THE HONGKONG AND SHANGHAI BANKING CORPORATION EMPLOYEES UNION, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND THE HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED, RES...

G.R. No. 113541. November 22, 2001

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

The instant petition for certiorari[1] with prayer for a temporary restraining order assails the Resolution[2] dated January 31, 1994 of the National Labor Relations Commission in NLRC IC CASE No. 000422-93, entitled "THE HONGKONG AND SHANGHAI BANKING CORPORATION, LIMITED, versus THE HONGKONG AND SHANGHAI BANKING CORPORATION EMPLOYEES UNION, et al."

The challenged Resolution issued by the NLRC granted the preliminary injunction prayed for by The Hongkong and Shanghai Banking Corporation, Limited ("respondent bank") enjoining The Hongkong and Shanghai Banking Corporation Employees Union ("petitioner union"), its agents, sympathizers or anyone acting in its behalf from unlawfully barricading and/or obstructing the free ingress to and egress from the respondent bank's offices in Makati City and Ortigas Center, Pasig City.

On December 22, 1993, the officers and members of petitioner union staged a strike against respondent bank for its (1) arbitrary and unilateral reduction of the "CBA-established entry level of clerical pay rates" and (2) whimsical refusal to bargain collectively on wage rates, among others.

The next day, December 23, 1993, respondent bank filed a petition for injunction[3] with the National Labor Relations Commission ("respondent NLRC") praying that petitioner union's acts of obstructing the ingress to and egress from the bank's premises be enjoined and, in the interim, a temporary restraining order be issued. Respondent bank claimed that the unlawful obstruction has caused grave and irreparable damage to its banking activities, and that unless these acts are restrained, it will continue to suffer greater injury.

At the initial hearing of the petition for injunction on December 28, 1993 before Labor Arbiter Jesus B. Afable (whom respondent NLRC delegated to receive evidence thereon), petitioner union orally prayed for the dismissal of the petition on the ground that respondent bank failed to specifically allege therein the provisions of Article 218 (e, 3 and 4) of the Labor Code, as amended, to wit:

> "ART. 218. POWERS OF THE COMMISSION. - The Commission shall have the power and authority:
>
> x x x
>
> (e) To enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party or render ineffectual any decision in favor of such party: Provided, That no temporary or permanent injunction in any case involving or growing out of a labor dispute

> as defined in this Code shall be issued except after hearing x x x, and only after a finding of fact by the Commission, to the effect:
>
> x x x
>
> (3) That as to each item of relief to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;
>
> (4) That complainant has no adequate remedy at law; and
>
> x x x" (Emphasis ours)

On January 4, 1994, respondent bank filed a supplemental petition alleging that petitioner union's officers and members continue to commit acts of intimidation, coercion, and obstruction in violation of Article 264 (e)[4] of the Labor Code.

Finding the petition and the supplemental petition to be in accordance with Article 218 of the Labor Code, respondent NLRC issued a Resolution[5] on January 6, 1994 granting a temporary restraining order and setting the hearing of respondent bank's application for preliminary injunction, thus impliedly denying petitioner union's oral motion to dismiss the petition.

Petitioner union then filed a motion for reconsideration of the said Resolution but was denied by respondent NLRC in its Resolution of January 20, 1994. This Resolution also directed Labor Arbiter Afable to conduct trial on January 24, 25 and 26, 1994. During these dates, respondent bank presented testimonial, documentary and real evidence. Upon motion by petitioner union, the Labor Arbiter ordered the exclusion for being immaterial, of all evidence pertaining to the events prior to the said dates. Respondent bank then objected to this order of exclusion by filing an "Exception with Tender of Excluded Evidence (Ex Abundante Cautelam)". After respondent bank rested its case, petitioner union did not present evidence. Its counsel argued in open session for the dismissal of the petition, citing the insufficiency of evidence in support of the issuance of a temporary restraining order or preliminary injunction.

On January 31, 1994, respondent NLRC issued the questioned Resolution (1) denying petitioner union's oral motion to dismiss the petition; (2) issuing a writ of preliminary injunction in favor of respondent bank, and (3) directing the Labor Arbiter to conduct further hearing for the reception of additional evidence to sustain the issuance of a writ of permanent injunction.

Without first filing a motion for reconsideration of the said Resolution, petitioner union comes to this Court via the present petition raising the sole issue of whether or not respondent NLRC acted with grave abuse of discretion in denying its motion to dismiss and granting respondent bank's prayer for the issuance of a writ of preliminary injunction.

Petitioner union vigorously maintains that the petition for injunction filed by the respondent bank with the NLRC suffers from a fatal flaw for it failed to specifically allege therein the matters set forth under Nos. 3 and 4 of Article 218 (e) of the Labor Code. Petitioner union further alleges that it was deprived of its right to due process because it was not given the opportunity "to cross-examine the bank's witnesses concerning the excluded evidence relied upon by respondent Commission for its findings, and to present testimony in opposition thereto."[6]

The petition is devoid of merit.

In a special civil action for certiorari, the petitioner has to show not merely a reversible error committed by the public respondent, but that it acted with grave abuse of discretion amounting to lack or excess of jurisdiction.[7] "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as is equivalent to lack of

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jurisdiction, or where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility which must be so patent and gross as to amount to an invasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[8] Mere abuse of discretion is not enough.[9]

Here, we see no grave abuse of discretion on the part of respondent NLRC in giving due course to the petition for injunction filed by respondent bank. As aptly observed by the Solicitor General, it is not necessary for the respondent bank to allege in verbatim the requisites for the issuance of the temporary restraining order and/or writ of preliminary injunction under Article 218 (e) of the Labor Code.[10] In its original and supplemental petition for injunction, respondent bank made sufficient allegations that members of petitioner union were unlawfully preventing or obstructing the free ingress to and egress from the respondent bank premises; and disrupting operations, causing great and continuing damage to the bank in terms of lost revenues. These allegations, as found by respondent NLRC, were proven by respondent bank during the proceedings for the issuance of a writ of preliminary injunction. Incidentally, it is not our function in this certiorari proceedings to review the findings of facts of respondent NLRC since we are confined only to issues of jurisdiction or grave abuse of discretion.[11] Indeed, this Court is not a trier of facts; factual issues are beyond the ambit of our authority to review on certiorari.[12]

Anent the contention of petitioner union that it was deprived of the opportunity to cross-examine the bank's witnesses, the same is totally unavailing. In the proceedings before respondent NLRC, petitioner union's counsel, instead of cross-examining those witnesses, merely resorted to oral argument and moved to dismiss the petition for insufficiency of evidence. The oral motion to dismiss was opposed, also in open session, by respondent bank, after which, the entire incident was considered submitted for resolution. Respondent NLRC had no recourse but to decide the motion based solely on the evidence presented. In any event, respondent NLRC gave petitioner union the opportunity to controvert respondent bank's evidence when it directed the Labor Arbiter to receive evidence. Clearly, respondent NLRC, in issuing the assailed Resolution, did not commit any grave abuse of discretion.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Carpio, JJ., concur.

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[1] Filed pursuant to Rule 65 of the 1997 Rules of Civil Procedure, as amended.

[2] Annex "H", Petition, Rollo, pp. 62-73.

[3] Annex "A", Ibid., pp. 21-30.

[4] ART. 264. PROHIBITED ACTIVITIES. x x x

(e)

No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares."

[5] Annex "C", supra, pp. 45-46.

[6] Petition, Rollo, p.15.

[7] Don Orestes Romualdez Electric Cooperative, Inc. vs. National Labor Relations Commission, 319 SCRA 255 (1999).

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[8] Esguerra vs. Court of Appeals, 267 SCRA 380 (1997).

[9]Don Orestes Romualdez Electric Cooperative, Inc. v. National Labor Relations Commission, supra.

[10] Comment of the OSG, p. 7; Rollo, p. 225.

[11] Masagana Concrete Products vs. NLRC, 313 SCRA 576 (1999).

[12] C. Planas Commercial vs. NLRC, 303 SCRA 49 (1999); Caruncho III vs. Commission on Elections, 315 SCRA 693 (1999).

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