

CAGAYAN SUGAR MILLING COMPANY, PETITIONER, VS. SECRETARY OF LABOR AND EMPLOYMENT, DIRECTOR RICARDO S. MARTINEZ, SR., AND CARSUMCO EMPLOYEES UNION, RESPONDENTS.

G.R. No. 128399. January 15, 1998

Ponente: PUNO, J.

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PUNO, J.:

In this petition for certiorari, petitioner CAGAYAN SUGAR MILLING COMPANY (CARSUMCO) impugns the October 8, 1996 Decision of the Secretary of Labor, dismissing its appeal and upholding the Order of Regional Director Ricardo S. Martinez, Sr. finding petitioner guilty of violating Regional Wage Order No. RO2-02.

The facts: On November 16, 1993, Regional Wage Order No. RO2-02[1] was issued by the Regional Tripartite Wage and Productivity Board, Regional Office No. II of the Department of Labor and Employment (DOLE). It provided, *inter alia*, that:

"Section 1. Upon effectivity of this Wage Order, the statutory minimum wage rates applicable to workers and employees in the private sector in Region II shall be increased as follows:

x x x

1.2 P14.00 per day Cagayan

x x x"

On September 12 and 13, 1994, labor inspectors from the DOLE Regional Office examined the books of petitioner to determine its compliance with the wage order. They found that petitioner violated the wage order as it did not implement an across the board increase in the salary of its employees.

At the hearing at the DOLE Regional Office for the alleged violation, petitioner maintained that it complied with Wage Order No. RO2-02 as it paid the mandated increase in the minimum wage.

In an Order dated December 16, 1994, public respondent Regional Director Ricardo S. Martinez, Sr. ruled that petitioner violated Wage Order RO2-02 by failing to implement an across the board increase in the salary of its employees. He ordered petitioner to pay the deficiency in the salary of its employees in the total amount of P555,133.41.

On January 6, 1995, petitioner appealed to public respondent Labor Secretary Leonardo A. Quisumbing. On the same date, the Regional Wage Board issued Wage Order No. RO2-02-A,[2] amending the earlier wage order, thus:

"Section 1. Section 1 of Wage Order No. RO2-02 shall now read as, "Upon effectivity of this Wage Order, the workers and employees in the private sector in Region 2 shall receive an across the board wage increase as follows:

x x x

1.2 P14.00 per day Cagayan

x x x

"Section 2. This amendment is curative in nature and shall retroact to the date of the effectivity of Wage Order No. RO2-02."

On October 8, 1996, the Secretary of Labor dismissed petitioner's appeal and affirmed the Order of Regional Director Martinez, Sr. Petitioner's motion for reconsideration was likewise denied.[3]

On February 12, 1997, private respondent CARSUMCO EMPLOYEES UNION moved for execution of the December 16, 1994 Order. Regional Director Martinez, Sr. granted the motion and issued the writ of execution. On March 4, 1997, petitioner moved for reconsideration to set aside the writ of execution. On March 5, the DOLE regional sheriff served on petitioner a notice of garnishment of its account with the Far East Bank and Trust Company. On March 10, the sheriff seized petitioner's dump truck and scheduled its public sale on March 20, 1997.

Hence, this petition, with a prayer for the issuance of a temporary restraining order (TRO).

On April 3, 1997, this Court issued a TRO enjoining respondents from enforcing the writ of execution.[4] On July 16, upon petitioner's motion, we amended the TRO by also enjoining respondents from enforcing the Decision of the Secretary of Labor and conducting further proceedings until further orders from this Court.[5]

In the case at bar, petitioner contends that:

I

WAGE ORDER RO2-02 IS NULL AND VOID FOR HAVING BEEN ISSUED IN VIOLATION OF THE PROCEDURE PROVIDED BY LAW AND IN VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS OF LAW.

II

WAGE ORDER NO. RO2-02 CLEARLY PROVIDED FOR THE FIXING OF A STATUTORY MINIMUM WAGE RATE AND NOT AN ACROSS THE BOARD INCREASE IN WAGES.

III

THE DECISION OF THE SECRETARY OF LABOR AND EMPLOYMENT IS NULL AND VOID FOR LACK OF ANY LEGAL BASIS.

The petition has merit.

Wage Order No. RO2-02, passed on November 16, 1993, provided for an increase in the statutory minimum wage rates for Region II. More than a year later, or on January 6, 1995, the Regional Board passed Wage Order RO2-02-A amending the earlier wage order and providing instead for an across the board increase in wages of employees in Region II, retroactive to the date of effectivity of Wage Order RO2-02.

Petitioner assails the validity of Wage Order RO2-02-A on the ground that it was passed without the required public consultation and newspaper publication. Thus, petitioner claims that public respondent Labor Secretary Quisumbing abused his discretion in upholding the validity of said wage order.

We agree.

Article 123 of the Labor Code provides:

"ART. 123. Wage Order. -- Whenever conditions in the region so warrant, the Regional Board shall investigate and study all pertinent facts, and, based on the standards and criteria herein prescribed, shall proceed to determine whether a Wage Order should be issued. Any such Wage Order shall take effect after fifteen (15) days from its complete publication in at least one (1) newspaper of general circulation in the region.

"In the performance of its wage-determining functions, the Regional Board shall conduct public hearings/consultations, giving notices to employees' and employers' groups and other interested parties.

x x x"

The record shows that there was no prior public consultation or hearings and newspaper publication insofar as Wage Order No. RO2-02-A is concerned. In fact, these allegations were not denied by public respondents in their Comment. Public respondents' position is that there was no need to comply with the legal requirements of consultation and newspaper publication as Wage Order No. RO2-02-A merely clarified the ambiguous provision of the original wage order.

We are not persuaded.

To begin with, there was no ambiguity in the provision of Wage Order RO2-02 as it provided in clear and categorical terms for an increase in statutory minimum wage of workers in the region. Hence, the subsequent passage of RO2-02-A providing instead for an across the board increase in wages did not clarify the earlier Order but amended the same. In truth, it changed the essence of the original Order. In passing RO2-02-A without going through the process of public consultation and hearings, the Regional Board deprived petitioner and other employers of due process as they were not given the opportunity to ventilate their positions regarding the proposed wage increase. In wage-fixing, factors such as fair return of capital invested, the need to induce industries to invest in the countryside and the capacity of employers to pay are, among others, taken into consideration.[6] Hence, our legislators provide for the creation of Regional Tripartite Boards composed of representatives from the government, the workers and the employers to determine the appropriate wage rates per region to ensure that all sides are heard. For the same reason, Article 123 of the Labor Code also provides that in the performance of their wage-determining functions, the Regional Board shall conduct public hearings and consultations, giving notices to interested parties. Moreover, it mandates that the Wage Order shall take effect only after publication in a newspaper of general circulation in the region. It is a fundamental rule, borne out of a sense of fairness, that the public is first notified of a law or wage order before it can be held liable for violation thereof. In the case at bar, it is indisputable that there was no public consultation or hearing conducted prior to the passage of RO2-02-A. Neither was it published in a newspaper of general circulation as attested in the February 3, 1995 minutes of the meeting of the Regional Wage Board that the non-publication was by consensus of all the board members.[7] Hence, RO2-02-A must be struck down for violation of Article 123 of the Labor Code.

Considering that RO2-02-A is invalid, the next issue to settle is whether petitioner could be held liable under the original wage order, RO2-02.

Public respondents insist that despite the wording of Wage Order RO2-02 providing for a statutory increase in minimum wage, the real intention of the Regional Board was to provide for an across the board increase. Hence, they urge that petitioner is liable for merely providing an increase in the statutory minimum wage rates of its employees.

The contention is absurd. Petitioner clearly complied with Wage Order RO2-02 which provided for an increase in statutory minimum wage rates for employees in Region II. It is not just to expect petitioner to interpret Wage RO2-02 to mean that it granted an across the board increase as such interpretation is not sustained by its text. Indeed, the Regional Wage Board had to amend Wage Order RO2-02 to clarify this alleged intent.

In sum, we hold that RO2-02-A is invalid for lack of public consultations and hearings and non-publication in a newspaper of general circulation, in violation of Article 123 of the Labor Code. We likewise find that public respondent Secretary of Labor committed grave abuse of discretion in upholding the findings of Regional Director Ricardo S. Martinez, Sr. that petitioner violated Wage Order RO2-02.

IN VIEW WHEREOF, the petition is GRANTED. The Decision of the Secretary of Labor, dated October 8, 1996, is set aside for lack of merit.

SO ORDERED.

Regalado, (Chairman), Mendoza, and Martinez, JJ., concur.

[1] Annex "A", Petition; Rollo, pp. 25-26.

[2] Rollo, pp. 27-28.

[3] See Order dated November 24, 1996; Rollo, pp. 43-45.

[4] Rollo, pp. 63-64.

[5] See Resolution; Rollo, pp. 103-104

[6] Article 124 (h), Labor Code.

[7] See Decision of former Labor Secretary Jose Brillantes in the consolidated appeals of Cagayan Colleges of Tuguegarao and St. Louis College of Tuguegarao, Inc. (NWPC Case Nos. 95-003 and 95-004) regarding the non-publication of RO2-02-A; Rollo, at p. 33.

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