NDC-GUTHRIE PLANTATIONS, INC., NDC-GUTHRIE ESTATES, INC., AND DAVID SUDHIR KUMAR DAS, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, JESSIE OMAMALIN, EDWIN M. CRUZ, REMED...

G.R. No. 110740. August 09, 2001

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for certiorari seeking to annul the Resolution[1] of the National Labor Relations Commission (NLRC), Fifth Division, dated May 27, 1993 which affirmed the Decision[2] of the Labor Arbiter dated January 13, 1992 holding petitioners NDC-Guthrie Plantations, Inc. (NGPI), NDC-Guthrie Estates, Inc. (NGEI) and David Sudhir Kumar Das liable for unfair labor practice, illegal dismissal and ordering them to reinstate private respondents to their former positions or to pay them their separation pay plus backwages.

Petitioner companies are both government-controlled corporations, 60% of their stocks being owned by the National Development Corporation. They were incorporated in the early 1980's to develop, operate and maintain integrated palm projects in Agusan del Sur.[3] Pursuant to their purpose clause, NGPI and NGEI hired hundreds of farm workers to establish and maintain their respective plantations[4] as well as several supervisors to oversee and superintend their workers. Petitioner Kumar Das was the designated general manager of petitioner companies at the time of the supposed illegal dismissal.

Sometime in 1989, NGPI discovered that it was sustaining tremendous losses which threatened to further upset its precarious financial condition. In 1987 alone it incurred a net loss of Eighty Six Million Three Hundred Eighteen Thousand Five Hundred Eighty Pesos (P86,318,580.00) while in 1988 its net loss amounted to Eighty Three Million Nine Hundred Fifty Thousand Nine Hundred Thrity Pesos (P83,950,930.00). In a desperate attempt to reverse its fortune and prevent its coffers from further depletion, NGPI terminated the services of seventy- two (72) field workers. Still, the company was confronted with an audit report prepared by the Commission on Audit reflecting losses of Sixty Four Million Three Hundred Fifteen Thousand One Hundred Forty-Four Pesos (P64,315,144.000) and One Hundred Forty Three Million Nine Hundred Thirty Nine Thousand Eight Hundred Ninety-Three Pesos (P143,939,893.00) for 1989 and 1990, respectively. Faced with mounting losses, NGPI further terminated the employment of forty-nine (49) field workers in February 1990, followed by another one hundred fifty-eight (158) farm hands in September of that year.

NGEI was not spared from a similar fate as it likewise fell into dire straits during the same period. Based on the 1990 Audit Report furnished the company by the Commission on Audit, NGEI incurred a net loss of Forty Four Million Seven Hundred Ninety Seven Thousand Eight Hundred Sixty-Eight Pesos (P44,797,868.00) for 1990. Previous financial statements of the company indicated a trend of dwindling current assets. NGEI's assets diminished from Thirteen Million Forty Four Thousand Seven Hundred Twenty Seven Pesos (P13,044,727.00) in 1987 to Seven Million Six Hundred Forty Five Thousand Four Hundred Seventy-Three Pesos (P7,645,473.00) in

1988 to Five Million Eight Hundred Sixty One Thousand Two Hundred Eighty-Five Pesos (P5,861,285.00) in 1989 to Three Million Five Hundred Seventy Six Thousand Three Hundred Fifty-Two Pesos (P3,576,352.00) in 1990.[5] Thus, it was compelled to take the same course of action undertaken by NGPI and retrenched or laid off eighty-eight (88) farm workers in December 1989, seven (7) field workers in February 1990 and fifty-eight (58) farm helpers in September of that year.

With this as backdrop, several employees of petitioner companies bonded together and formed the NDC-GUTHRIE Staff Workers Union hereinafter called the Union. On October 7,1990, after it had been issued a Certificate of Recognition by the Department of Labor and Employment (DOLE), the Union sent notice to NGPI and NGEI requesting that it be recognized as the sole and exclusive bargaining agent of all its member-employees. Petitioner companies jointly replied asking that they be furnished proof confirming the Union's claim that it represented the majority of the employees covered by the proposed bargaining unit. In compliance with the request, petitioner companies were provided with a copy of the minutes of the Union's organizational meeting as well as the minutes of the meeting when its proposed collective bargaining agreement was ratified.

Since the documents submitted did not constitute proof of majority representation, petitioner companies denied recognition of the Union. Consequently, the Union filed a petition for a certification election among all employees covered by the proposed bargaining unit.[6]

Meanwhile, on January 16, 1991, petitioner companies notified the DOLE of their financial condition and their decision to retrench employees numbering about one hundred and twenty (120).[7] Subsequently, on January 21, 1991 petitioner companies sent notices to seventeen (17) of their office and supervisory employees advising them that in view of the companies' financial problems, they would be retrenched from their employment effective February 28, 1991. Believing that their dismissal was resorted to because of their union activities and hence, in violation of their rights to self-organization and to collective bargaining, the said seventeen (17) employees who were laid off filed with the Labor Arbiter's Office a complaint for illegal dismissal and unfair labor practice against petitioner companies and petitioner Kumar Das.

As petitioners failed to attend any of the scheduled conferences and hearings before Labor Arbiter Irving A. Petilla thereby rendering all efforts towards conciliation in vain, the Labor Arbiter issued an order directing the parties to submit their respective position papers.

In their position paper, private respondents averred that prior to their dismissal from their employment they had been pleading with petitioner companies for a salary increase. However, petitioner companies rejected their demand and even removed certain privileges to which they had been previously entitled such as the use of the companies' clubhouses. Perturbed by the apparent arrogance of the management of petitioner companies, private respondents decided to form a union in the belief that it would increase their bargaining power. Their decision proved calamitous as petitioner companies called attention to their financial woes and got back at them by dismissing them purportedly by reason of retrenchment.

Petitioners, on the other hand, denied the claim of illegal dismissal and asserted that it was their prerogative to lay off their employees to prevent or forestall further losses. They countered that their financial obligations had eaten up most of their capital outlay resulting in unabated losses from 1987 to 1990, thus constraining them to adopt and implement retrenchment programs. The petitioner companies presented financial statements prepared by the Commission on Audit showing tremendous losses for four (4) consecutive years, i.e., from 1987 to 1990. They further claimed that the retrenchment of private respondents was done in good faith as it was based on a number of criteria, namely, seniority, service record and performance.

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One of the complainants, Paul V. Martinet, was dropped from the complaint after it was found that he had accepted his separation pay from NGPI and executed a deed of quitclaim releasing the latter from liability. Accordingly, his complaint was dismissed with prejudice.

On January 13, 1992, Labor Arbiter Petilla rendered judgment ordering the reinstatement of private respondents, with full backwages, on the ground that petitioner companies failed to substantiate their supposed losses incurred from 1987 to 1990 which led to the retrenchment of employees. The Labor Arbiter pointed out in his Decision that petitioners' alleged losses were merely conjured as "a convenient excuse to get rid of herein complainants who displayed more determination, motivation, zeal and enthusiasm in going through with their union x x x. It constitutes nothing less than an unfair labor practice."[8]

Aggrieved, petitioner companies appealed to the NLRC. Pending appeal, complainants Joel F. Fortich, Merelyn D. Jara and Edwin M. Cruz entered into an amicable settlement with petitioner companies thereby extinguishing whatever claim they had against the latter. On the basis of the aforementioned settlement, petitioners moved for the dismissal of the complaint insofar as Fortich, Jara and Cruz were concerned.

On 27 May 1993, the NLRC dismissed the appeal and held:

> We are subsequently in accord with the findings and conclusions of the Labor Arbiter below. Appellants miserably failed to establish the grave abuse of discretion and/or serious errors allegedly committed by the Labor Arbiter a quo when he rendered the decision in question. The records of the case plausibly show that the assailed decision was amply supported by relevant and material evidence.[9]

The NLRC expressed the view that the decision of petitioner companies to lay off private respondents was calculated to douse the embers of unionism among the workers. The NLRC, however, granted the Motion to Dismiss filed by complainants Fortich, Jara and Cruz.[10]

Inasmuch as their motion for reconsideration was denied by the NLRC, petitioners filed with this Court the instant petition for certiorari. The veracity of their claim of financial distress and the validity of private respondents' dismissal, as a consequence of their distressful financial condition, are the basic issues which they submitted for the Court's consideration.

Instead of commenting on the petition, the Solicitor General filed his Manifestation and Motion which gave credence to petitioner companies' plea of financial distress and supported the retrenchment of employees. In recommending the granting of the petition, the Solicitor General remarked that "had the Labor Arbiter and the NLRC studied more carefully the financial statements offered in evidence by petitioner companies, they would have found that the two companies were losing."[11]

On the other hand the NLRC, in its Comment, strongly opposed the granting of the petition and averred that the mass layoff could not be justified by losses suffered by petitioner companies inasmuch as there were no proof presented in support thereof. The NLRC further argued that assuming arguendo that petitioner companies were suffering losses, there was no showing that they observed fair and reasonable standards in effecting retrenchment nor was there proof that they adopted cost reduction measures before resorting to retrenchment.[12]

In the meantime, by authority of the Securities and Exchange Commission, petitioner companies were merged, with NGPI as the surviving corporation. Accordingly, the entire assets and liabilities of NGEI were transferred to and absorbed by NGPI.[13]

After an assiduous evaluation of the record, we are convinced that there truly existed a persistent and irreversible financial instability in petitioner companies, thus amply justifying their resort to drastic cuts in personnel. We cannot share the posture adopted by the Labor Arbiter and the NLRC rejecting petitioners' defense of financial

distress. On the contrary, it is more logical to conclude from the evidence on record that petitioner companies had indeed been deeply troubled by a continuing downtrend in their financial resources and had been struggling to keep their businesses afloat. From the evidence presented by NGPI, in 1987 alone it sustained a net loss of Eighty Six Million Three Hundred Eighteen Thousand Five Hundred Eighty Pesos (P86,318,580.00), followed by Eighty Three Million Nine Hundred Fifty Thousand Nine Hundred Thirty Pesos (P83,950,930.00) in 1988, Sixty Four Million Three Hundred Fifteen Thousand One Hundred Forty-Four Pesos (P64,315,144.00) in 1989 and One Hundred Forty Three Million Nine Hundred Thirty Nine Thousand Eight Hundred Ninety-Three Pesos (P143,939,893.00) in 1990. On the other hand, NGEI reported an alarming constriction in its current assets from Thirteen Million Forty Four Thousand Seven Hundred Twenty-Seven Pesos (P13,044,727.00) in 1987 to a measly Three Million Five Hundred Seventy Six Thousand Three Hundred Fifty-Two Pesos (P3,576,352.00) in 1990; while its net loss for 1990 was Forty Four Million Seven Hundred Ninety Seven Thousand Eight Hundred Sixty-Eight Pesos (P44,797,868.00). Proof was also presented supporting petitioners' claim that even prior to the dismissal of private respondents, hundreds of farm workers of petitioner companies had already been retrenched to save on much needed capital.

In the context of the submitted financial statements prepared by the Commission on Audit itemizing and explaining the losses suffered by petitioner companies, the Court is unable to understand the rationale behind the NLRC's challenged judgment. These financial documents duly audited by the Commission on Audit constitute the normal and reliable method of proof of the profit and loss performance of a government-controlled corporation.[14] The Court cannot also conceive how the Labor Arbiter, despite these financial statements, was able to opine that "the financial statements submitted by respondents failed to show losses incurred in business operation deducted from gains."

As the retrenchment programs undertaken by petitioner companies were purely business decisions properly within the reasonable exercise of management prerogative, the NLRC has been denied the authority to delve into their wisdom and soundness.[15] Indeed, management cannot be denied recourses to retrenchment if it can successfully prove the existence of the following factors: (a) substantial losses which are not merely de minimis in extent; (b) imminence of such substantial losses; (c) retrenchment would effectively prevent the expected additional losses; and, (d) alleged losses and expected losses must be proven by sufficient and convincing evidence.[16] As these guidelines were faithfully observed by petitioner companies, the respondent NLRC's opinion in the case at bar is thus shown, upon analysis, to be nothing but rhetoric of hyperbolic character, finding no justification whatever in the facts, or in law or logic.[17] Accordingly, NLRC's subject resolution will have to be rejected for having been rendered with grave abuse of discretion amounting to lack of jurisdiction.

However, notwithstanding the propriety of the retrenchment programs, petitioner companies are not excused from complying with the required written notice to the affected employees and the Department of Labor and Employment at least one month before the intended date of termination.[18] In this case, it is undisputed that petitioner companies informed both the retrenched employees and DOLE of the impending retrenchment. The requirement of law mandating the giving of notices was intended not only to enable the employees to look for other employment and therefore ease the impact of the loss of their jobs and the corresponding income,[19] but, more importantly, to give the DOLE the opportunity to ascertain the verity of the alleged authorized cause of termination.[20]

Accordingly, inasmuch as private respondents' separation from service was both substantively and procedurally just, petitioner companies should only be held liable for separation pay at the rate of one month for every year of service and the proportionate 13[th] month pay.[21]

At this point, we take notice of the 9 July 1991 Order[22] issued by Labor Arbiter Petilla which, in our view, was

rendered in grave abuse of discretion. The facts surrounding the issuance of the said order are as follows: It appears that by reason of the nature of their work, each of the private respondents was allowed to avail of petitioner companies' loan policy intended exclusively for the purchase of motorcycles. Under that policy, the company would advance the purchase price of the motorcycle to be paid back by the employee through monthly deductions from his salary with the company retaining the ownership of the motorcycle until it was fully paid for. All the private respondents availed of petitioner companies' motorcycle loan policy.

After they had been dismissed from their employment private respondents, fearing that their motorcycles would be taken, sought a temporary restraining order from the Labor Arbiter to stop petitioner companies from seizing their motorcycles pending the final resolution of their complaints for illegal dismissal. Labor Arbiter Petilla responded favorably and immediately issued a restraining order forbidding petitioners from disturbing private respondents in their possession of the said motorcycles. Petitioner companies moved for reconsideration but their motion was denied.

The 1990 Rules of Procedure of the National Labor Relations Commission grant labor arbiters with the power to issue preliminary injunction or restraining order "as an incident to cases pending before them in order to preserve the rights of the parties during the pendency of the cases but excluding labor disputes involving strike or lock-out."[23] The said Rules, however, limit the exercise of the power over labor disputes only, which as defined, refer to "any controversy or matter concerning terms and conditions of employment or the association or representation of persons in negotiating, fixing, maintaining, changing, arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."[24]

In the present case, petitioners' supposed attempt to seize the said motorcycles from the private respondents is not a labor, but a civil, dispute. The issue, inasmuch as it relates directly to the enforcement of the loan agreement, between petitioners and private respondents, involves debtor-creditor relations founded on a contract and does not in any way concern employer-employee relations. As such, it should be enforced through a separate civil action in the regular courts and not before the Labor Arbiter.

Since the seizure of the motorcycles is unrelated to any labor dispute under which an injunction may be issued by a labor arbiter, it was plain grave abuse of discretion for Labor Arbiter Petilla to have issued a writ of injunction restraining the petitioner companies from seizing the motorcycles subject of the loan agreement between petitioner companies and private respondents.

WHEREFORE, the petition is GRANTED. The questioned Resolution issued on May 27, 1993 by respondent National Labor Relations Commission (NLRC) is MODIFIED by ordering petitioner NDC-GUTHRIE Plantations,Inc., as the surviving corporation of the original petitioner companies, to pay private respondents separation pay equivalent to one month pay for every year of service and their proportionate 13[th] month pay. For this purpose, this case is REMANDED to the Labor Arbiter for computation of the separation pay and the proportionate 13[th] month pay due to the private respondents.

The writ of preliminary injunction issued by the Labor Arbiter a quo is hereby ordered dissolved.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing and Buena JJ., concur.

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[1] Penned by Commissioner Leon G. Gonzaga, Jr., and concurred in by Presiding Commissioner Musib M. Buat and Commissioner Oscar N. Abella in NLRC CA No. M-000770-92, Rollo, pp. 568-580.

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[2] Penned by Labor Arbiter Irving A. Petilla in NLRC Case No. SRAB 10-01-00012-91 TO 10-01-00028-91.

[3] While NGPI was incorporated in 1980, NGEI was issued its certificate of incorporation in 1983.

[4] NGPI's farm is located in Maligaya, Rosario, Agusan del Sur while NGEI's plantations is in San Francisco, Agusan del Sur.

[5] Rollo, pp. 509-525.

[6] Docketed as MED-ARB Rox Case No. R1000-9012-RU-037 before the DOLE, Regional Office No. X, Cagayan de Oro City; Original Records, Vol. I, p. 13.

[7] Rollo, p. 201.

[8] Original Records, Vol. I, pp. 564-577.

[9] Rollo, pp. 568-580.

[10] Rollo, pp. 568-580.

[11] Rollo, p. 626. Id., pp. 646-652.

[12] Id., pp. 646-652.

[13] Rollo, p. 526.

[14] Dela Salle University v. Dela Salle University Employees Union, 330 SCRA 363, 383 [2000]; Asian Alcohol Corporation v. NLRC, 305 SCRA 416, 430 [1999]; Caltex Refinery Employees Association (CREA) v. Brillantes, 279 SCRA 218, 231 [1997]; Saballa v. NLRC, 260 SCRA 697, 709 [1996]; Revidad v. NLRC, 245 SCRA 356,367 [1995]; Lopez Sugar Corporation v. Federation of Free Workers, 189 SCRA 179, 190 [1990].

[15] In the present case, private respondents were the last ones to be hired by petitioner companies.

[16] Bogo-Medellin Sugarcane Planters Association, Inc. v. NLRC, 296 SCRA 108,122 [1998]; Somerville Stainless Steel Corporation v. NLRC, 287 SCRA 420, 434 [1998]; Banana Growers Collective at Puyod Farms v. NLRC, 276 SCRA 544, 556 [1997]; Uichico v. NLRC, 273 SCRA 35, 43 [1997].

[17] La Salette of Santiago, Inc. v. NLRC, 195 SCRA 80, 92 [1991].

[18] Article 283 of the Labor Code of the Philippines provides:

> ART. 283. Closure of establishment and reduction of personnel. - The employer may also terminate the employment of any employee due to xxx retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. xxx

[19] Coca-Cola Bottlers (Phils.), Inc. v. NLRC, 194 SCRA 592, 599 [1991].

[20] Serrano v. NLRC, 331 SCRA 331, 340 [2000].

[21] Article 283 of the Labor Code of the Philippines further reads: x x x In case of retrenchment to prevent losses and in cases of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

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[22] Original Records, Vol. I, pp. 510-515.

[23] Sec. 1, Rule XI, 1990 NLRC Rules of Procedure.

[24] Article 212(l), Labor Code of the Philippines.

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