

**COCA-COLA BOTTLERS, PHILS., INC., PETITIONER, VS. DELFIN HINGPIT, GABRIEL FRANCISCO, JR., CECILIO PINAR, JR., ABUNDIO BALATERO, NARITO MANLULUYO, SECERO ZAMORA, MEDARDO GABINES,...**

*G.R. No. 127238. August 25, 1998*

Ponente: NARVASA, CJ.

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**NARVASA, CJ.:**

The special civil action of certiorari at bar concerns seven (7) cases against petitioner Coca-Cola Bottling, Phils., Inc. instituted in the Regional Arbitration Branch of the National Labor Relations Commission in Cebu City over a period of four years or so, by eleven (11) persons claiming to be employees of the company's Tagbilaran City plant. These were:

- (1) RAB Case No. VII-07-12-0657-88 initiated on August 9, 1988 by Delfin Hingpit for "illegal dismissal, back wages and damages;"
- (2) RAB Case No. VII-05-0398-89 filed on February 13, 1989 by Gabriel Francisco for "unjust dismissal, non-payment of overtime pay and service incentive;"
- (3) RAB Case No. VII-02-0189-90 jointly filed on February 7, 1990 by Nelson Umali, Medardo Gabines, Enrique Bangalao, Julito Apat and Sotero Pandan for "illegal dismissal," "separation pay," "service incentive leave," and "Cost of Living Allowance mandated by law;"
- (4) RAB Case No. VII-02-0169-90 initiated by Severo Zamora on February 12, 1990 for "illegal dismissal," "service incentive leave," "retirement pay," and "separation pay;"
- (5) RAB Case No. VII-10-0896-89 filed by Cecilio Pinar on March 9, 1992 for "unjust dismissal" and "separation pay;"
- (6) RAB Case No. VII-11-1026-89 initiated by Abundio Balatero also on March 9, 1992 for "unjust dismissal," "non-payment of overtime pay" and "separation pay;" and
- (7) RAB Case No. VII-10-0897-89 commenced by Narito Manluluyo.

In the first two (2) cases – RAB Case No. VII-07-12-0657-88 and RAB Case No. VII-05-0398-89 – the respondents impleaded were Coca-Cola Bottling, Phils., Inc. (COCA-COLA) and its Tagbilaran Branch Manager, Godofredo Bagares. In the other (5), the respondents named, aside from COCA-COLA, were Pioneer Multi Services, Inc. and Lipercon Services Inc.

COCA-COLA is a corporation duly organized under Philippine laws with principal offices at Ace Building, Legaspi Village, Makati, Metro Manila, engaged in the bottling, distribution and sale of soft drink products.[1] It maintains, among others, a bottling plant in Tagbilaran City, with sales offices and bodegas in strategic places to serve the surrounding areas in Bohol Province.

Pioneer Multi-Services Co. (PIONEER) and Lipercon Services, Inc. (LIPERCON), are manning companies with which COCA COLA successively entered into contracts for the supply of the manpower needs of its plant in Tagbilaran. COCA-COLA's contract with PIONEER was executed on May 28, 1983, and that with LIPERCON, five (5) years later, on December 17, 1988.

The seven (7) cases against COCA-COLA were heard together after issues had been joined; and judgment thereon was handed down by the Executive Labor Arbiter on February 7, 1995.[2] The judgment found that complaints were supplied as workers to COCA-COLA first by PIONEER and later, by LIPERCON; that whereas LIPERCON was an independent contractor, PIONEER was not; that in any case, "(w)hen Lipercon entered into the picture,\*\* complainant were already regular employees of the respondent firm," and hence the subsequent "coming in Lipercon did nt deprive \*\* (them of) the right to claim separation pay \*\* as reinstatement is no longer feasible." COCA-COLA was therefore sentenced to pay the complainants the sum of Seventy One Thousand Six Hundred Fifty Six (P71,656.00) Pesos in concept of separation pay" in deferring amounts. The complaint was dismissed as regards Godofredo Bagares (COCA COLA's Branch Manager at Tagbilaran), his liability not having been established.

The eleven complainants appealed from the Decision of the Arbiter imputing reversible error to the latter "when he merely awarded separation pay instead of reinstatement with backwages, despite his finding of illegal dismissal, without even explaining in his decision why complainants could not be reinstated." The appeal was filed only by Hingpit who represented that he was taking the appeal also in behalf of the other complainants.

In its Decision of February 28, 1996, the Fourth Division of the National Labor Relations Commission (Cebu City) "AFFIRMED with MODIFICATION" the appealed judgment, commanding COCA-COLA to pay complainants an increased amount of P2,022,076.94 representing full back wages and "13th month pay, holiday pay, service incentive leave pay, cost of living allowance and rest day pay." [3] Both COCA-COLA and the complainants moved for reconsideration of the Decision. By Resolution of October 3, 1996, [4] COCA COLA's motion for reconsideration was denied, while that of the complainants was granted in the sense that COCA-COLA was additionally "ordered to reinstate \*\* (them) to their former position without loss of seniority rights and other privileges."

COCA COLA thereupon commenced the present certiorari action on December 11, 1996 through which it seeks the setting aside of the Commission's Decision on February 28, 1996 and its Resolution of October 3, 1996. The Court required the respondents to comment on the petition and, upon a bond of P2,022,076.94, issued a temporary restraining order stopping execution of the Commission's challenged dispositions. [5]

On February 4, 1997, a pleading traversing the petition, entitled "Comments/Objection to Temporary Restraining Order," was filed by ten (10) of the complainants themselves: Hingpit, Francisco, Pinar, Manluluyo, Zamora, Gabines, Bangalao, Apat, Pandan, Umali; [6] and on February 12, 1997, another pleading, "Private Respondents' Supplemental Comment," was submitted by the same ten (10) parties. [7] On March 26, 1997, a COMMENT on behalf of the National Labor Relations Commission was filed by the Solicitor General's Office. [8] On June 13, 1997, COCA-COLA filed its "REPLY To Private Respondent's Supplemental Comment)," and on August 27, 1997 its "REPLY To Public Respondent's Comment)."

It appears that all the complainants except Delfin Hingpit and Gabriel Francisco, were originally recruited by PIONEER which detailed them, under its contract with COCA COLA, in the latter's Tagbilaran Plant, some being assigned as utility workers, and other, as bottling crew members. [9] Three years afterwards, they were absorbed by LIPERCON when it replaced PIONEER as COCA-COLA's labor supplier.

It appears that Hingpit was recruited by LIPERCON for the Tagbilaran COCA COLA plant, and first assigned as

bottling crew member on November 24, 1984. Sometime in 1988, Hingpit, being then involved in a labor case against his employer, sent a letter to then President Corazon C. Aquino asking that she help him obtain permanent employment in COCA COLA. This brought about a conciliation conference in the Bohol Labor Extension Office in Tagbilaran city; and there, an agreement was reached between Hingpit and COCA COLA, represented by its Tagbilaran Personnel Officer, Ms. Suzette Gotera. According to Hingpit,[10] Ms. Gotera had offered him “the position of driver-helper or security guard if I possess the necessary qualification for the aforesaid position,” and he had “accepted her offer as a basis of this amicable agreement, and after obtaining a clearance from Lipercon Services, Inc., Hingpit was hired by COCA COLA on a probationary basis for a period of six (6) months effective May 16, 1988.

Hingpit was then required, among other things, to take examinations to qualify for permanent placement and to submit a police clearance. He submitted a police clearance issued by the Integrated National Police Command in Bohol which stated that he was a resident of Batuan, Bohol, and that he had no criminal record thereat. Unfortunately for him, not only did he obtain failing marks in the qualifying examinations, but the police clearance submitted by him was shortly afterwards revealed to be false, belied by a certification of the Office of the Fiscal of Tagbilaran City to the effect that he was then facing charges of physical injuries in no less than three (3) cases. As a result, his services – considered temporary or probationary – were terminated on July 22, 1988, on the ground that he had (1) failed to measure up to the standards of the firm, having flunked the required qualifying tests, and (2) been shown to be dishonest, for not disclosing that he had been charged with 3 counts of physical injuries.[11]

Gabriel Francisco originally worked as bottling crew member of San Miguel Corporation at its Tagbilaran Plant from 1971 until 1976. He was reemployed in 1979, and assigned to the beer department of COCA COLA. In 1980, he was hired by PIONEER, which was aforesaid had concluded a contract to supply COCA COLA’s manpower needs. He worked under this arrangement until PIONEER was replaced by LIPERCON, in December 1986. He continued working as bottling crew member until he was separated from employment on December 15, 1988.[12]

The other complainant-employees – Cecilio Pinar, Jr., Abundio Balatero, Narito Manluluyo, Secero Zamora, Medardo Gabines, Enrique Bangalao, Julito Apat, Sotero Pandan, Nelson Umali – were, as already stated, found by the Labor Arbiter to have been first placed in the COCA COLA Tagbilaran plant by their recruiter, PIONEER, and after the latter’s contract expired, were recruited by LIPERCON and again assigned at the same Tagbilaran plant.

The Executive Labor Arbiter’s decision of February 7, 1995[13] found that while PIONEER was a “labor only contractor,”[14] LIPERCON – which had also undertaken to provide COCA COLA with manpower for such services as the repair and maintenance of machines, activities related to projects, yard cleaning, utility jobs; loading and unloading of full and empty bottles[15] -- was a legitimate labor contractor. It had substantial capital of its own; paid its recruited employees regularly even before receiving its stipulated fees from COCA-COLA; had control over complainants-workers who could not get inside the premises of COCA COLA without its written authority; attended to providing route helpers with requisition slips; kept the signed daily time records of its recruited employees; monitored their hours of work, and saw to it that they were at their places of work at the appointed hours of work, and saw to it that they were at their places of work at the appointed hours; and could receive, and act with finality on, complaints concerning its recruited workers presented by COCA COLA’s regular employees or supervisors.[16]

The Executive Labor Arbiter’s decision declared that when the complainants were discharged from LIPERCON, they signed documents of quitclaim and release, a fact “not refuted” by them.[17] Consequently, LIPERCON was

absolved from liability. The judgment was quick to point out, however, that “when LIPERCON entered into the picture” – after the lapse of COCA COLA’s earlier contract with PIONEER – said complainants –

“ \*\* were already regular employees of of the respondent firm (COCA COLA).” Its entry, even if viewed as a consequence of a legitimate business of a manpower servicing firm, resulted to (sic) the illegal termination of the complainants who at that point in time had already acquired regular status. The coming in of Lipercon did not deprive the complainants of the right to claim separation pay. Their severance from respondent firm, it appears, was forced upon them. It is only fair, thus, that they be given the benefits that they deserve while placed under Pioneer Multi-Services, Inc. Considering that their termination was not legal and valid, they should be paid one pay for every year of service as reinstatement is no longer feasible.”[18]

For this reason, COCA COLA was sentenced “to pay the complainants the sum of Seventy One Thousand Six Hundred Fifty Six (P71,656.00) Pesos in concept of separation pay” in differing amounts.

Respondent Commission saw the case differently. It opined that (1) LIPERCON was a labor-only, not an independent labor contractor; and (2) COCA COLA not having presented evidence to establish any just cause for the termination of complainants’ employment, such termination must be held illegal; and having, as well, failed to submit the payrolls corresponding to the complainants, its monetary liability to them should be increased.

In the special civil action of certiorari, COCA COLA submits that respondent Commission acted with grave abuse of discretion –

- 1) in completely ignoring the fact that Hingpit had no capacity to take an appeal in behalf of the other complainants;
- 2) in not ruling that the Labor Arbiter’s decision had long become final and executory because the complaints, except Hingpit, had already lost their right of appeal;
- 3) in disregarding the Labor Arbiter’s findings that the complainants were not regular employees of COCA COLA;
- 4) even granting arguendo that complainants were employees of COCA COLA, in requiring the latter to pay the former even when they did nothing;
- 5) in awarding complainants “rest day pay” despite their admission that they did not work seven days a week;
- 6) in holding complainants to be entitled to holiday pay, service incentive leave pay, cost of living allowance, 13th month pay, without any factual basis and contrary to the evidence on record;
- 7) in not allowing Hingpit to raise the issue of his alleged employment with COCA COLA although the same was already subject of a compromise agreement; and
- 8) in not ruling that Hingpit had been validly dismissed, having failed to meet the company standards for a probationary employee.

The Court will deal with Delfin Hingpit first. It seems fairly evident from the record that his services were validly terminated. As already narrated, on the basis of his compromise agreement with the Tagbilaran Personnel Officer of COCA COLA (entered into under the auspices of the Bohol Labor Extension Office), and after obtaining a clearance from LIPERCON, Hingpit was employed by COCA COLA on a probationary basis for a period of six (6) months effective May 16, 1988. However, Hingpit subsequently flunked the qualifying examinations for regular employment, and was later discovered to have misled COCA COLA by submitting a police clearance contradicted by the records of the Fiscal’s Office of Tagbilaran City showing that he was then facing three (3) charges of physical injuries. Upon the facts, therefore, there can be no question: first, of the propriety of his

contract of probationary employment – not only executed before Labor officials, but also admitted by him as freely and voluntarily entered into – and second, of the fact that he had not only failed the qualifying examinations, but had also presented a false clearance. Hence, his services were properly terminated on July 22, 1988, for (1) failing to qualify for the job, and (2) for dishonesty.[19]

Turning to another point, respondent Commission reversed the Labor Arbiter's conclusion that LIPERCON was an independent labor contractor. It declared it instead to be a mere "labor-only" contractor, as the term is defined and described in the Labor Code[20] and the Omnibus Rules Implementing said Code.[21] On the basis it held that complainants were not employees of LIPERCON, but of COCA COLA.

In so ruling respondent Commission unaccountably ignored the evidence on which the Labor Arbiter had based his contrary conclusion. That evidence, consisting chiefly of the testimony of Filomena Legaspi, Head of LIPERCON's Accounting Division, is summarized by the Arbiter as follows:[22]

"The Lipercon has indeed substantial capital of its own is proven by the testimony of its personnel in charge in Tagbilaran City, Filomena Legaspi. Legaspi affirmed the fact that Lipercon paid its employees (the complainants herein) regularly even before it is paid of its billing (TSN p. 49, September 2, 1992). She also testified that she had control over the complainants. Without her signature, they cannot get inside the premises of respondent firm. She signed her daily time records and monitored their hours of work. She saw to it that they were in their positions and places of work. And if the regular employees of CCBPI or their supervisors complain, they notify and inform her of these complaints. With regard to the route helpers, these were covered by requisition slips (TSN, p. 47, Sept. 2, 1992). In fact, after Lipercon's contract with respondent expired in December 1988, it was she who assigned some workers like Cecilio Pinar, Jr. and Abundio Balatero to SMC (TSN, pp. 34, 35, 42-49, September 2, 1992). The payrolls of Lipercon (Exhs. '1' and '2' for CCBPI) and the resignation letter addressed to Ms. Perla Cañete (Exh. '4') by Gabriel Francisco, Jr. points out that complainants were indeed employees of Lipercon. The aforecited facts were not refuted by the complainant

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" \*\* Lipercon proved to be an independent contractor. Aside from hiring its own employees and paying the workers their salaries, it also exercised supervision and control over them which is the most important aspect in determining employer-employee relations (Mafinco Trading Corp. v. Ople, 70 SCRA 139; Rosario Brothers Inc. vs. Ople, 131 SCRA 72). That it indeed has substantial capital is proven by the fact that it did not depend upon its billing on respondent regarding payment of workers' salaries. And when complainants were separated from Lipercon, they signed quitclaim and release documents. \*\*."

While it is within respondent Commission's competence, as an appellate agency reviewing decisions of Labor Arbiters, to disagree with and set aside the latter's findings, it stands to reason that it should state an acceptable cause therefor. It would otherwise be a whimsical, capricious, oppressive, illogical, unreasonable exercise of quasi-judicial prerogative, subject of invalidation by the extraordinary writ of certiorari.

But that, regrettably, is precisely what respondent Commission appears to have done. It overturned the Labor Arbiter's factual determination regarding LIPERCON's being a legitimate independent contractor without stating the reason therefor, without any explanation whatever as to why the Arbiter's evidentiary premises were not worthy of credit, or why the inferences drawn therefrom were unacceptable, as a matter of law or logic.

Respondent Commission grounded its reversal of the Arbiter's adjudgment solely on a 1989 judgment of this Court, *Guarin et al. v. Lipercon*[23] - in which LIPERCON had also been involved as a labor contractor of another company.[24] There, the Court held LIPERCON to be a "labor only" contractor; and declared that the NLRC's finding – that it "was not a mere labor-only contractor because it has substantial capital or investment in the form of tools, equipment, machineries, work premises, \*\*\*" - was "based on insubstantial evidence, as the

NLRC (had merely) pointed out that ‘it (LIPERCON) claims to be possessed among others, of substantial capital and equipment essential to carry out its business as general independent contractor’\*\*.” In other words, in Guarin, LIPERCON was held to have failed to discharge its burden of proof that “it has substantial capital, investment, tools, etc.”

Not so in the case at bar. Here, there is substantial evidence, detailed by the Labor Arbiter, to establish LIPERCON’s character as an independent contractor in the real sense of the word,[25] which makes the Labor Arbiter’s ruling more acceptable than respondent Commission’s on the same matter, being founded solely on an inapplicable precedent. Also more deserving of assent is said Labor Arbiter’s conclusion that the complainant’s acceptance of employment in LEPERCON in December, 1986 – lasting for a period of some two years – effectively operated as a cessation of the prior relationship they had with PIONEER and COCA COLA in consequence of which they became entitled to separation pay from COCA COLA, PIONEER being merely its hiring agent.

The evidence therefore satisfactorily establishes that complainants were employees of LIPERCON. It was LIPERCON that terminated their services at which time, as found by the Labor Arbiter, the complainants “signed quitclaim and release documents” in favor of LIPERCON. COCA COLA was not privy either to that act of employment-termination or execution of “quitclaim and release documents,” or to the earlier act of creation of the employment relationship between the complainants and LIPERCON. COCA COLA was in no position to intervene in any manner in the creation or termination of the relationship between complainants and LIPERCON.

It was therefore erroneous for respondent Commission to demand that COCA COLA present proof of just cause for the termination of the services of complainants, the latter not being its employees, but LIPERCON’s. For the same reason, it was erroneous for the NLRC to expect COCA COLA to present its payrolls to show the salaries and wages of the complainants although, it must be mentioned, COCA COLA did cause presentation of LIPERCON’s payrolls relative to its employees, including complainants. And it was grave error for respondent Commission to conclude that because proof of just cause for complainant’s removal from their employment in LIPERCON was not presented by COCA COLA, said complainants had been dismissed without just cause and due process.

What has been said make it unnecessary to address the other substantive issues raised by COCA COLA.[26] And the adjective issue that it sets up – respecting the validity of Hingpit’s having attempted to appeal from the Labor Arbiter’s decision in behalf of the other complainants – appears to be too unsubstantial to merit consideration. All things considered, and except as regards Delfin Hingpit, the Court is satisfied that the Decision of the Executive Labor Arbiter fairly and reasonably disposed of the controversy, and is worthy of adoption as the ultimate adjudgment of this case.

WHEREFORE, the petition for certiorari is GRANTED, and the challenged Decision of the Fifth Division of the National Labor Relations Commission promulgated on February 28, 1996 is NULLIFIED AND SET ASIDE. The Decision of the Executive Labor Arbiter, Cebu City, dated February 7, 1995 is REINSTATED and hereby AFFIRMED, with the sole modification that the complaint of DELFIN HINGPIT is dismissed, for lack of merit. No pronouncement as to costs.

### **SO ORDERED.**

Romero, Kapunan and Purisima, JJ., concur.

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[1] Rollo, pp. 4, 5-6, 84.

[2] Id., pp. 81-94.

[3] Id., pp. 51-73.

[4] Id., pp. 74-77.

[5] Resolution, January 2, 1997, confirmed by Resolution, January 13, 1997 (Rollo, p. 250).

[6] Rollo, pp. 214-216.

[7] Id., pp. 227-235.

[8] Id., pp. 254-281.

[9] The Arbiter found that Sotero Pandan and Enrique Bangalao had been assigned as utility workers, and Julito Apat as forklift operator, as early as March, 1974; Nelson Umali, as delivery worker, in April, 1974; Severo Zamora as utility worker in September, 1978; Cecilio Pinar, Jr. as bottling crew member in May 1980; Medardo Gabines, utility worker, and Abundion Balarero, bottling crew member, in November and December, 1982, respectively; and Nerito Manluluyo as bottling crew member, in November, 1986 (Rollo, p. 84).

[10] In his sworn statement – executed “on my own free and voluntary will without mental reservation” – dated April 22, 1988, by which he withdrew his complaint against COCA COLA; see Annex C, petition; SEE also, petition, pp. 41-42 (Rollo, pp. 43-44), and COCA COLA’s “REPLY (to Private Respondents’ Comment),” dated June 5, 1997, pp. 4-6.

[11] Rollo, pp. 83, 85.

[12] Id., pp. 83-85.

[13] Id., pp. 81-94 (Footnote No. )

[14] Id., pp. 91-92.

[15] Id., p. 89.

[16] Id., pp. 89-90.

[17] Id., pp. 92-93.

[18] Id., p. 92.

[19] Rollo, pp. 83, 85.

#### **[20] ARTS. 106 AND 107.**

[21] Secs. 8 and 9, Rule VIII, Book III.

[22] Rollo, pp. 89-90, 92-93 (SEE footnotes 14-17, supra).

#### **[23] 178 SCRA 267, 273.**

[24] Novelty Philippines, Inc.

[25] SEE footnote 22 and related text, supra.

[26] E.g., the days and hours of work of complainants; whether or not they are entitled to so called “rest day pay;” holiday pay, service incentive leave pay, cost of living allowance, 13th month pay.

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