

VENANCIO DIOLA, AMADO SAMOY, REMIGIO CANDARI, DELFIN SINUTO, JOSE MADDALORA, REY-NALDO FANG, JOVITO CABALLERO, DIOSDADO MULACRUZ, IGMANILBER NALUPANO AND IRENEO JAMIN, PETITIONE...

G.R. No. 101641. May 31, 1993

Ponente: GRIÑO–AQUINO, J.

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GRIÑO–AQUINO, J.:

The issue for resolution is whether or not public respondent National Labor Relations Commission acted without or in excess of its jurisdiction when it entertained private respondents' appeal although the surety bond required under Sec. 223 of the Labor Code was filed 13 days after the ten-day appeal period had expired.

The antecedent facts as summarized by the Solicitor General are:

"The petitioners were former regular security guards of the Retired Army Protective and Security Agency Inc. (RAPSA) when they filed on September 24, 1986 complaints against RAPSA and its President and Director, Herminia Crisologo, and Ms. Malou Alviar for illegal deduction, underpayment of wages, over-time pay, legal holiday pay, premium pay for rest day, unpaid differential and allowances pursuant to Wage Orders Nos. 3, 4, 5, and 6, shoe allowances and separation pay. In their Position Paper filed on December 16, 1986, petitioners impleaded private respondent ESA Protective and Security Agency (ESAPSA).

"Private respondent ESAPSA's principal contention was that petitioners were not its employees, ESAPSA allegedly being a corporation separate and distinct from RAPSA. Ms. Malou Alviar insisted that she was neither a Director nor an employee of RAPSA, but only of ESAPSA.

"On February 26, 1990, Labor Arbiter Ricardo C. Nora, applying the doctrine of piercing the veil of corporate entity, and finding that RAPSA and ESAPSA were indeed one and the same, declared that justice and equity dictate that RAPSA, ESAPSA, Ms. Herminia A. Crisologo and Ms. Malou Alviar were jointly and severally liable to petitioners' monetary claims. Hence, it disposed:

""WHEREFORE, respondent RAPSA, ESAPSA, Ms. Herminia A. Crisologo and Ms. Malou Alviar are hereby ordered to pay the following complainants the monetary award opposite their names jointly and severally, to wit:

VENANCIO DIOLA P20,136.00

REMIGIO CANDARI 16,832.29

AMADO SAMOY 15,930.86

DELFIN SINUTO 15,928.95

JOSE MADALLORA 19,395.50

REYNALDO FANG 17,136.29

JOVITO CABALLERO 13,275.85

DIOSDADO MULACRUZ 5,497.00

IGMANILBER NALUPANO 16,499.20

IRENEO JAMIN 14,421.00

TOTAL 155,052.94

within ten (10) days from receipt of this Decision.'

"Private respondents ESAPSA and Ms. Malou Alviar were notified of the Decision on April 3, 1990. On April 10, 1990, private respondents filed their Memorandum on Appeal, without, however, posting the requisite bond for the monetary judgment of P155,052.94.

"On April 18, 1990, petition-ers moved for execution of the Labor Arbiter's Decision. On April 20, 1990, petitioners filed their Oppo-sition to the Memorandum on Appeal, principally raising the issue that the appeal of private respondents had not been perfected for failure to post the requisite bond within the reglementary period, hence, the judgment appealed from had become final and executory.

"On April 26, 1990, private respondents belatedly posted their bond in the amount of one hundred fifty five thousand fifty two pesos and 94/100 (P155,052.94), allegedly in compliance with R.A. No. 6715.

"Subsequently, on November 2, 1990, petitioners filed a 'Motion to Dismiss Appeal and to Remand Records for Execution,' raising the same issue of non-perfection of the appeal. No action was made on the same.

"On August 2, 1991, without touching on the issue regarding the timeliness of the appeal, public respondent issued the questioned Resolution modifying the Labor Arbi-ter's Decision and disposed:

"'WHEREFORE, premises consid-ered, the decision appealed from is hereby affirmed with modification in that ESAPSA and Malou Alviar are absolved from any liability anent the money awards due herein complainants.'" (pp. 98-101, Rollo.)

Hence, this petition.

The issues raised and to be resolved in this in-stance are:

1. whether or not public respondent NLRC acted without or in excess of its jurisdiction when it entertained private respondents' appeal although the surety bond required under Sec. 223 of the Labor Code was filed 13 days after the ten-day appeal period had expired;
2. whether or not private respondents ESAPSA and Alviar may be held jointly and severally liable with their co-defendant RAPSA for petitioners' monetary claim.

The petition must fail.

The New Rules of Procedure of the National Labor Relations Commission, which among others implemented the provisions of R.A. 6715, were adopted and promulgated only on August 31, 1990 in Cebu City, Philippines.

The effectivity clause of the New Rules provide that "These New Rules shall take effect fifteen (15) days after their publication in two (2) newspapers of general circulation." (Underlining supplied.) The New Rules were published in The Manila Bulletin on September 24, 1990. Thus, the New Rules of Procedure became effective only on October 9, 1990.

When respondents-appellants' appeal memorandum became due in April, 1990, the New Rules of Procedure were not yet in effect. Prior to the effectivity of those Rules, the filing of a surety bond was not required for the perfection of an appeal to the NLRC. The NLRC correctly refrained from dismissing the respondents' appeal on that score.

On the issue regarding the liability of ESAPSA for the petitioners' money claims against RAPSA, the NLRC in its decision, held:

"The Labor Arbiter x x x erroneously conjured that something binds RAPSA and ESAPSA, based on the phrases contained in the letter, dated 4 August, 1986, sent by respondent Malou Alviar to China Banking Corporation, to wit:

"x x x. The latter agency will in turn take over all obligations and responsibilities of RAPSA, x x x. We propose that we merely substitute the name of ESAPSA for that of RAPSA in our new contract. The RAPSA officers and guards who are presently assigned to your bank will all be absorbed by ESAPSA.'

"Without the omitted portions, the letter reads as follows:

"All our corporate and administrative officials have had extensive and long experience in operating and managing security agencies. May we, therefore, propose and request that your present security contract with RAPSA be transferred to our agency ESAPSA. The latter agency will in turn take over all obligations and responsibilities of RAPSA. ESAPSA is willing that the terms and conditions of present security contract with RAPSA will be the same as the contract we will sign and execute with you including the present contract rate. We propose that we merely substitute the name ESAPSA for that of RAPSA in our new contract. The RAPSA officers and guards who are presently assigned to your bank will be absorbed by ESAPSA.' (Underscoring supplied).

"A careful review of the whole text of the letter, without the expressly omitted portions, which are underlined would indicate that ESAPSA was merely more than willing to give China Banking Corporation the same composition of security guards, if the Bank was satisfied with services of the present complement. The obligations and responsibilities spoken of clearly refer to the obligation of RAPSA to the bank and was never meant to assume the obligation of RAPSA to the security guards, since the purpose was to solicit a client, not to recruit the security guards. The letter was not to appease the security guards, but to assure a prospective client of worthwhile services." (pp. 60-61, Rollo.)

These factual findings of the NLRC are not correctible by certiorari (*Manila Hotel Corp. vs. NLRC*, 141 SCRA 169). In fact they are binding on this Court in the absence of any showing that they are completely without any support in the evidence on record.

WHEREFORE, finding no grave abuse of discretion nor excess of jurisdiction in the decision of the National Labor Relations Commission, the petition for certiorari is DISMISSED for lack of merit.

SO ORDERED.

Cruz, (Chairman), Bellosillo, and Quason, JJ., concur.

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