

NEW GOLDEN CITY BUILDERS & DEVELOPMENT CORPORATION AND MANUEL SY, PETITIONERS, VS. COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, LITO GALLO, TEOFANES ANORA, RICARDO CEN...

G.R. No. 154715. December 11, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for review under Rule 45 of the Rules of Court seeking the reversal of the decision[1] of the Court of Appeals dated February 28, 2002, in CA-G.R. SP No. 65577, which dismissed the petition on the ground that there was no grave abuse of discretion on the part of the public respondent National Labor Relations Commission (NLRC) in ordering petitioner to reinstate private respondents and to pay their full backwages from the dates of their dismissal to the dates of their reinstatement.

The antecedent facts are as follows:

On April 4, 1995, petitioner New Golden City Builders and Development Corporation, a corporation engaged in the construction business, entered into a construction contract with Prince David Development Corporation for the construction of a 17-storey office and residential condominium building along Katipunan Road, Loyola Heights, Quezon City, Metro Manila.[2]

Petitioner engaged the services of Nilo Layno Builders to do the specialized "concrete works, form works and steel rebars works", in consideration of the total contract price of P5 Million. Pursuant to the contract, Nilo Layno Builders hired private respondents to perform work at the project. After the completion of the phase for which Nilo Layno Builders was contracted sometime in 1996, private respondents filed a complaint case against petitioner and its president, Manuel Sy, with the Arbitration Branch of the NLRC for "unfair labor practice, non-payment of 13[th] month pay, non-payment of 5 days service incentive leave, illegal dismissal and severance pay in lieu of reinstatement."

On August 30, 1999, Labor Arbiter Felipe Garduque rendered a decision finding that Nilo Layno Builders was a labor-only-contractor; thus, private respondents were deemed employees of the petitioner. The dispositive portion of the decision reads:

WHEREFORE, premises considered, respondents New Golden City Builders and Development Corp. and/or Manuel Sy are hereby ordered to provide work as operator or steelman for herein respondents within six (6) months from receipt hereof, otherwise, the latter will be awarded separation pay equivalent to one month pay for every year of service, without loss of seniority rights but without backwages, and to pay them within ten (10) days from receipt hereof, their respective 13[th] month pay and service incentive leave pay...

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Complainants charges of illegal dismissal including their prayers for backwages and damages and unfair labor

practice, and other monetary claims are hereby dismissed for lack of merit or withdrawn.

SO ORDERED.[3]

Both parties appealed the decision of the Labor Arbiter to the NLRC. Petitioner maintained that Nilo Layno Builders was an independent contractor and that private respondents were not its employees. On the other hand, private respondents claimed that the Labor Arbiter erred in finding that they were not illegally dismissed and not entitled to recover monetary claims like premium pay for rest days, regular holidays and special holidays.

On March 19, 2001, the NLRC affirmed with modification the Labor Arbiter's decision. As modified, the NLRC held that private respondents were illegally dismissed and ordered petitioner to reinstate them and to pay their full backwages. The dispositive portion of the decision reads:

WHEREFORE, the decision appealed from is hereby MODIFIED to the extent that the respondents are hereby ordered to reinstate the complainants and to pay their full backwages from the dates of their dismissal to the dates of their reinstatement.

The award to the complainants of their 13[th] month pay and service incentive leave pay is hereby AFFIRMED.

SO ORDERED.[4]

Since petitioner's motion for a reconsideration of the decision was denied in the resolution[5] of May 10, 2001, it instituted a special civil action for certiorari with the Court of Appeals, alleging that the NLRC gravely abused its discretion in totally discarding uncontroverted evidence and in relying merely on conjectures and assumptions not supported by facts. On February 29, 2002, the Court of Appeals rendered judgment as follows:

WHEREFORE, premises considered, the PETITION FOR CERTIORARI is hereby DENIED.

SO ORDERED.[6]

Hence, this petition for review, raising the following arguments:

THE COURT OF APPEALS AND NLRC ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND /OR EXCESS OF JURISDICTION CONSIDERING THAT:

- THE PRIVATE RESPONDENTS ARE NOT ENTITLED TO BACKWAGES BEYOND 7 APRIL 2000.
- THE PRIVATE RESPONDENTS WERE NOT ILLEGALLY DISMISSED SINCE THERE EXISTS NO EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PETITIONERS AND THE PRIVATE RESPONDENTS BECAUSE THE LATTER WERE NOT ALL EMPLOYEES OF A LEGITIMATE INDEPENDENT LABOR CONTRACTOR.
- NILO G. LAYNO BUILDERS IS A LEGITIMATE LABOR CONTRACTOR COMPLETE WITH ALL THE REQUIREMENTS SET BY LAW TO BE SUCH.[7]

Inextricably intertwined in the resolution of this instant petition is the determination of the issues of whether Nilo Layno Builders was an "independent contractor" or a "labor-only" contractor; and whether there existed an employer-employee relationship between petitioner and private respondents.

In their Comment, private respondents contend that the issues presented by the petitioner were clearly factual in nature and, thus, should not be entertained by this Court.[8]

Prefatorily, while the issue of labor-only contracting may involve some factual considerations, the existence of an employer-employee relation is nonetheless a question of law. Thus, it falls squarely within the ambit of this

Court's judicial review.[9]

The Court finds partial merit in the petition.

Under Section 8, Rule VIII, Book III, of the Omnibus Rules Implementing the Labor Code, an independent contractor is one who undertakes "job contracting," i.e., a person who: (a) carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and (b) has substantial capital or investment in the form of tools, equipments, machineries, work premises, and other materials which are necessary in the conduct of the business. Jurisprudential holdings are to the effect that in determining the existence of an independent contractor relationship, several factors may be considered, such as, but not necessarily confined to, whether or not the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the work to another; the employer's power with respect to the hiring, firing and payment of the contractor's workers; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.[10]

Juxtaposing this provision vis-à-vis the facts of this case, we are convinced that Nilo Layno Builders is undertaking permissible labor or job contracting. Nilo Layno Builders is a duly licensed labor contractor carrying on an independent business for a specialized work that involves the use of some particular, unusual and peculiar skills and expertise, like concrete works, form works and steel rebars works. As a licensed labor contractor, it complied with the conditions set forth in Section 5, Rule VII-A, Book III, Rules to Implement the Labor Code, among others, proof of financial capability and list of equipment, tools, machineries and implements to be used in the business. Further, it entered into a written contract with the petitioner, a requirement under Section 3, Rule VII-A, Book III, Rules to Implement the Labor Code to assure the employees of the minimum labor standards and benefits provided by existing laws.

The test to determine the existence of independent contractorship is whether one claiming to be an independent contractor has contracted to do the work according to his own methods and without being subject to the control of the employer, except only to the results of the work.

This is exactly the situation obtaining in the case at bar. Nilo Layno Builders hired its own employees, the private respondents, to do specialized work in the Prince David Project of the petitioner. The means and methods adopted by the private respondents were directed by Nilo Layno Builders except that, from time to time, the engineers of the petitioner visited the site to check whether the work was in accord with the plans and specifications of the principal. As admitted by Nilo G. Layno, he undertook the contract work on his own account and responsibility, free from interference from any other persons, except as to the results; that he was the one paying the salaries of private respondents; and that as employer of the private respondents, he had the power to terminate or dismiss them for just and valid cause.[11] Indubitably, the Court finds that Nilo Layno Builders maintained effective supervision and control over the private complainants.

Thus, it was plain conjecture on the part of the Labor Arbiter, the NLRC and the Court of Appeals to conclude that Nilo Layno Builders was a labor-only contractor merely because it does not have investment in the form of tools or machineries. They failed to appreciate the fact that Nilo Layno Builders had substantial capitalization for it did not only provide labor to do the specified project and pay their wages, but it furnished the materials to be used in the construction.[12]

In *Neri v. NLRC*,[13] we held that the labor contractor which sufficiently proved that it had substantial capital

was not engaged in labor-only contracting. Thus:

While there may be no evidence that it has investment in the form of tools, equipment, machineries, work premises, among others, it is enough that it has substantial capital, as was established before the Labor Arbiter as well as the NLRC. In other words, the law does not require both substantial capital and investment in the form of tools, equipment, machineries, etc. This is clear from the use of the conjunction "or". If the intention was to require the contractor to prove that he has both capital and the requisite investment, then the conjunction "and" should have been used.

Moreover, the Court has taken judicial notice of the general practice adopted in several government and private institutions and industries of hiring independent contractors to perform special services.[14]

Anent the second issue, we hold that there existed an employer-employee relationship between petitioner and private respondents albeit for a limited purpose.

In legitimate job contracting, the law creates an employer-employee relationship for a limited purpose, i.e., to ensure that the employees are paid their wages. The principal employer becomes jointly and severally liable with the job contractor only for the payment of the employees' wages whenever the contractor fails to pay the same. Other than that, the principal employer is not responsible for any claim made by the employees.[15]

From the foregoing disquisition, the petitioner did not, as it could not, illegally dismissed the private complainants. Hence, it could not be held liable for backwages and separation pay.[16] Nevertheless, it is jointly and severally liable with Nilo Layno Builders for the private complainants' wages, in the same manner and extent that it is liable to its direct employees. The pertinent provisions of the Labor Code read:

ART. 106. Contractor or subcontractor. – Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him. (Emphasis ours)

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ART. 107. Indirect employer. - The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

In the case of *Rosewood Processing, Inc. v. NLRC*,[17] it was held:

The joint and several liability of the employer or principal was enacted to ensure compliance with the provisions of the Code, principally those on statutory minimum wage. The contractor or subcontractor is made liable by virtue of his or her status as a direct employer, and the principal as the indirect employer of the contractor's employees. This liability facilitates, if not guarantees, payment of the workers' compensation, thus, giving the workers ample protection as mandated by the 1987 Constitution. This is not unduly burdensome to the employer. Should the indirect employer be constrained to pay the workers, it can recover whatever amount it had paid in accordance with the terms of the service contract between itself and the contractor.

This liability covers the payment of service incentive leave and 13th month pay[18] of the private complainants during the time they were working at petitioners' Prince David Project. So long as the work, task, job or project has been performed for petitioners' benefit or on its behalf, the liability accrues for such period even if, later on,

the employees are eventually transferred or reassigned elsewhere.[19]

WHEREFORE, in view of the foregoing, the petition is PARTLY GRANTED. The decision of the Court of Appeals in CA-G.R. SP No. 65577 is MODIFIED. Petitioner is ABSOLVED from liability for the payment of backwages to private respondents. However, he is ORDERED to pay, jointly and severally with Nilo Layno Builders, private complainants' Service Incentive Leave Pay and 13[th] Month Pay.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Carpio, and Azcuna, JJ., concur.

[1] Penned by Justice Bienvenido L. Reyes and concurred in by Justices Ma. Alicia Austria-Martinez (now Associate Justice of the Supreme Court) and Justice Roberto A. Barrios.

[2] Rollo, pp. 139-150.

[3] Id., pp. 198-200.

[4] Id., p. 212, penned by Commissioner Ireneo B. Bernardo; concurred in by Presiding Commissioner Lourdes C. Javier and Commissioner Tito F. Genilo.

[5] Id., pp. 215-216.

[6] Id., p. 136.

[7] Id., p. 109.

[8] Id., p. 240.

[9] PAL v. NLRC, 358 Phil. 919, 938 (1998).

[10] Ponce v. NLRC, 355 Phil. 103, 113 (1998); Religious of the Virgin Mary v. NLRC, 375 Phil. 75, 94 (1999); Escario v. NLRC, 388 Phil. 929, 939 (2000).

[11] Rollo, p. 82.

[12] Id., p. 187.

[13] G.R. Nos. 97008-09, 23 July 1993, 224 SCRA 717, 721.

[14] Filipinas Synthetic Fiber Corporation v. NLRC, 327 Phil. 144, 149 (1996).

[15] San Miguel Corporation v. MAERC Integrated Services, Inc., et al., G.R. No. 144672, 10 July 2003.

[16] Philippine Airlines, Inc. v. NLRC, 384 Phil. 828, 841 (2000).

[17] 352 Phil. 1013, 1033-1034 (1998).

[18] Philippine American Life Insurance Company v. NLRC, 356 Phil. 434, 448-449 (1998).

[19] Id.

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