employee relationship.[23] Under the control test, an employer-employee relationship exists where the person for whom the services are performed reserves the right to control not only the end achieved, but also the manner and means to be used in reaching that end.[24]

In this case, there is indubitable evidence supporting private respondents' position that it never exercised any control and supervision over the means and methods petitioner Laspuna had to adopt in order to achieve the desired result, i.e. delivery of the newspapers to different subscribers. Private respondents' only concern is for its newspapers to be delivered to its subscribers in Quezon City. Petitioner Laspuna was free to adopt whatever means or methods he may deem convenient and effective to carry out the delivery. This fact is not disputed by petitioner Laspuna. In fact, he never mentioned in his position paper the degree or extent of control allegedly exercised by private respondents over him except for a general and sweeping allegation that he was expected to report for work at 3:00 o'clock to 4:00 o'clock in the morning, wherein he picked up the newspaper and delivered them to subscribers. Clearly, this sweeping statement cannot be construed as "control" contemplated under the law and prevailing jurisprudence.

It must be emphasized that not every form of control that the hiring party reserves to himself or itself over the conduct of the party hired in relation to the services rendered may be accorded the effect of establishing an employer-employee relationship between them in the legal or technical sense of the term.[25] A line must be drawn somewhere, if the recognized distinction between an employee and an individual contractor is not to vanish altogether.[26] Realistically, it would be a rare contract of service that gives untrammelled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement.[27] Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and those that control or fix the methodology and bind or restrict the party hired to the use of such means.[28] The first, which aims only to promote the result, creates no employer-employee relationship unlike the second, which addresses both the result and the means used to achieve it.[29]

In *Lopez v. Bodega City*,[30] a "lady keeper" whose agreement stated that she "shall maintain the cleanliness of the ladies' comfort room and observe courtesy guidelines that would help her obtain the results they wanted to achieve" was not construed as an act of "control" but rather, simply a requirement dictated by the very nature of her job. Treating it as a mere guideline instead of an indication of particular methods and manner which the lady keeper had to abide by in going about cleaning the ladies' comfort room, the Supreme Court held that no employer-employee relationship exists in such a case. In the same way, petitioner Laspuna cannot be said to be under the control and supervision of private respondents when he was asked to report at 4:00 o'clock in the morning to pick up the newspapers and deliver the same to subscribers. By the very nature of his job as a

freelance carrier, petitioner Laspuna had to deliver the newspapers in the morning to apprise its subscribers of current news. Otherwise, the news contained in its newspaper would cease to be news, and become history. If indeed private respondents had exercised control and supervision over petitioner Laspuna as he claimed, petitioner Laspuna should have presented convincing evidence that private respondents imposed a clear delivery route for petitioner Laspuna to follow and from which he cannot in any way deviate, or maybe a directive of the sequential order of deliveries he must make to private respondents' subscribers.

In stark contrast, private respondents presented proof that petitioner Laspuna did not receive a fixed wage or salary compared to its employees, but rather received variable delivery fees as an independent contractor,[31] without any deductions for SSS and Pag-ibig premiums,[32] but net of withholding tax applicable to subcontractors.[33] Furthermore, petitioner Laspuna never refuted private respondents' claim that he was not required to observe regular office hours, nor was he obliged to account for or make a report of his activities. Petitioner Laspuna also never disputed private respondents' position that the former was free to do as he wishes after delivering the newspapers, even to the extent of offering his services to other rival companies because private respondents did not impose any restriction or prohibition regarding the same.

In *Ushio Marketing v. NLRC*,[34] electricians who worked in the premises of an auto shop in Banawe, Quezon City were not considered employees thereof, but were instead classified as freelance operators and partners in trade of the autoshop. The Supreme Court considered that the electricians who rendered services to customers of the autoshop were not restricted to a particular method or manner by which they should perform their work. While it is the autoshop that pays the freelance electricians a part of the service fee collected for their services, the electricians did earn fixed wages, instead, were paid variable fees, and may come and go as they wish, as they were not subject to regular office hours. The Supreme Court thus concluded that absent the element of control, the electricians cannot be considered employees of the autoshop.

Similarly in *Besa v. Trajano et al.*,[35] shoe shiners who rendered services within the premises of Mr. Besa were not considered regular employees of the latter. The Supreme Court likewise considered them partners in trade, and not regular employees because Mr. Besa did not exercise any degree of control or supervision over their person and their work.

The same conclusion was reached in *Manila Golf & Country Club, Inc. v. Intermediate Appellate Court*,[36] where the Supreme Court did not consider caddies in a golf club as employees. The Supreme Court ratiocinated that despite the various rules and regulations pertaining to the caddies' conduct and dress code, these alone do not so circumscribe the actions or judgment of the caddies concerned, as to leave them little or no freedom of choice whatsoever in the manner of carrying out their services. Taking into consideration the fact that the caddies do not have to observe any working hours, are free to leave anytime as they please, and to stay away for as long as they like, even render services to other entities or individuals without restriction by the golf club, the Supreme Court concluded that the club did not exercise control over the caddies as employees.

Applying *Ushio*, *Besa*, and *Manila Golf & Country Club Inc.*, it becomes abundantly clear that the element of control is absent in this case. Petitioner Laspuna's status as an independent or freelance carrier becomes more apparent as he had a freehand in conducting his work or in the delivery of the newspapers, he was not required to devote his full time to private respondents and was in fact free to engage in other means of livelihood, and his salary was not at all fixed but was merely a variable delivery fee not subjected to deductions such as SSS and Pag-ibig premiums which would have applied to him had he been a regular employee. Indeed, where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and in turn is compensated according to the result of his efforts and not the amount thereof, Courts are bound to find that no employer-employee relationship exists.[37] So it must be in this case.

As earlier mentioned, the determination of the existence or non-existence of an employer-employee relationship involves factual findings.[38] Thus, absent any grave abuse of discretion in the findings of the Labor Arbiter, as affirmed by public respondent NLRC, this Court is necessarily bound by the same.

WHEREFORE, premises considered, the instant petition is DENIED. The assailed Decision dated October 30, 2013 and Resolution dated December 18, 2013 of the National Labor Relations Commission (NLRC), Sixth Division, in NLRC LAC No. 07-002162-13, NLRC NCR Case No. 10-15736-12 are hereby AFFIRMED.

SO ORDERED.

Gonzales-Sison, M., and Cruz, R. A., JJ., concur.

[1] Rollo, pp. 33-38.

[2] Rollo, pp. 45-46.

[3] Rollo, p. 37.

[4] Rollo, p. 46.

[5] Rollo, pp. 48-49.

[6] Rollo, pp. 53-67.

[7] Rollo, pp. 69-81.

[8] Rollo, pp. 92-95.

[9] Rollo, pp. 25-31.

[10] Rollo, pp. 99-108.

[11] Rollo, pp. 33-38.

[12] Rollo, pp. 40-44.

[13] Rollo, pp. 45-46.

[14] Rollo, p. 10.

[15] Jinalinan Technical School, Inc. v. NLRC, G.R. No. 163167, 9 August 2006, citing 1997 Rules of Civil Procedure, Rule 65, Section 1.

[16] Id.

[17] Id. citing Intestate Estate of Carmen de Luna v. Intermediate Appellate Court, G.R. No. 72424, 13 February 1989, 170 SCRA 246, 254.

[18] Lopez v. Bodega City, G.R. No. 155731, September 3, 2007 citing Manila Water Company, Inc. v. Peña, G.R. No. 158255, July 8, 2004.

[19] Encyclopaedia Britannica (Philippines) Inc. v. NLRC et al., G.R. No. 87098, November 4, 1996 citing Oplencia Ice Plant and Storage vs. NLRC, G.R. 98368, December 15, 1993.

[20] Id.

- [21] San Miguel Corporation v. Semillano et al., G.R. No. 164257, July 5, 2010.
- [22] Id. citing Gallego v. Bayer Philippines, Inc., G.R. No. 179807, July 31, 2009.
- [23] Ushio Marketing v. NLRC et al., G.R. No. 124551, Augsut 28, 1998.
- [24] Id. citing Encyclopedia Britannica (Phils.), Inc. v. NLRC, 264, SCRA 1, 6-7 [1996].
- [25] Consulta v. Court of Appeals, G.R. No. 145443, March 18, 2005 citing Insular Life Assurance Co., Ltd. v. National Labor Relations Commission, G.R. No. 84484, November 15, 1989.
- [26] Id.
- [27] Id.
- [28] Id.
- [29] Id.
- [30] Supra note 18.
- [31] Rollo, pp. 83-88.
- [32] Rollo, pp. 83-88.
- [33] Rollo, pp. 89-90.
- [34] Supra note 23.
- [35] Besa v. Trajano et al., G.R. No. 72409, December 29, 1986.
- [36] Manila Golf & Country Club, Inc. Intermediate Appellate Court, G.R. No. 64948, September 27, 1994.
- [37] Id. citing Investment Planning Corporation of the Philippines vs. Social Security System, No L-19124, November 18, 1967, 21 SCRA 924.
- [38] Supra note 18. See also Canlubang Security Agency Corporation v. National Labor Relations Commission, G.R. No. 97942, 8 December 1992.

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