

OLDARICO S. TRAVEÑO, ROVEL A. GENELSA, RUEL U. VILLARMENTE, ALFREDO A. PANILAGAO, CARMEN P. DANILA, ELIZABETH B. MACALINO, RAMIL P. ALBITO, REYNALDO A. LADRILLO, LUCAS G. TAMAYO...

G.R. No. 164205. September 03, 2009

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

By the account of petitioner Oldarico Traveño and his 16 co-petitioners, in 1992, respondent Timog Agricultural Corporation (TACOR) and respondent Diamond Farms, Inc. (DFI) hired them to work at a banana plantation at Bobongon, Santo Tomas, Davao Del Norte which covered lands previously planted with rice and corn but whose owners had agreed to convert into a banana plantation upon being convinced that TACOR and DFI could provide the needed capital, expertise, and equipment. Petitioners helped prepare the lands for the planting of banana suckers and eventually carried out the planting as well.[1]

Petitioners asseverated that while they worked under the direct control of supervisors assigned by TACOR and DFI, these companies used different schemes to make it appear that petitioners were hired through independent contractors, including individuals, unregistered associations, and cooperatives; that the successive changes in the names of their employers notwithstanding, they continued to perform the same work under the direct control of TACOR and DFI supervisors; and that under the last scheme adopted by these companies, the nominal individual contractors were required to, as they did, join a cooperative and thus became members of respondent Bobongon Banana Growers Multi-purpose Cooperative (the Cooperative).[2]

Continued petitioners: Sometime in 2000, above-named respondents began utilizing harassment tactics to ease them out of their jobs. Without first seeking the approval of the Department of Labor and Employment (DOLE), they changed their compensation package from being based on a daily rate to a pakyawan rate that depended on the combined productivity of the "gangs" they had been grouped into. Soon thereafter, they stopped paying their salaries, prompting them to stop working.[3]

One after another, three separate complaints for illegal dismissal were filed by petitioners, individually and collectively, with the National Labor Relations Commission (NLRC) against said respondents including respondent Dole Asia Philippines as it then supposedly owned TACOR,[4] for unpaid salaries, overtime pay, 13th month pay, service incentive leave pay, damages, and attorney's fees.[5]

DFI answered for itself and TACOR, which it claimed had been merged with it and ceased to exist as a corporation. Denying that it had engaged the services of petitioners,[6] DFI alleged that during the corporate lifetime of TACOR, it had an arrangement with several landowners in Santo Tomas, Davao Del Norte whereby TACOR was to extend financial and technical assistance to them for the development of their lands into a banana plantation on the condition that the bananas produced therein would be sold exclusively to TACOR; that the landowners worked on their own farms and hired laborers to assist them; that the landowners themselves decided

to form a cooperative in order to better attain their business objectives; and that it was not in a position to state whether petitioners were working on the banana plantation of the landowners who had contracted with TACOR.[7]

The Cooperative failed to file a position paper despite due notice, prompting the Labor Arbiter to consider it to have waived its right to adduce evidence in its defense.

Nothing was heard from respondent Dole Asia Philippines.

By consolidated Decision dated October 30, 2002,[8] the Labor Arbiter, found respondent Cooperative guilty of illegal dismissal. It dropped the complaints against DFI, TACOR and Dole Asia Philippines. Thus it disposed:

WHEREFORE, judgment is hereby rendered:

- Declaring respondent Bobongon Banana Growers Multi-purpose Cooperative guilty of illegal dismissal;
- Ordering respondent Bobongon Banana Growers Multi-purpose Cooperative to pay complainants full backwages from the time of their illegal dismissal up to this promulgation, to be determined during the execution stage;
- Ordering respondent Bobongon Banana Growers Multi-purpose Cooperative to reinstate complainants to their former positions without loss of seniority rights and if not possible, to pay them separation pay equivalent to 1/2 month pay for every year of service;
- Ordering respondent Bobongon Banana Grower Cooperative [sic] to pay 10% of the total award as Attorney's fees;
- All other respondents are hereby dropped as party-respondents for lack of merit. (Underscoring supplied)

In finding for petitioners, the Labor Arbiter relied heavily on the following Orders submitted by DFI which were issued in an earlier case filed with the DOLE, viz: (1) Order dated July 11, 1995 of the Director of DOLE Regional Office No. XI declaring the Cooperative as the employer of the 341 workers in the farms of its several members; (2) Order dated December 17, 1997 of the DOLE Secretary affirming the Order dated July 11, 1995 of the Director of DOLE Regional Office No. XI; and (3) Order dated June 23, 1998 of the DOLE Secretary denying the Cooperative's Motion for Reconsideration.

On partial appeal to the NLRC, petitioners questioned the Labor Arbiter's denial of their money claims and the dropping of their complaints against TACOR, DFI, and Dole Asia Philippines.

By Resolution dated July 30, 2003,[9] the NLRC sustained the Labor Arbiter's ruling that the employer of petitioners is the Cooperative, there being no showing that the earlier mentioned Orders of the DOLE Secretary had been set aside by a court of competent jurisdiction. It partially granted petitioners' appeal, however, by ordering the Cooperative to pay them their unpaid wages, wage differentials, service incentive leave pay, and 13th month pay. It thus remanded the case to the Labor Arbiter for computation of those awards.

Their Motion for Reconsideration having been denied by Resolution of September 30, 2003,[10] petitioners appealed to the Court of Appeals via certiorari.[11]

By Resolution dated February 20, 2004,[12] the appellate court dismissed petitioners' petition for certiorari on the ground that the accompanying verification and certification against forum shopping was defective, it having been signed by only 19 of the 22 therein named petitioners. Their Motion for Reconsideration having been denied by Resolution of May 13, 2004,[13] petitioners lodged the present Petition for Review on Certiorari.

Petitioners posit that the appellate court erred in dismissing their petition on a mere technicality as it should have,

at most, dismissed the petition only with respect to the non-signing petitioners.

Dwelling on the merits of the case, petitioners posit that the Labor Arbiter and the NLRC disregarded evidence on record showing that while the Cooperative was their employer on paper, the other respondents exercised control and supervision over them; that the Cooperative was a labor-only contractor; and that the Orders of the DOLE Secretary relied upon by the Labor Arbiter and the NLRC are not applicable to them as the same pertained to a certification election case involving different parties and issues.[14]

DFI, commenting for itself and TACOR, maintains that, among other things, it was not the employer of petitioners; and that it cannot comment on their money claims because no evidence was submitted in support thereof.[15]

It appears that respondent Cooperative had been dissolved.[16]

As respondent Dole Asia Philippines failed to file a comment, the Court, by Resolution of November 29, 2006,[17] required it to (1) show cause why it should not be held in contempt for its failure to heed the Court's directive, and (2) file the required comment, within 10 days from notice.

Dole Philippines, Inc. (DPI) promptly filed an Urgent Manifestation[18] stating that, among other things, while its division located in Davao City received the Court's Resolution directing Dole Asia Philippines to file a comment on the present petition, DPI did not file a comment as the directive was addressed to "Dole Asia Philippines", an entity which is not registered at the Securities and Exchange Commission.

Commenting on DPI's Urgent Manifestation, petitioners contend that DPI cannot be allowed to take advantage of their lack of knowledge as to its exact corporate name, DPI having raised the matter for the first time before this Court notwithstanding its receipt of all pleadings and court processes from the inception of this case.[19]

Upon review of the records, the Court finds that DPI never ever participated in the proceedings despite due notice. Its posturing, therefore, that the court processes it received were addressed to "Dole Asia Philippines," a non-existent entity, does not lie. That DPI is the intended respondent, there is no doubt.

Respecting the appellate court's dismissal of petitioners' appeal due to the failure of some of them to sign the therein accompanying verification and certification against forum-shopping, the Court's guidelines for the bench and bar in *Altres v. Empleo*,[20] which were culled "from jurisprudential pronouncements," are instructive:

For the guidance of the bench and bar, the Court restates in capsule form the jurisprudential pronouncements already reflected above respecting non-compliance with the requirements on, or submission of defective, verification and certification against forum shopping:

- 1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
- 2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.
- 3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.
- 4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in

verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf. (Emphasis and underscoring supplied)

The foregoing restated pronouncements were lost in the challenged Resolutions of the appellate court. Petitioners' contention that the appellate court should have dismissed the petition only as to the non-signing petitioners or merely dropped them as parties to the case is thus in order.

Instead of remanding the case to the appellate court, however, the Court deems it more practical to decide the substantive issue raised in this petition so as not to further delay the disposition of this case.[21] And it thus resolves to deviate as well from the general rule that factual questions are not entertained in petitions for review on certiorari of the appellate court's decisions in order to write finis to this protracted litigation.

The sole issue is whether DFI (with which TACOR had been merged) and DPI should be held solidarily liable with the Cooperative for petitioners' illegal dismissal and money claims.

The Labor Code and its Implementing Rules empower the Labor Arbiter to be the trier of facts in labor cases.[22] Much reliance is thus placed on the Arbiter's findings of fact, having had the opportunity to discuss with the parties and their witnesses the factual matters of the case during the conciliation phase.[23] Just the same, a review of the records of the present case does not warrant a conclusion different from the Arbiter's, as affirmed by the NLRC, that the Cooperative is the employer of petitioners.

To be sure, the matter of whether the Cooperative is an independent contractor or a labor-only contractor may not be used to predicate a ruling in this case. Job contracting or subcontracting refers to an arrangement whereby a principal agrees to farm out with a contractor or subcontractor the performance of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.[24] The present case does not involve such an arrangement.

DFI did not farm out to the Cooperative the performance of a specific job, work, or service. Instead, it entered into a Banana Production and Purchase Agreement[25] (Contract) with the Cooperative, under which the Cooperative would handle and fund the production of bananas and operation of the plantation covering lands owned by its members in consideration of DFI's commitment to provide financial and technical assistance as needed, including the supply of information and equipment in growing, packing, and shipping bananas. The Cooperative would hire its own workers and pay their wages and benefits, and sell exclusively to DFI all export quality bananas produced that meet the specifications agreed upon.

To the Court, the Contract between the Cooperative and DFI, far from being a job contracting arrangement, is in essence a business partnership that partakes of the nature of a joint venture.[26] The rules on job contracting are, therefore, inapposite. The Court may not alter the intention of the contracting parties as gleaned from their

stipulations without violating the autonomy of contracts principle under Article 1306 of the Civil Code which gives the contracting parties the utmost liberality and freedom to establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good custom, public order or public policy.

Petitioners' claim of employment relationship with the Cooperative's herein co-respondents must be assessed on the basis of four standards, viz: (a) the manner of their selection and engagement; (b) the mode of payment of their wages; (c) the presence or absence of the power of dismissal; and (d) the presence or absence of control over their conduct. Most determinative among these factors is the so-called "control test." [27]

There is nothing in the records which indicates the presence of any of the foregoing elements of an employer-employee relationship.

The absence of the first requisite, which refers to selection and engagement, is shown by DFI's total lack of knowledge on who actually were engaged by the Cooperative to work in the banana plantation. This is borne out by the Contract between the Cooperative and DFI, under which the Cooperative was to hire its own workers. As TACOR had been merged with DFI, and DPI is merely alleged to have previously owned TACOR, this applies to them as well. Petitioners failed to prove the contrary. No employment contract whatsoever was submitted to substantiate how petitioners were hired and by whom.

On the second requisite, which refers to the payment of wages, it was likewise the Cooperative that paid the same. As reflected earlier, under the Contract, the Cooperative was to handle and fund the production of bananas and operation of the plantation. [28] The Cooperative was also to be responsible for the proper conduct, safety, benefits, and general welfare of its members and workers in the plantation. [29]

As to the third requisite, which refers to the power of dismissal, and the fourth requisite, which refers to the power of control, both were retained by the Cooperative. Again, the Contract stipulated that the Cooperative was to be responsible for the proper conduct and general welfare of its members and workers in the plantation.

The crucial element of control refers to the authority of the employer to control the employee not only with regard to the result of the work to be done, but also to the means and methods by which the work is to be accomplished. [30] While it suffices that the power of control exists, albeit not actually exercised, there must be some evidence of such power. In the present case, petitioners did not present any.

There being no employer-employee relationship between petitioners and the Cooperative's co-respondents, the latter are not solidarily liable with the Cooperative for petitioners' illegal dismissal and money claims.

While the Court commiserates with petitioners on their loss of employment, especially now that the Cooperative is no longer a going concern, it cannot simply, by default, hold the Cooperative's co-respondents liable for their claims without any factual and legal justification therefor. The social justice policy of labor laws and the Constitution is not meant to be oppressive of capital.

En passant, petitioners are not precluded from pursuing any available remedies against the former members of the defunct Cooperative as their individual circumstances may warrant.

WHEREFORE, the petition is DISMISSED.

Quisumbing, (Chairperson), Corona, [*] Del Castillo, and Abad, JJ., concur.

[*] Additional member vice Justice Arturo D. Brion, due to prior participation in the Court of Appeals.

- [1] Vide Position Papers of Petitioners, NLRC records, Vol. I, pp. 37-54; 67-86.
- [2] Id.
- [3] Id.
- [4] Id. at 38, 68.
- [5] Id. at 1-13.
- [6] Id. at 30-36.
- [7] Id. at 119-134.
- [8] Id. at 103-115.
- [9] NLRC records, Vol. II, pp. 89-93.
- [10] Id. at 142.
- [11] CA rollo, pp. 2-24.
- [12] Penned by Associate Justice Eloy R. Bello, Jr., with the concurrence of Associate Justice Amelita G. Tolentino and then Associate Justice of the Court of Appeals, now Associate Justice of this Court, Arturo D. Brion; CA rollo, pp. 174-175.
- [13] Id. at 187.
- [14] Vide Petition, rollo, pp. 12-44.
- [15] Vide Comment of DFI, id. at 231-235.
- [16] Id. at 263-265.
- [17] Id. at 265.
- [18] Id. at 266-270.
- [19] Id. at 276-280.
- [20] G.R. No. 180986, December 10, 2008.
- [21] Vide *Chan v. Secretary of Justice*, G.R. No. 147065, March 14, 2008, 548 SCRA 337, 351-352.
- [22] *Manaya v. Alabang Country Club, Incorporated*, G.R. No. 168988, June 19, 2007, 525 SCRA 140, 159.
- [23] *Salazar v. Phil. Duplicators, Inc.*, G.R. No. 154628, December 6, 2006, 510 SCRA 288, 305.
- [24] Vide *Acevedo v. Advanstar Company, Inc.*, G.R. No. 157656, November 11, 2005, 474 SCRA 656, 667.
- [25] NLRC records, Vol. I, pp. 162-183.
- [26] A joint venture is an association of persons or companies jointly undertaking some commercial enterprise; generally, all contribute assets and share risks. (*Kilosbayan v. Guingona*, G.R. No. 113375, May 5, 1994, 232 SCRA 110, 144)
- [27] *De los Santos v. National Labor Relations Commission*, 423 Phil. 1020, 1029 (2001).
- [28] Vide NLRC records, Vol. I, p. 169.

[29] *Id.* at 176.

[30] *Almeda v. Asahi Glass Philippines, Inc.*, G.R. No. 177785, September 3, 2008, 564 SCRA 115, 127-128.

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