

SAN MIGUEL CORPORATION, PETITIONER, VS. VICENTE B. SEMILLANO, NELSON MONDEJAR, JOVITO REMADA, ALILGILAN MULTI-PURPOSE COOP (AMPCO) AND MERLYN V. POLIDARIO, RESPONDENTS.

G.R. No. 164257. July 05, 2010

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing (i) the February 19, 2004 Decision[1] of the Court of Appeals in CA-G.R. SP. No. 75209 which reversed and set aside the February 28, 2002 and September 27, 2002 Resolutions of the National Labor Relations Commission in NLRC Case No. V-000588-98; and (ii) its May 28, 2004 Resolution[2] denying petitioner's motion for the reconsideration thereof.

The facts of the case, as found by the Court of Appeals,[3] are as follows:

"xxx It appears that AMPCO hired the services of Vicente et al. [Vicente Semillano, Nelson Mondejar, Jovito Remada and Alex Hawod,[4] respondents herein] on different dates in December [of 1991 and] 1994. All of them were assigned to work in SMC's Bottling Plant situated at Brgy. Granada Sta. Fe, Bacolod City, in order to perform the following tasks: segregating bottles, removing dirt therefrom, filing them in designated places, loading and unloading the bottles to and from the delivery trucks, and performing other tasks as may be ordered by SMC's officers. [They] were required to work inside the premises of SMC using [SMC's] equipment. [They] rendered service with SMC for more than 6 months.

Subsequently, SMC entered into a Contract of Services[5] with AMPCO designating the latter as the employer of Vicente, et al. As a result, Vicente et al. failed to claim the rights and benefits ordinarily accorded a regular employee of SMC. In fact, they were not paid their 13[th] month pay. On June 6, 1995, they were not allowed to enter the premises of SMC. The project manager of AMPCO, Merlyn Polidario, told them to wait for further instructions from the SMC's supervisor. Vicente et al. waited for one month, unfortunately, they never heard a word from SMC.

Consequently, Vicente et al., as complainants, filed on July 17, 1995 a COMPLAINT FOR ILLEGAL DISMISSAL with the Labor Arbiter against AMPCO, Merlyn V. Polidario, SMC and Rufino I. Yatar [SMC Plant Manager], as respondents. xxx Complainants alleged that they were fillers of SMC Bottling Plant xxx assigned to perform activities necessary and desirable in the usual business of SMC. xxx They claim that they were under the control and supervision of SMC personnel and have worked for more than 6 months in the company. As such, they assert that they are regular employees of SMC.

However, SMC utilized AMPCO making it appear that the latter was their employer, so that SMC may evade the responsibility of paying the benefits due them under the law. Finally, complainants contend that AMPCO and SMC failed to give their 13[th] month pay and that they were prevented from entering the SMC's premises. Hence, complainants contend that they were illegally dismissed from service.

On the other hand, respondent SMC raised the defense that it is not the employer of the complainants.

According to SMC, AMPCO is their employer because the latter is an independent contractor xxx. Also SMC alleged that it was AMPCO that directly paid their salaries and remitted their contributions to the SSS. Finally, SMC assails the jurisdiction of the Labor Arbiter contending that the instant dispute is intra-cooperative in nature falling within the jurisdiction of the Arbitration Committee of the Cooperative Development Authority.

On April 30, 1998, the Labor Arbiter (LA) rendered his decision.[6] The dispositive portion of which reads:

Wherefore, premises considered, judgment is hereby rendered declaring herein complainants as regular employees of San Miguel Corporation and the latter is ordered:

- To reinstate complainants to their previous or equivalent positions without loss of seniority rights with payment of full backwages from the time of their illegal dismissal up to the time of their actual reinstatement; and
- To pay complainant's counsel attorney's fees 10% of the total award or P36,625.76.

Per our computation complainants Vicente Semillano, Nelson Mondejar and Jovito Remada are entitled to the amount of P122,085.88 each as full backwages covering the period June 6, 1995 up to April 30, 1998.

SO ORDERED.[7]

Accordingly, respondents filed a motion for partial execution of the decision of the Labor Arbiter praying for their immediate reinstatement.[8] Petitioner San Miguel Corporation (SMC) filed its Opposition to the motion.[9] The LA, however, rendered no ruling thereon.[10]

Petitioner appealed the LA Decision to the NLRC. Initially, the NLRC Fourth Division affirmed with modifications the findings of the LA as follows:

WHEREFORE, premises considered, the appeals of respondents AMPCO and SMC are denied for lack of merit and the decision appealed from is affirmed with a modification in the following:

- Respondent SMC to pay complainants their backwages from June 6, 1995 up to and until July 22, 1998;
- Respondent SMC to pay complainants their accrued salaries and allowances from July 23, 1998 up to the present; and
- Respondent SMC to pay complainants ten percent (10%) of the total award as attorney's fees.

Complainants, to restate, are regular employees of San Miguel Corporation and the latter is ordered to reinstate complainants to their former position as pilers/segregators.

Petitioner SMC moved for a reconsideration of the foregoing decision. In a Resolution dated February 28, 2002, the NLRC acted on the motion and reversed its earlier ruling. It absolved petitioner from liability and instead held AMPCO, as employer of respondents, liable to pay for respondents' backwages, accrued salaries, allowances, and attorney's fees. In holding that AMPCO was an independent contractor, NLRC was of the view that the law only required substantial capital or investment. Since AMPCO had "substantial capital of nearly one (1) million" then it qualified as an independent contractor. The NLRC added that even under the control test, AMPCO would be the real employer of the respondents, since it had assumed the entire charge and control of respondents' services. Hence, an employer-employee relationship existed between AMPCO and the respondents.

Respondents timely filed their motion for reconsideration of the NLRC resolution but it was denied.[11]

Feeling aggrieved over the turnaround by the NLRC, the respondents filed a petition for review on certiorari under Rule 65 with the Court of Appeals (CA), which favorably acted on it.

In overturning the commission's ruling, the Court of Appeals ironically applied the same control test that the NLRC used to resolve the issue of who the actual employer was. The CA, however, found that petitioner SMC wielded (i) the power of control over respondent, as SMC personnel supervised respondents' performance of loading and unloading of beer bottles, and (ii) the power of dismissal, as respondents were refused entry by SMC to its premises and were instructed by the AMPCO manager "to wait for further instructions from the SMC's supervisor." The CA added that AMPCO was a labor-only contractor since "a capital of nearly one million pesos" was insufficient for it to qualify as an independent contractor. Thus, the decretal portion reads:

WHEREFORE, premises considered, the instant petition is GRANTED. The assailed Resolutions dated February 28, 2002 and September 27, 2002 both issued by the public respondent National Labor Relations Commission in the case docketed as RAB CASE NO. 06-07-10298-95 are hereby SET ASIDE and a new one entered reinstating its original Decision dated June 30, 2000, which affirmed with modification the decision of the Labor Arbiter dated April 30, 1998. No pronouncement as to costs.

SO ORDERED.

SMC filed a motion for reconsideration but it was denied by the CA in its May 28, 2004 Resolution.[12]

Hence, this petition for review on certiorari.

Petitioner SMC argues that the CA wrongly assumed that it exercised power of control over the respondents just because they performed their work within SMC's premises. In advocacy of its claim that AMPCO is an independent contractor, petitioner relies on the provisions of the service contract between petitioner and AMPCO, wherein the latter undertook to provide the materials, tools and equipment to accomplish the services contracted out by petitioner. The same contract provides that AMPCO shall have exclusive discretion in the selection, engagement and discharge of its employees/personnel or otherwise in the direction and control thereof. Petitioner also adds that AMPCO determines the wages of its employees/personnel who shall be within its full control.

Petitioner further argues that respondents' action is essentially one for "regularization" (as employees of SMC) which is nowhere recognized or allowed by law. Lastly, petitioner contends that the case involves an intra-cooperative dispute, which is within the original and exclusive jurisdiction of the Arbitration Committee of the Cooperative and, thereafter, the Cooperative Development Authority.

In its Comment,[13] respondent AMPCO essentially advanced the same arguments in support of its claim as a legitimate job contractor.

The only issue that needs to be resolved is whether or not AMPCO is a legitimate job contractor. A claim that an action for regularization has no legal basis and is violative of petitioner's constitutional and statutory rights is, therefore, dependent upon the resolution of the issue posed above.

The petition fails.

Generally, the findings of fact made by the Labor Arbiter and the NLRC, as the specialized agencies presumed to have the expertise on matters within their respective fields, are accorded much respect and even finality, when supported by ample evidence[14] and affirmed by the CA. The fact that the NLRC, in its subsequent resolution, reversed its original decision does not render the foregoing inapplicable where the resolution itself is not supported by substantial evidence.

Department of Labor and Employment (DOLE) Department Order No. 10, Series of 1997, defines "job contracting" and "labor-only contracting" as follows:

Sec. 8. Job contracting. - There is job contracting permissible under the Code if the following conditions are

met:

(1) The contractor 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

(2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

Sec. 9. Labor-only contracting. - (a) Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such persons are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.

(b) Labor-only contracting as defined herein is hereby prohibited and the person acting as contractor shall be considered merely as an agent or intermediary of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

(c) For cases not falling under this Article, the Secretary of Labor shall determine through appropriate orders whether or not the contracting out of labor is permissible in the light of the circumstances of each case and after considering the operating needs of the employer and the rights of the workers involved. In such case, he may prescribe conditions and restrictions to insure the protection and welfare of the workers.

Section 5 of Department Order No. 18-02 (Series of 2002) of the Rules Implementing Articles 106 to 109 of the Labor Code further provides that:

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job work or service contracted out. (emphasis supplied)

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

The test to determine the existence of independent contractorship is whether or not the 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 as to the results of the work.[15]

The existence of an independent and permissible contractor relationship is generally established by the following criteria: 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 a specified piece 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 the premises, tools, appliances, materials, and labor; and the mode, manner and terms of payment.[16]

Although there may be indications of an independent contractor arrangement between petitioner and AMPCO, the most determinant of factors exists which indicate otherwise.

Petitioner's averment that AMPCO had total assets amounting to P932,599.22 and income of P2,777,603.46 in 1994 was squarely debunked by the LA. Thus:

Furthermore, there are no pieces of evidence that AMPCO has substantial capital or investment. An examination its "Statement of Income and Changes in Undivided Savings" show that its income for the year 1994 was P2,777,603.46 while its operating expenses for said year is P2,718,315.33 or a net income of P59,288.13 for the year 1994; that its cash on hand for 1994 is P22,154.80.

In fact, the NLRC in its original decision likewise stated as follows:

In contrast, the (sic) AMPCO's main business activity is trading, maintaining a store catering to members and the public. Its job contracting with SMC is only a minor activity or sideline. The component of AMPCO's substantial capital are [sic]in fact invested and used in the trading business. This is palpably shown in the sizable amount of its accounts receivables amounting to more than P.6M out of its members' capital of only P.47M in 1994.

Neither did petitioner prove that AMPCO had substantial equipment, tools, machineries, and supplies actually and directly used by it in the performance or completion of the segregation and piling job. In fact, as correctly pointed out by the NLRC in its original decision, there is nothing in AMPCO's list[17] of fixed assets, machineries, tools, and equipment which it could have used, actually and directly, in the performance or completion of its contracted job, work or service with petitioner. For said reason, there can be no other logical conclusion but that the tools and equipment utilized by respondents are owned by petitioner SMC. It is likewise noteworthy that neither petitioner nor AMPCO has shown that the latter had clients other than petitioner. Therefore, AMPCO has no independent business.

In connection therewith, DOLE Department Order No. 10 also states that an independent contractor 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, and 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. This embodies what has long been jurisprudentially recognized as the control test[18] to determine the existence of employer-employee relationship.

In the case at bench, petitioner faults the CA for holding that the respondents were under the control of petitioner whenever they performed the task of loading in the delivery trucks and unloading from them. It, however, fails to show how AMPCO took "entire charge, control and supervision of the work and service agreed upon." AMPCO's Comment on the Petition is likewise utterly silent on this point. Notably, both petitioner and AMPCO chose to ignore the uniform finding of the LA, NLRC (in its original decision) and the CA that one of the assigned jobs of respondents was to "perform other acts as may be ordered by SMC's officers." Significantly, AMPCO, opted not to challenge the original decision of the NLRC that found it a mere labor-only contractor.

Moreover, the Court is not convinced that AMPCO wielded "exclusive discretion in the discharge"[19] of respondents. As the CA correctly pointed out, Merlyn Polidario, AMPCO's project manager, even told respondents to "wait for further instructions from the SMC's supervisor" after they were prevented from entering petitioner SMC's premises. Based on the foregoing, no other logical conclusion can be reached than that it was petitioner, not AMPCO, who wielded power of control.

Despite the fact that the service contracts[20] contain stipulations which are earmarks of independent contractorship, they do not make it legally so. The language of a contract is neither determinative nor conclusive of the relationship between the parties. Petitioner SMC and AMPCO cannot dictate, by a declaration in a contract, the character of AMPCO's business, that is, whether as labor-only contractor, or job contractor. AMPCO's

character should be measured in terms of, and determined by, the criteria set by statute.[21] At a closer look, AMPCO's actual status and participation regarding respondents' employment clearly belie the contents of the written service contract.

Petitioner cannot rely either on AMPCO's Certificate of Registration as an Independent Contractor issued by the proper Regional Office of the DOLE to prove its claim. It is not conclusive evidence of such status. The fact of registration simply prevents the legal presumption of being a mere labor-only contractor from arising.[22] In distinguishing between permissible job contracting and prohibited labor-only contracting, the totality of the facts and the surrounding circumstances of the case are to be considered.[23]

Petitioner also argues that among the permissible contracting arrangements include "work or services not directly related or not integral to the main business or operation of the principal including... work related to manufacturing processes of manufacturing establishments." [24] The Court is not persuaded. The evidence is clear that respondents performed activities which were directly related to petitioner's main line of business. Petitioner is primarily engaged in manufacturing and marketing of beer products, and respondents' work of segregating and cleaning bottles is unarguably an important part of its manufacturing and marketing process.

Lastly, petitioner claims that the present case is outside the jurisdiction of the labor tribunals because respondent Vicente Semillano is a member of AMPCO, not SMC. Precisely, he has joined the others in filing this complaint because it is his position that petitioner SMC is his true employer and liable for all his claims under the Labor Code.

Thus, petitioner SMC, as principal employer, is solidarily liable with AMPCO, the labor-only contractor, for all the rightful claims of respondents. Under this set-up, AMPCO, as the "labor-only" contractor, is deemed an agent of the principal (SMC). The law makes the principal responsible over the employees of the "labor-only" contractor as if the principal itself directly hired the employees.[25]

WHEREFORE, the petition is DENIED. The February 19, 2004 Decision of the Court of Appeals, reversing the decision of the National Labor Relations Commission and reinstating the decision of the Labor Arbiter, is AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Abad, JJ., concur.

[1] Penned by Associate Justice Mercedes Gozo-Dadole with Associate Justice Eugenio S. Labitoria and Associate Justice Rosmari D. Carandang concurring.

[2] Id.

[3] Rollo, pp. 34-43.

[4] Complainant Alex Hawod's complaint was dismissed by the Labor Arbiter because his signature does not appear in complainant's position paper as well as in the Joint Affidavit submitted.

[5] It appears from the records that there are two (2) Service Contracts material to the controversy. The first is dated April 1992. The contractual period is for six (6) months commencing February 1, 1992. The other is dated May 1993. The contractual period is for 12 months commencing April 16, 1993. Both contracts stipulate that it is deemed renewed on a month-to-month basis.

[6] Penned by Labor Arbiter Jesus N. Rodriguez, Jr.

[7] Rollo, p. 209.

[8] Id. at 210-211.

[9] Id. at 212-214.

[10] Nothing in the records indicates that there was execution of the reinstatement aspect, whether by actual or by payroll reinstatement.

[11] Rollo, pp. 106-109.

[12] Id. at 63.

[13] Id. at 335-342.

[14] Aboitiz Haulers Inc. v. Dimapatoi, G.R. No. 148619, September 19, 2006, 502 SCRA 281.

[15] San Miguel Corporation v. Aballa, G.R. No. 149011, June 28, 2005, 461 SCRA 421.

[16] DOLE Philippines Inc. v. Esteva, G.R. No. 161115, November 30, 2006, 509 SCRA 376; and Brotherhood Labor Unity Movement of the Philippines v. Zamora, 231 Phil. 53 (1987).

[17] Attached as Annex 4 of AMPCO's Comment reveals the following:

- Transportation Equipment.
- 1 unit custom van
- 1 motor - Ford 350 (Gasoline)
- Land and Building
- Furniture and Fixtures
- 3 pcs. office tables
- 3 pcs Monobloc Chairs
- Office Equipment
- 5 pcs. Casio electronic Calculator (12 digit)
- 1 unit Laminating Machine (ID)
- 1 Printing Calculator
- Dry Cell
- Communication equipment
- 2 pcs. ICOM (Hand Set) with Anthena
- Store Equipment
- Nutex - Temperature Compensated Capacity (kg.) / Weighing scale
- 1 Cash Box
- 1 Charmaster
- 80 empty cases w/ bottles Coke litro

90 -do- Coke regular

13 -do- Coke 500 ml

- 2 pcs. Emergency light.

[18] The existence of an employer-employee relationship is determined on the basis of four standards, namely: (a) the manner of selection and engagement of the putative employee; (b) the mode of payment of wages; (c) the presence or absence of power of dismissal; and (d) the presence or absence of control of the putative employee's conduct. Most determinative among these factors is the so-called "control test." *Gallego v. Bayer Philippines, Inc.*, G.R. No. 179807, July 31, 2009, 594 SCRA 736.

[19] See Service Contract.

[20] Certificate of Registration as independent contractor issued by the Regional Director of Department of Labor Regional Office No. VI; Articles of Incorporation, under which providing services and other requirements of members, and engaging in utility services are among its main objectives; Certificate of Confirmation as a registered cooperative with the Bureau of Agricultural Cooperatives Development; Mayor's permit to engage in business as a contractor; Registration with the SSS as member.

[21] *De Los Santos and Buklod Manggagawa ng Camara v. National Labor Relations Commission*, 423 Phil. 1020, 1034 (2001).

[22] "Section 11. Registration of contractor or subcontractors.-

xxx

Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting."- Department Order No. 18-02 Series of 2002.

[23] *Supra* note 18.

[24] Petition for Review on Certiorari, p. 19; rollo, p. 23 citing Department Order No. 10, Series of 1997.

[25] *San Miguel Corporation v. MAERC Integrated Services, Inc.*, 453 Phil. 543 (2003).

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