DON ORESTES ROMUALDEZ ELECTRIC COOPERATIVE, INC.(DORELCO), PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, AND LINO L. PARONE, RESPONDENTS.

G.R. No. 128389. November 25, 1999

Ponente: PARDO, J.

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PARDO, J.:

The case is a petition for certiorari[1] to set aside three (3) Resolutions of the National Labor Relations Commission[2] on the ground that they were issued with grave abuse of discretion, as follows:

> a) Resolution dated October 31, 1996 denying the motion of petitioner Don Orestes Romualdez Electric Cooperative, Inc. (DORELCO) for reduction of appeal bond.
>
> b) Resolution dated November 26, 1996 denying petitioner's motion for reconsideration of respondent NLRC's Resolution dated October 31, 1996.
>
> c) Resolution dated February 3, 1997 directing the Deputy Executive Clerk of the NLRC to immediately issue an entry of judgment and the Labor Arbiter to immediately act on the motion of respondent Lino L. Parone for a writ of execution.

The facts are as follows:

> On January 25, 1993, respondent Lino L. Parone filed with the Regional Arbitration Branch No. 8 a case for illegal dismissal and non-payment of emergency cost of living allowance (ECOLA) and other monetary benefits against petitioner.[3] Respondent claimed that petitioner illegally dismissed him when he demanded payment of his ECOLA and other benefits pursuant to an opinion of the DOLE Regional Director, Region 8, that he was a regular employee, notwithstanding his appointment as a contractual employee.
>
> Thereafter, the parties presented evidence and submitted their respective position papers.

On July 30, 1996, Labor Arbiter Benjamin S. Guimoc rendered decision in favor of respondent, the dispositive portion of which reads:

> "WHEREFORE, judgment is hereby rendered finding complainant LINO L. PARONE to be a regular employee of respondent, DORELCO, and his dismissal from the service to be illegal.
>
> "Respondent DON ORESTES ELECTRIC COOPERATIVE (DORELCO), its Board of Directors and its General Manager, at the time of his dismissal, are hereby ordered to pay jointly and severally the amount of P239, 667.72 representing backwages, separation, ECOLA, wage orders, sick and vacation leave pay and 13[th] month pay, as computed herein.
>
> "SO ORDERED."[4]

On August 30, 1996, petitioner filed with the NLRC, Fourth Division, Cebu City, its notice of appeal, memorandum of appeal and motion for reduction of appeal bond, instead of posting the appeal bond in an amount

equivalent to the judgment award.[5]

On October 31, 1996, the NLRC issued a resolution denying petitioner's motion for reduction of appeal bond and directing petitioner to post a cash or surety bond in the amount of P239,667.72 within a non-extendible period of ten (10) days from notice.[6]

On November 21, 1996, petitioner filed a motion for reconsideration of the resolution dated October 31, 1996.[7]

On November 26, 1996, the NLRC denied petitioner's motion for reconsideration and dismissed his appeal for failure to post the required bond within the ten-day period specified in the resolution dated October 31, 1996, with warning that no further motion for reconsideration would be entertained.[8]

On December 4, 1996, petitioner filed with the NLRC a motion for reconsideration of the resolution dated November 26, 1996.[9] Thereafter, on December 20, 1996, it filed a memorandum in support of said motion for reconsideration.[10]

On February 3, 1997, the NLRC issued a resolution directing the NLRC Deputy Executive Clerk to immediately issue an entry of judgment and the Labor Arbiter to immediately act on private respondent's motion for issuance of a writ of execution.[11]

On February 25, 1997, the NLRC Executive Clerk of Court, Atty. Julie C. Rendoque, issued an entry of judgment pursuant to the NLRC resolution dated February 3, 1997.

Hence, this petition.[12]

On March 19, 1997, we required respondents to comment on the petition within ten (10) days from notice.[13] On June 11, 1997, respondent Lino L. Parone filed his comment praying for the dismissal of the petition.[14] On September 29, 1997, the Solicitor General filed his comment stating that petitioner failed to perfect its appeal for non-posting of the required bond within the prescribed period, hence, the NLRC did not act with grave abuse of discretion when it issued the questioned resolutions.[15]

On January 19, 1998, we gave due course to the petition.[16]

The sole issue raised is whether or not respondent NLRC acted with grave abuse of discretion in issuing the resolutions which denied reduction of the appeal bond, dismissed the appeal for failure to post the required bond and directed the issuance of an entry of judgment.

Petitioner contends that at the time it filed its notice of appeal, it could not afford to post the required appeal bond because it was paying its creditors for various debts.

The petition is devoid of merit.

In a special action for certiorari, the burden is on petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent. "By grave abuse of discretion is meant capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."[17]

Here, we find that the National Labor Relations Commission in issuing the assailed resolutions committed no grave abuse of discretion amounting to lack or excess of jurisdiction. There are factual bases and legal justification for the assailed resolutions. It is not this Court's function at this stage to re-evaluate the findings of

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fact of the NLRC, given a limited scope of its review power, which is properly confined only to issues of jurisdiction or grave abuse of discretion.[18] This Court is not a trier of facts[19] and factual issues are beyond the ambit of our authority to review on certiorari.[20]

Petitioner's failure to post the required appeal bond within the prescribed period is inexcusable. With several obligations to settle, it is up to petitioner to prioritize the same. For choosing to pay other obligations ahead, petitioner must suffer the consequences of its choice.

WHEREFORE, the petition is hereby DISMISSED and the resolutions of the National Labor Relations Commission in Case No. V-0219-96 are hereby AFFIRMED.

No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Ynares-Santiago, JJ., concur.

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[1] Under Rule 65, 1964 Revised Rules of Court.

[2] NLRC Case No. V-0219-96.

[3] Docketed as NLRC RAB VIII Case No., 1-0063-93.

[4] Rollo, pp. 24-34.

[5] Rollo, pp. 35-41, 42-43.

[6] Rollo, pp. 44-46.

[7] Rollo, pp. 47-49.

[8] Rollo, pp. 50-51.

[9] Rollo, pp. 52-54.

[10] Rollo, pp. 56-57.

[11] Rollo, pp. 58-61.

[12] Petition, filed on March 17, 1997, Rollo, pp. 8-23.

[13]Rollo, p. 62.

[14] Rollo, pp. 74-83.

[15] Rollo, pp.94-105.

[16] Rollo, p. 119.

[17] Solvic Industrial Corp. vs. NLRC, 296 SCRA 432, 441 [1998]; Tomas Claudio Memorial College, Inc. vs. Court of Appeals, G. R. No. 124262, October 12, 1999.

[18] Geslani vs. National Labor Relations Commission, 253 SCRA 612 [1996].

[19] Caruncho III vs. Comelec, G. R. No. 135996, September 30, 1999, citing David-Chan vs. Court of Appeals, 335 Phil. 1140, 1148 [1997].

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[20] Pepsi-Cola Products Philippines, Inc. vs. National Labor Relations Commission, G. R. No. 121324, September 30, 1999; Social Security System Employees Association vs. Velasco, G. R. No. 108765, August 27, 1999; Toyota Auto Parts Philippines, Inc. vs. Director, Bureau of Labor Relations, G. R. No. 13104, March 2, 1999, citing Flores vs. NLRC, 253 SCRA 494 [1996].

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