

**ORIENTAL PETROLEUM AND MINERALS CORPORATION,
PETITIONER, VS. MARCIANO V. FUENTES, ROGER B. BELO, REYNOLD
P. GACULA, ALBERTO P. RODRIGUEZ, NESTOR L. MESINA, MA.
LOURDES P. BUENAV...**

G.R. NO. 151818. October 14, 2005

Ponente: TINGA, J.

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TINGA, J.:

This Petition for Review on Certiorari[1] dated February 22, 2002 seeks a review of the Decision[2] of the Court of Appeals dated July 31, 2001 which annulled and set aside the decision of the National Labor Relations Commission (NLRC) and reinstated the decision of the labor arbiter, finding that the dismissal of respondents on account of retrenchment was illegal and awarding the latter full backwages, separation pay, and attorney's fees.

A brief factual background follows.

In separate letters[3] dated June 2, 1994, petitioner petitioner Oriental Petroleum and Minerals Corporation, through its Senior Vice President for Operations and Administration, Apollo P. Madrid, informed respondents Marciano V. Fuentes, Roger B. Belo, Reynold P. Gacula, Alberto P. Rodriguez, Nestor L. Ledesma, Ma. Lourdes P. Buenavista and Luzviminda M. de Castro of its retrenchment program as a consequence of which respondents would be terminated from employment. Petitioner advised respondents that they would be getting separation pay equivalent to one-half (1/2) month salary for every year of service in accordance with the company's retirement plan. However, if respondents qualify for retirement or resignation benefits under the retirement plan, they would receive the greater amount as separation benefits.

The Department of Labor and Employment (DOLE) was served a copy of the report of termination on June 6, 1994.[4]

In a letter[5] dated June 7, 1994, respondents sought clarification on the retrenchment package being offered them. Petitioner replied, in a letter[6] dated June 13, 1994, that respondents Mesina, Rodriguez, De Castro and Buenavista would be entitled to one (1) month gross salary for every year of service, while respondents Fuentes, Gacula and Belo would receive one-half (1/2) month gross salary for every year of service.

Finding this unacceptable, respondents requested that the following benefits be extended to them: (a) two (2) months' separation pay (gross salary) on top of one (1) month retirement fund for every year of service; (b) profit sharing; (c) one (1) month balance of the 1993 Christmas bonus; (d) two (2) months' 1994 mid-year bonus; (e) loyalty bonus for those who have rendered fifteen (15) years of service amounting to about P10,000.00; (f) conversion to cash of accrued vacation and sick leaves; (g) thirteenth (13th) month pay; and (h) I-care coverage to continue up to the end of coverage in December 1994 since premiums have been paid for in full and no refunds are given for early cancellation.[7]

Acting on the request, petitioner countered that respondents would be given the following benefits: (1) loyalty

bonus for those who have rendered at least 15 years of continuous service amounting to P10,000.00; (2) conversion to cash of the accrued 1994 vacation and sick leave credits; and (3) pro-rated 13th month pay.

Dissatisfied with petitioner's counter-offer, respondents filed on July 4, 1994 separate complaints[8] for illegal retrenchment with prayer for the payment of backwages, actual damages, moral and exemplary damages, and attorney's fees.

After due proceedings, the labor arbiter rendered a decision[9] dated June 29, 1995, finding the retrenchment invalid as there was allegedly no sufficient basis therefor. The dispositive portion of the decision states:

WHEREFORE, viewed from the foregoing considerations, judgment is hereby rendered finding the retrenchment of all the herein complainants not legal and just, thus their termination inevitably becomes illegal.

Accordingly, respondent Oriental Petroleum & Minerals Corporation (OPMC) is hereby ordered to pay all the complainants their full backwages and all appurtenant benefits from the time of their dismissal on July 4, 1994 including loyalty bonus and the cash equivalent of their accrued vacation and sick leave credits. In lieu of reinstatement however, respondent OPMC is hereby ordered to pay each complainant their separation pay equivalent to one (1) month gross salary per year of service, a fraction of at least six (6) months equivalent to one (1) whole year, the total award computed as follows:

...

exclusive of the award of loyalty bonus prevailing at the time of complainants separation and the updated balances of complainants["] accrued vacation and sick leave, also reckoned as of July 4, 1995.

Attorney's fees equivalent to ten percent (10%) of the total monetary award is likewise awarded to the complainants.

The claim for damages is hereby dismissed for lack of merit.

All individual respondents are hereby absolved of personal liability for they acted only in their official capacity.

SO ORDERED.[10]

Petitioner instituted a partial appeal of the decision of the labor arbiter insofar as the latter ruled that the retrenchment of respondents was invalid, as well as with respect to the award of backwages.

Resolving the partial appeal, the NLRC held that petitioner's serious financial difficulties necessitated the retrenchment of respondents. Petitioner's audited financial statements allegedly showed that it had suffered a net loss in the amount of P107,812,816.00 in 1993; and that its assets went down from P312.902 million in 1992 to P212.072 million in 1993, while its liabilities soared from P376.01 million in 1992 to P519.143 million in 1993. Further, in order to raise money to meet its maturing financial obligations, petitioner sold several of its shareholdings in Magellan Capital Holdings Corporation and several assets consisting of cars, a townhouse, an office condominium unit and some equipment. The land, building and other assets of its wholly-owned subsidiary, Oriental Mahogany and Woodworks, Inc., were also sold for the same purpose. A substantial number of its unissued shares of stock were likewise disposed of.[11]

The NLRC, therefore, reversed the decision of the labor arbiter and instead ordered petitioner to pay respondents the severance compensation enumerated in its June 13 and June 30, 1994 letters. Respondents' motion for reconsideration was denied for lack of merit.[12]

Respondents filed a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure (Rules of Court)

with this Court. We required petitioner and the Office of the Solicitor General (OSG) to file their respective comments but later referred the case to the Court of Appeals in view of our ruling in *St. Martin Funeral Homes v. NLRC*.^[13]

In its assailed Decision^[14] dated July 31, 2001, the Court of Appeals reversed the decision of the NLRC and reinstated that of the labor arbiter. The appellate court proceeded to review the factual findings of the NLRC and ruled that petitioner failed to prove the existence of substantial losses that would justify the retrenchment of respondents. Quoting the findings of the labor arbiter, the Court of Appeals stated that petitioner enjoyed an increase in its operations revenue from 1992 to 1993. The appellate court made short shrift of petitioner's claim that it had to sell the bulk of its assets in order to meet its financial obligations.

Moreover, petitioner allegedly failed to prove that it resorted to less drastic and less permanent cost-cutting measures before the decision to retrench respondents was implemented. Petitioner also failed to rebut respondents' allegation that petitioner hired new personnel, especially specialists and consultants with exorbitant salaries and generous fringe benefits, prior to and even during the alleged retrenchment program; regularized temporary employees; and issued and sold more than six (6) billion shares of its common stock for additional capitalization, indicating a decision to actively invest even as the company was claiming bankruptcy.

Petitioner also allegedly failed to present evidence as to the criteria it used in effecting the retrenchment, such as less preferred status, efficiency, and seniority.

In its Resolution^[15] dated January 14, 2002, the Court of Appeals denied petitioner's motion for reconsideration.

Petitioner is now before this Court arguing that it undertook a valid retrenchment as it was already actually suffering serious financial losses at the time the retrenchment was undertaken. It cites the same data and figures presented and adopted by the NLRC.

Moreover, the finding that petitioner hired new personnel and regularized temporary employees prior to and during the retrenchment is allegedly without any factual and evidentiary support. Respondents, on whom the burden of proving this affirmative allegation fell, did not even bother to name who the alleged new employees were.

Petitioner also notes that the OSG itself, in its comment, stated that petitioner undertook the retrenchment scheme as a last ditch effort to prevent further losses and that it complied with the required notices both to the employees concerned and to the DOLE, leaving no doubt that the retrenchment was done in good faith.

Further, petitioner maintains that the NLRC decision was supported by substantial evidence; thus, the Court of Appeals should not have entertained the petition for certiorari, much less made its own independent findings of fact.

Respondents filed a Comment^[16] dated September 11, 2002, arguing mainly that the instant petition should not be entertained as it raises questions of fact. They further argue that the Court of Appeals was correct in reversing the decision of the NLRC because petitioner failed to prove that it incurred substantial losses; show that retrenchment was a last resort and that other less permanent cost-cutting measures had been availed of but had failed; and prove that it followed the criteria in dismissing employees based on retrenchment; and because petitioner's Corporate Secretary, Atty. Perry Pe, admitted that the decision to retrench was made ahead of the decision to cut costs.

Petitioner filed a Reply^[17] dated December 17, 2002, reiterating its arguments.

In the Resolution^[18] dated January 22, 2003, the parties were required to submit their respective memoranda.

Accordingly, petitioner filed its Memorandum[19] on April 21, 2003, while respondents filed theirs on May 13, 2003.[20]

We first resolve the question of whether, in a petition for certiorari assailing the decision of the NLRC, the Court of Appeals may make an independent evaluation of facts.

Ordinarily in certiorari proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. However, in *St. Martin Funeral Homes v. NLRC*, supra, it was held that the special civil action of certiorari is the mode of judicial review of the decisions of the NLRC either by this Court or the Court of Appeals, although the latter court is the appropriate forum for seeking the relief desired in strict observance of the doctrine on the hierarchy of courts and that, in the exercise of its power, the Court of Appeals can review the factual findings or the legal conclusions of the NLRC.[21]

The Court of Appeals in this case, therefore, cannot be faulted for making a full review of the factual findings of the NLRC. Whether it correctly disregarded these findings and reversed the resultant decision is another matter which we will now proceed to review.

The fundamental question is, of course, whether the retrenchment was validly undertaken. Retrenchment is one of the authorized causes recognized by the Labor Code[22] for the dismissal of employees. It is a management prerogative resorted to by employers to avoid or minimize business losses. The Court has laid down the following standards that a company must meet to justify retrenchment and to foil abuse:

Firstly, the losses expected should be substantial and not merely de minimis in extent. If the loss purportedly sought to be forestalled by retrenchment is clearly shown to be insubstantial and inconsequential in character, the bonafide nature of the retrenchment would appear to be seriously in question. Secondly, the substantial loss apprehended must be reasonably imminent, as such imminence can be perceived objectively and in good faith by the employer. There should, in other words, be a certain degree of urgency for the retrenchment, which is after all a drastic recourse with serious consequences for the livelihood of the employees retired or otherwise laid-off. Because of the consequential nature of retrenchment, it must, thirdly, be reasonably necessary and likely to effectively prevent the expected losses. The employer should have taken other measures prior or parallel to retrenchment to forestall losses, i.e., cut other costs other than labor costs. An employer who, for instance, lays off substantial numbers of workers while continuing to dispense fat executive bonuses and perquisites or so-called "golden parachutes," can scarcely claim to be retrenching in good faith to avoid losses. To impart operational meaning to the constitutional policy of providing "full protection" to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means-e.g., reduction of both management and rank-and-file bonuses and salaries, going on reduced time, improving manufacturing efficiencies, trimming of marketing and advertising costs, etc.-have been tried and found wanting.

Lastly, but certainly not the least important, alleged losses if already realized, and the expected imminent losses sought to be forestalled, must be proved by sufficient and convincing evidence. The reason for requiring this quantum of proof is readily apparent: any less exacting standard of proof would render too easy the abuse of this ground for termination of services of employees.[23]

Petitioner presented its audited financial statements for the years 1992 and 1993 to demonstrate that retrenchment was necessary to put a stop to its actual losses and prevent further losses. The financial statements show that petitioner's total current assets dipped from P325,167,148.00 in 1992 to P221,001,191.00 in 1993. Its total current liabilities, on the other hand, swelled from P373,571,128.00 in 1992 to P517,301,874.00 in 1993. Its costs likewise increased from P262,698,049.00 in 1992 to P456,507,065.00 in 1993. The financial statements reflect that petitioner suffered a net loss of P107,812,816.00 in 1993 contrasted with its net earnings of P148,229,404.00 in 1992.

These figures do not bode well for petitioner's financial future. However, while it is true that the Court has ruled that financial statements audited by independent external auditors constitute the normal method of proof of the profit and loss performance of a Company,[24] financial statements, in themselves, do not suffice to meet the stringent requirement of the law that the losses must be substantial, continuing and without any immediate prospect of abating.[25]

Retrenchment being a measure of last resort, petitioner should have been able to demonstrate that it expected no abatement of its losses in the coming years. Petitioner having failed in this regard, we find that the Court of Appeals did not err in dismissing as unimpressive and insufficient petitioner's audited financial statements.

Nonetheless, we disagree with the appellate court's ruling that petitioner was not able to prove that retrenchment was resorted to only after less drastic means have been tried and found wanting.

According to the labor arbiter and the Court of Appeals, petitioner failed to show that it adopted other cost-cutting measures short of retrenchment. However, both failed to appreciate the significance of petitioner's assertion borne out by the records that it took several measures prior or parallel to retrenchment, such as: (1) the sale of its shareholdings in Magellan Capital Holdings Corporation to raise money to pay off the oil drilling operator to avoid being declared in default; (2) the sale of several of its assets consisting of cars, townhouse unit, and office condominium unit (where petitioner holds office), and equipment like jaw crushers and other scrap materials in the company's Sabina Mines in Mindanao; (3) the sale of the land, building and other assets of its wholly-owned subsidiary, Oriental Mahogany and Woodworks, Inc.; and (4) the call to its various stockholders to pay all of their unpaid subscriptions to petitioner's capital stock and offer of pre-emptive rights to its stockholders for the sale of its Class B Common Stocks to raise capital to meet its various obligations.

Even the OSG concedes that petitioner did take remedial measures to forestall losses. Further, the allegations regarding the foregoing measures taken by petitioner as prior and parallel solutions were never disputed by respondents.

Interestingly, it is only the Court of Appeals which cites respondents' allegation that petitioner hired new personnel, purportedly with exorbitant salaries and generous fringe benefits, and regularized temporary employees, and treats these as indicia that petitioner failed to adopt other cost-cutting measures short of retrenchment. Notably, however, the records do not bear any proof that this allegation was substantiated, at least by naming the supposed newly-hired personnel or regularized employees. Hence, it deserves no weight in law.

As regards the rule that reasonable criteria be used in effecting retrenchment, such as but not limited to: (a) less preferred status (e.g., temporary employee); (b) efficiency; and (c) seniority,[26] we find that petitioner failed to demonstrate its transparency and good faith in the implementation of its decision to retrench respondents. While it contends that the termination of two (2) non-regular employees ahead of respondents shows that it complied with the requisite fair and reasonable criteria, that fact alone is insufficient, considering the importance this Court has given to the observance of fair and reasonable criteria in the implementation of a retrenchment scheme.

In *Philippine Tuberculosis Society, Inc. v. National Labor Union*,[27] for instance, the Court agreed with the finding of the NLRC that though petitioner therein was justified in ordering a retrenchment, its implementation of the scheme without taking seniority into account rendered the retrenchment invalid. In that case, petitioner's criteria for retrenchment included dependability, adaptability, trainability, job performance, discipline and attitude towards work. Quoting the NLRC, the Court stated:

We noted with concern that the criteria used by the Society failed to consider the seniority factor in choosing those to be retrenched, a failure which, to our mind, should invalidate the retrenchment, as the omission immediately makes the selection process unfair and unreasonable. Things being equal, retaining a newly hired

employee and dismissing one who had occupied the position for years, even if the scheme should result in savings for the employer, since he would be paying the newcomer a relatively smaller wage, is simply unconscionable and violative of the senior employee's tenurial rights. In *Villena v. NLRC*, 193 SCRA 686, February 7, 1991, the Supreme Court considered the seniority factor an important ingredient for the validity of a retrenchment program. According to the Court, the following legal procedure should be observed for a retrenchment to be valid: (a) one-month prior notice to the employee as prescribed by Article 282 of the Labor Code; and (b) use of a fair and reasonable criteria in carrying out the retrenchment program, such as 1) less preferred status (as in the case of temporary employees), 2) efficiency rating, 3) seniority, and 4) proof of claimed financial losses.[28]

In this case, petitioner presents the following allegation in rebuttal of the appellate court's finding that it failed to comply with the required criteria set by jurisprudence in effecting retrenchment:

More importantly, it further shows that with the retrenchment of non-regular employees in the person of Atty. Sison and Mr. Gagni, the Petitioner was not remised (sic) in complying with the required fair and reasonable criteria laid down by the Supreme Court in cases of retrenchment. [29]

Such a bare allegation is obviously unsatisfactory. If we struck down the retrenchment undertaken by the Philippine Tuberculosis Society, Inc. in the above-cited case for failure to take seniority into account, with more reason should the retrenchment in this case be held invalid, considering that petitioner utterly failed to show that it had any standard at all in selecting the employees to be retrenched. Verily, the assistance that two (2) non-regular employees were similarly retrenched ahead of respondents appears more like a handy excuse than any deliberate effort on petitioner's part to follow the fair and reasonable criteria established by jurisprudence.

WHEREFORE, the instant petition is hereby DENIED.

SO ORDERED.

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

[1] Rollo, pp. 29-67.

[2] *Id.* at 9-24.

[3] *Id.* at 69-75.

[4] *Id.* at 87.

[5] *Id.* at 88.

[6] *Id.* at 89.

[7] *Id.* at 90-91; letter dated June 14, 1994.

[8] *Id.* at 95-100; The first complaint was filed by respondents Mesina, Rodriguez, Buenavista and De Castro. A second complaint was filed by respondents Fuentes, Belo and Gacula.

[9] *Id.* at 215-233.

[10] *Id.* at 231-233.

[11] CA Records, pp. 25-37; NLRC decision dated May 31, 1996.

[12] *Id.* at 38.

[13] 356 Phil. 811 (1998).

[14] Supra note 2; Penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Delilah Vidallon-Magtolis and Teodoro P. Regino.

[15] Id. at 26.

[16] Id. at 418-422.

[17] Id. at 439-448.

[18] Id. at 451-452.

[19] Id. at 468-506.

[20] Id. at 574-586.

[21] *Agustilo v. Court of Appeals*, G.R. No. 142875, September 7, 2001, 364 SCRA 740; *Garcia v. NLRC*, G.R. No. 147427, February 7, 2005, 450 SCRA 535.

[22] Art. 283. Closure of Establishment and Reduction of Personnel.-The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this title, by serving a written notice on the worker and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closure or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered as one (1) whole year.

[23] *Saballa v. NLRC*, 329 Phil. 511 (1996), cited in *EMCO Plywood Corporation v. Abelgas*, G.R. No. 148532, April 14, 2004, 427 SCRA 496.

[24] *Saballa v. NLRC*, id. citing *Lopez Sugar Corporation v. Federation of Free Workers*, 189 SCRA 179, August 30, 1990.

[25] *EMCO Plywood Corporation v. Abelgas*, supra note 23.

[26] *Capitol Wireless, Inc. v. Hon. Secretary Ma. Nieves Confesor*, 332 Phil. 78 (1996).

[27] 356 Phil. 63 (1998).

[28] Id. at 63.

[29] *Rollo*, p. 54.

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