

METRO DRUG DISTRIBUTION, INC., PETITIONER, VS. METRO DRUG CORPORATION EMPLOYEES ASSOCIATION – FEDERATION OF FREE WORKERS, RESPONDENT.

G.R. NO. 142666. September 26, 2005

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.

This is a petition for review on certiorari seeking the reversal of the Decision[1] promulgated on 17 September 1999 and Resolution[2] of 27 March 2000 of the Court of Appeals in CA-G.R. SP No. 47642 entitled, "Metro Drug Distribution, Inc. v. Jose C. De Vera, in his capacity as Labor Arbiter of the National Labor Relations Commission (NLRC), National Capital Region Arbitration Branch, Metro Drug Corporation Employees Association – Federation of Free Workers" which dismissed petitioner's petition for certiorari.

The facts are as follows:

Petitioner is a corporation engaged in the business of distributing consumer products. On the other hand, respondent union is the recognized collective bargaining representative of the rank-and-file employees of petitioner.

On 11 February 1997, petitioner and respondent union entered into a Collective Bargaining Agreement (CBA) which includes the following provision on grievance machinery, to wit:

ARTICLE XIX GRIEVANCE MACHINERY

Section 1. Definition – A grievance is a dispute by and between the COMPANY and the UNION or any complaint or expressed dissatisfaction by an employee as may arise from any of the following:

- a) The interpretation, violation, non-implementation, or manner of implementation of any provision of this Agreement;
- b) The violation, non-implementation or manner of implementation of any provision of labor laws, decrees, social legislation, including their implementing rules and regulations;
- c) Dismissal, termination, and/or suspension of employees;
- d) Any matter concerning labor-management relations and specifically covered by the collective bargaining agreement.

Section 2. Preliminary Steps – Before resorting to the grievance procedure, the employee or employees who have cause for complaint or grievance shall give their respective immediate supervisors the opportunity to adjust the same.

Section 3. Steps – The grievance shall be processed as expeditiously as possible through the following

procedures:

Step 1. The complainant, assisted by his shop steward, shall discuss the dispute with his department head or branch manager, as the case may be. If there is no settlement in two (2) days, the next grievance may be brought up to the next higher step within three (3) days in writing and signed by the employee concerned. If no such action is taken, the grievance shall be considered withdrawn or decided to the satisfaction of the complainant.

Step 2. Unless settled or withdrawn in step 1, the complaint shall be filed with the Vice-President, Human Resources Division. This corporate official or his authorized representatives shall take up the matter with the President of the UNION or the latter's authorized representative. Decision at this step must be made within three (3) days from date of last deliberation. If there is no settlement made within five (5) days, the grievance may be taken up to the next higher step within three (3) days in writing and signed by the President of the UNION or his authorized representatives. If no such appeal is made, the grievance shall be considered withdrawn or decided to the satisfaction of the complainant.

Step 3. If no decision is reached in step 2, the grievance may be filed in writing by the employee concerned with the President of the COMPANY or his authorized representative who shall take up the matter with the President of the UNION or the latter's authorized representative. Decision at this step must be made within three (3) days from the date of the last deliberation.

SECTION 4. Decision. – The decision in every grievance step shall be in writing and the parties thereto furnished a copy thereof.

SECTION 5. Voluntary Arbitration. – All disputes, grievances, or matters not settled through the grievance procedure aforementioned shall be referred to and decided, or settled through voluntary arbitration except termination, dismissal, suspension and unfair labor practice (ULP) cases which, unless otherwise agreed upon by the parties, shall be referred to compulsory arbitration.

SECTION 6. Arbitrators.- The party desiring to submit to any dispute or controversy to arbitration shall submit a notice in writing to the other party which shall contain the names of the three (3) NCMB accredited arbitrators of his choice, declaring intent to submit the matter to arbitration. Within five (5) days from receipt of the written notice, the other party shall also submit its three (3) NCMB-accredited arbitrators and inform in writing the opposing side of such choice.

SECTION 7. Selection. – From the list submitted by both parties, each party shall strike out two (2) names. The two remaining names shall be raffled to select one who shall act as the arbitrator.

SECTION 8. Expediting proviso –

a)

In all grievances where a majority of the employees of a department, or employees from two or more departments or branches are concerned, the grievance procedure shall commence at step 2.

b)

In all grievances where the majority of the employees of the COMPANY are concerned, the grievance procedure shall commence at step 3.

SECTION 9. Period. – The arbitration committee shall render its decision within thirty (30) days after the dispute, disagreement or controversy is submitted for decision. All decisions of the arbitration committee shall be final and

binding on all parties hereto.

SECTION 10. Expenses. – The expenses of arbitration including per diem, salaries of the committee members shall be shared equally by the COMPANY and the UNION.[3]

In a letter dated 08 July 1997, respondent union's president requested for a discussion of particular grievable issues including that involving the health insurance provider and the issue pertaining to the amendment to the salesmen's incentive scheme which was implemented by petitioner.

On 29, 30 July, 01 and 06 August 1997, grievance meetings were conducted on the aforementioned issues; however, petitioner and respondent union were not able to reach an agreement.

According to respondent union, it expressed its desire to submit the issues for voluntary arbitration and it even went as far as submitting the names of three voluntary arbitrators as provided for in the CBA.[4] Despite this notice, petitioner failed to submit its own nominees of voluntary arbitrators prompting respondent union to protest such inaction through a letter dated 23 July 1997.[5] Subsequently, respondent union instituted a complaint for unfair labor practice before the arbitration branch of the NLRC.[6] Specifically, respondent union charged petitioner with gross violation of their CBA economic provisions stemming from petitioner's introduction of unilateral changes on the salesmen's incentive scheme and health insurance provider. Respondent union also accused petitioner of violations of the duty to bargain and non-observance of the CBA provision on grievance machinery.

For its part, petitioner filed a motion to dismiss[7] the complaint on the sole ground of lack of jurisdiction over the subject matter. Petitioner insisted that the issues raised by respondent union – salesmen's incentive scheme and the health insurance provider - are exclusively cognizable by the voluntary arbitrator based on Articles 217, 260, and 261 of the Labor Code which provide:

ART. 217. JURISDICTION OF LABOR ARBITERS AND THE COMMISSION

...

(c) Cases arising from the interpretation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

...

ART. 260. GRIEVANCE MACHINERY AND VOLUNTARY ARBITRATION

The parties to a Collective Bargaining Agreement shall include therein provisions that will ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies.

All grievances submitted to the grievance machinery which are not settled within seven (7) calendar days from the date of its submission shall automatically be referred to voluntary arbitration prescribed in the Collective Bargaining Agreement.

For this purpose, parties to a Collective Bargaining Agreement shall name and designate in advance a Voluntary Arbitrator or panel of Voluntary Arbitrators, or include in the agreement a procedure for the selection of such Voluntary Arbitrator or panel of Voluntary Arbitrators, preferably from the listing of qualified Voluntary Arbitrators duly accredited by the Board. In case the parties fail to select a Voluntary Arbitrator or panel of Voluntary Arbitrators, the Board shall designate the Voluntary Arbitrator or panel of Voluntary Arbitrators, as may be necessary, pursuant to the selection procedure agreed upon in the Collective

Bargaining Agreement, which shall act with the same force and effect as if the Arbitrator or panel of Arbitrators has been selected by the parties as described above.

ART. 261. JURISDICTION OF VOLUNTARY ARBITRATORS OR PANEL OF VOLUNTARY ARBITRATORS

The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this article, gross violations of Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

Respondent union opposed petitioner's motion to dismiss arguing that as petitioner's non-compliance with the CBA provision on grievance procedure is raised as an issue before the labor arbiter, it would be premature to dismiss the case for lack of jurisdiction and that resort to labor arbiter is permitted if recourse to the grievance machinery would be futile.[8] In this case, as petitioner obstinately refused to comply with its responsibility under the CBA, substantive justice requires the intervention of the labor arbiter.

In its order dated 19 March 1998, Labor Arbiter Jose G. De Vera denied petitioner's motion to dismiss, thus:

WHEREFORE, the respondent's [petitioner herein] motion to dismiss is denied. Both parties are required to file their respective position papers not later than April 28, 1998.[9]

Aggrieved, petitioner elevated the matter to the Court of Appeals through a petition for certiorari under Rule 65[10] claiming that the labor arbiter committed grave abuse of discretion in ruling that the complaint filed by respondent union was within his jurisdiction in contravention of the policy promoting free collective bargaining and negotiation and the adoption of voluntary arbitration as a mode of settling labor or industrial dispute.

The appellate court, however, found no merit in petitioner's arguments and therefore dismissed the same. The dispositive portion of the Court of Appeals' decision states:

WHEREFORE, premises considered, the instant petition is hereby DISMISSED.[11]

Similarly ill-fated was petitioner's motion for reconsideration which was denied through the Court of Appeals' resolution promulgated on 27 March 2000.[12]

Petitioner is now before this Court assailing the aforementioned decision and resolution of the Court of Appeals on the following grounds:

THE HONORABLE COURT OF APPEALS ERRED IN RENDERING THE ASSAILED DECISION/RESOLUTION, HAVING DECIDED A QUESTION OF PROCEDURE IN A WAY NOT IN ACCORDANCE WITH LAW AND THE APPLICABLE DECISIONS OF THE SUPREME COURT, CONSIDERING THAT:

I.

THE NEW RULES OF PROCEDURE OF THE NATIONAL LABOR RELATIONS COMMISSION DO NOT PERMIT THE FILING OF AN APPEAL OR A MOTION FOR RECONSIDERATION FROM AN ORDER DENYING A MOTION TO DISMISS IN PROCEEDINGS BEFORE THE LABOR ARBITER. HENCE, PETITIONER INVOKED THE JURISDICTION OF THE HONORABLE COURT OF APPEALS AS THERE WAS NO OTHER APPEAL NOR ANY PLAIN, SPEEDY AND ADEQUATE REMEDY IN

THE ORDINARY COURSE OF LAW AVAILABLE TO IT.

II.

CONSIDERING THAT THE RESPONDENT LABOR ARBITER ACTED WITH GRAVE ABUSE OF DISCRETION IN DENYING THE MOTION TO DISMISS FILED BY PETITIONER ON THE GROUND OF LACK OF JURISDICTION NOTWITHSTANDING THAT PRIVATE RESPONDENT'S COMPLAINT IS EXCLUSIVELY COGNIZABLE BY THE VOLUNTARY ARBITRATOR, THE REMEDY OF CERTIORARI UNDER RULE 65 OF THE 1997 RULES ON CIVIL PROCEDURE WAS PROPERLY AVAILED OF BY PETITIONER.[13]

The crucial issue for the resolution of this Court is whether petitioner availed of the proper remedy when it filed a petition for certiorari directly before the Court of Appeals after its motion to dismiss was denied by the labor arbiter.

Petitioner maintains that an order denying a motion to dismiss the complaint before the labor arbiter is not appealable as Section 15, Rule V of the New Rules of Procedure of the NLRC clearly states that:

Section 15. Motion to Dismiss. – On or before the date set for the conference, the respondent may file a motion to dismiss. Any motion to dismiss on the ground of lack of jurisdiction, improper venue or that the cause of action is barred by prior judgment or by prescription, shall be immediately resolved by the Labor Arbiter by a written order. An order denying the motion to dismiss or suspending its resolution until the final determination of the case is not appealable.

Considering that the labor arbiter's order denying a motion to dismiss such as the one involved in the instant case is not appealable, petitioner contends that it correctly availed of the petition for certiorari before the appellate court as we have consistently ruled that the extraordinary remedy of certiorari "may be invoked when there is no other plain, adequate and speedy remedy in the ordinary course of law." [14]

In addition, petitioner argues that the issues raised by respondent union in its complaint before the labor arbiter pertain to company personnel policies which should be resolved by a voluntary arbitrator or panel of voluntary arbitrators as prescribed by Article 261 of the Labor Code, to wit:

ART. 261. JURISDICTION OF VOLUNTARY ARBITRATORS OR PANEL OF VOLUNTARY ARBITRATORS

The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding article. . . .

On the other hand, respondent union asserts that while the NLRC rules do not provide for a motion for reconsideration of a denial of a motion to dismiss, still petitioner should have submitted the issue of jurisdiction along with its other arguments and allegations in its position paper to be filed before the labor arbiter. In the event of adverse ruling, petitioner's remedy was to thereafter appeal the decision of the labor arbiter before the NLRC. In addition, petitioner's attempt to short-cut the proceeding by initiating a petition for certiorari contravenes the settled doctrine of exhaustion of administrative remedies and denied the labor tribunal of its primary jurisdiction over labor cases.

Respondent union also asserts that as the case below was for unfair labor practice arising out of petitioner's refusal to comply with the grievance procedure in the CBA, the jurisdiction is properly lodged with the labor arbiter.

We resolve to deny the petition.

Under Rule 65 of the Revised Rules of Civil Procedure, for a certiorari proceeding to prosper, there should be a concurrence of the essential requisites, to wit: (a) the tribunal, board or officer exercising judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or in excess of jurisdiction, and (b) there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceeding.[15]

In the present case, it is undisputed that under the NLRC rules, no appeal may be taken from an order denying a motion to dismiss. The NLRC rule proscribing appeal from a denial of a motion to dismiss is similar to the general rule observed in civil procedure that an order denying a motion to dismiss is interlocutory and, hence, not appealable until final judgment or order is rendered.[16] The remedy of the aggrieved party in case of denial of the motion to dismiss is to file an answer and interpose, as a defense or defenses, the ground or grounds relied upon in the motion to dismiss, proceed to trial and, in case of adverse judgment, to elevate the entire case by appeal in due course.[17] In order to avail of the extraordinary writ of certiorari, it is incumbent upon petitioner to establish that the denial of the motion to dismiss was tainted with grave abuse of discretion.[18]

In labor cases, Article 223 of Presidential Decree No. 442, as amended, also known as the Labor Code of the Philippines states:

ART. 223. APPEAL

Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

(a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter; ...

In *Air Services Cooperative, et al. v. The Court of Appeals, et al.*, [19] a case where the jurisdiction of the labor arbiter was put in issue and was assailed through a petition for certiorari, prohibition and annulment of judgment before a regional trial court, this Court had the opportunity to expound on the nature of appeal as embodied in Article 223 of the Labor Code, thus:

. . . Also, while the title of the Article 223 seems to provide only for the remedy of appeal as that term is understood in procedural law and as distinguished from the office of certiorari, nonetheless, a closer reading thereof reveals that it is not as limited as understood by the petitioners. . .

...

Abuse of discretion is admittedly within the ambit of certiorari and its grant of review thereof to the NLRC indicates the lawmakers' intention to broaden the meaning of appeal as that term is used in the Code. For this reason, petitioners cannot argue now that the NLRC is devoid of any corrective power to rectify a supposed erroneous assumption of jurisdiction by the Labor Arbiter. . . [20]

Since the legislature had clothed the NLRC with the appellate authority to correct a claimed "erroneous assumption of jurisdiction" on the part of the labor arbiter – a case of grave abuse of discretion - the remedy availed of by petitioner in this case is patently erroneous as recourse in this case is lodged, under the law, with the NLRC.

Time and again, this Court has exhorted that "before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be resorted to by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of court's judicial intervention is

fatal to one's cause of action." [21] This rule is certainly not without reason –

The underlying principle of the rule on exhaustion of administrative remedies rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for the principle. The administrative process is intended to provide less expensive and more speedy solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts – for reasons of law, comity and convenience – will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum. [22]

Prescinding from the foregoing, the remedy then of petitioner from the order of denial of its motion to dismiss was to submit its position paper as ordered by the labor arbiter and raise therein the question of supposed lack of jurisdiction. In the event of unfavorable judgment, petitioner could thereafter raise the case, including the issue of jurisdiction, via appeal to the NLRC as provided for in the Labor Code on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction.

WHEREFORE, premises considered, this petition for review is DENIED and the Decision dated 17 September 1999 and Resolution dated 27 March 2000 of the Court of Appeals are hereby AFFIRMED. Let the records of this case be remanded to the Labor Arbiter for the resumption of proceedings therein. No costs.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Penned by Associate Justice Rodrigo V. Cosico with Associate Justices Jesus M. Elbinias and Delilah Vidallon-Magtolis, concurring; Rollo, pp. 93-98.

[2] Rollo, p. 118.

[3] Rollo, pp. 64-66.

[4] Annexes "1" & "2" of respondent union's Comment; Rollo, pp. 141-143.

[5] Rollo, pp. 144-145.

[6] Rollo, p. 62.

[7] Rollo, pp. 64-70.

[8] Citing *United Protective Workers of America v. Ford Motor Co.*, 194 F 2d 997, as cited by Quiason and Fernandez, *The Law of Labor Relations*, pp. 354-355 (1963 edition).

[9] Rollo, p. 26.

[10] Revised Rules of Civil Procedure.

[11] Rollo, pp. 93-98.

[12] Rollo, p. 118.

[13] Rollo, p. 16.

[14] Rollo, p. 19.

[15] *Suntay v. Cojuangco-Suntay*, G.R. No. 132524, 29 December 1998, 300 SCRA 760.

[16] *I Feria and Noche*, *Civil Procedure Annotated*, p. 453 (2001 edition).

[17] *Mendoza v. Court of Appeals*, G.R. No. 81909, 05 September 1991, 201 SCRA 343.

[18] *Macawiwili Gold Mining and Development Co., Inc. v. Court of Appeals*, G.R. No. 115104, 12 October 1998, 297 SCRA 602.

[19] G.R. No. 118693, 23 July 1998, 293 SCRA 101.

[20] *Id.* at 110.

[21] *Ambil, Jr. v. Commission on Elections*, G.R. No. 143398, 25 October 2000, 344 SCRA 372.

[22] *Union Bank of the Philippines v. Court of Appeals*, G.R. No. 131729, 19 May 1998, 290 SCRA 198, 219-220.

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