

## **LEGEND INTERNATIONAL RESORTS LIMITED, PETITIONER, VS. KILUSANG MANGGAGAWA NG LEGENDA (KML- INDEPENDENT), RESPONDENT.**

*G.R. No. 169754. February 23, 2011*

Ponente: DEL CASTILLO, J.

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### **DEL CASTILLO, J.:**

This Petition for Review on Certiorari assails the September 18, 2003 Decision of the Court of Appeals in CA-G.R. SP No. 72848 which found no grave abuse of discretion on the part of the Office of the Secretary of the Department of Labor and Employment (DOLE) which ruled in favor of Kilusang Manggagawa ng Legenda (KML). Also assailed is the September 14, 2005 Resolution denying petitioner's motion for reconsideration.

#### **Factual Antecedents**

On June 6, 2001, KML filed with the Med-Arbitration Unit of the DOLE, San Fernando, Pampanga, a Petition for Certification Election<sup>[1]</sup> docketed as Case No. RO300-0106-RU-001. KML alleged that it is a legitimate labor organization of the rank and file employees of Legend International Resorts Limited (LEGEND). KML claimed that it was issued its Certificate of Registration No. RO300-0105-UR-002 by the DOLE on May 18, 2001.

LEGEND moved to dismiss<sup>[2]</sup> the petition alleging that KML is not a legitimate labor organization because its membership is a mixture of rank and file and supervisory employees in violation of Article 245 of the Labor Code. LEGEND also claimed that KML committed acts of fraud and misrepresentation when it made it appear that certain employees attended its general membership meeting on April 5, 2001 when in reality some of them were either at work; have already resigned as of March 2001; or were abroad.

In its Comment,<sup>[3]</sup> KML argued that even if 41 of its members are indeed supervisory employees and therefore excluded from its membership, the certification election could still proceed because the required number of the total rank and file employees necessary for certification purposes is still sustained. KML also claimed that its legitimacy as a labor union could not be collaterally attacked in the certification election proceedings but only through a separate and independent action for cancellation of union registration. Finally, as to the alleged acts of misrepresentation, KML asserted that LEGEND failed to substantiate its claim.

#### **Ruling of the Med-Arbiter**

On September 20, 2001, the Med-Arbiter<sup>[4]</sup> rendered judgment<sup>[5]</sup> dismissing for lack of merit the petition for certification election. The Med-Arbiter found that indeed there were several supervisory employees in KML's membership. Since Article 245 of the Labor Code expressly prohibits supervisory employees from joining the union of rank and file employees, the Med-Arbiter concluded that KML is not a legitimate labor organization. KML was also found to have fraudulently procured its registration certificate by misrepresenting that 70 employees were among those who attended its organizational meeting on April 5, 2001 when in fact they were either at work or elsewhere.

KML thus appealed to the Office of the Secretary of the DOLE.

#### Ruling of the Office of the Secretary of DOLE

On May 22, 2002, the Office of the Secretary of DOLE rendered its Decision[6] granting KML's appeal thereby reversing and setting aside the Med-Arbiter's Decision. The Office of the Secretary of DOLE held that KML's legitimacy as a union could not be collaterally attacked, citing Section 5,[7] Rule V of Department Order No. 9, series of 1997.

The Office of the Secretary of DOLE also opined that Article 245 of the Labor Code merely provides for the prohibition on managerial employees to form or join a union and the ineligibility of supervisors to join the union of the rank and file employees and vice versa. It declared that any violation of the provision of Article 245 does not ipso facto render the existence of the labor organization illegal. Moreover, it held that Section 11, paragraph II of Rule XI which provides for the grounds for dismissal of a petition for certification election does not include mixed membership in one union.

The dispositive portion of the Office of the Secretary of DOLE's Decision reads:

WHEREFORE, the appeal is hereby GRANTED and the order of the Med-Arbiter dated 20 September 2001 is REVERSED and SET ASIDE.

Accordingly, let the entire record of the case be remanded to the regional office of origin for the immediate conduct of the certification election, subject to the usual pre-election conference, among the rank and file employees of LEGEND INTERNATIONAL RESORTS LIMITED with the following choices:

1. KILUSANG MANGGAGAWA NG LEGENDA (KML-INDEPENDENT); and
2. NO UNION.

Pursuant to Rule XI, Section II.1 of D.O. No. 9, the employer is hereby directed to submit to the office of origin, within ten days from receipt of the decision, the certified list of employees in the bargaining unit for the last three (3) months prior to the issuance of this decision.

SO DECIDED.[8]

LEGEND filed its Motion for Reconsideration[9] reiterating its earlier arguments. It also alleged that on August 24, 2001, it filed a Petition[10] for Cancellation of Union Registration of KML docketed as Case No. RO300-0108-CP-001 which was granted[11] by the DOLE Regional Office No. III of San Fernando, Pampanga in its Decision[12] dated November 7, 2001.

In a Resolution[13] dated August 20, 2002, the Office of the Secretary of DOLE denied LEGEND's motion for reconsideration. It opined that Section 11, paragraph II(a), Rule XI of Department Order No. 9 requires a final order of cancellation before a petition for certification election may be dismissed on the ground of lack of legal personality. Besides, it noted that the November 7, 2001 Decision of DOLE Regional Office No. III of San Fernando, Pampanga in Case No. RO300-0108-CP-001 was reversed by the Bureau of Labor Relations in a Decision dated March 26, 2002.

#### Ruling of the Court of Appeals

Undeterred, LEGEND filed a Petition for Certiorari[14] with the Court of Appeals docketed as CA-G.R. SP No. 72848. LEGEND alleged that the Office of the Secretary of DOLE gravely abused its discretion in reversing and setting aside the Decision of the Med-Arbiter despite substantial and overwhelming evidence against KML.

For its part, KML alleged that the Decision dated March 26, 2002 of the Bureau of Labor Relations in Case No.

RO300-0108-CP-001 denying LEGEND's petition for cancellation and upholding KML's legitimacy as a labor organization has already become final and executory, entry of judgment having been made on August 21, 2002.[15]

The Office of the Secretary of DOLE also filed its Comment[16] asserting that KML's legitimacy cannot be attacked collaterally. Finally, the Office of the Secretary of DOLE stressed that LEGEND has no legal personality to participate in the certification election proceedings.

On September 18, 2003, the Court of Appeals rendered its Decision[17] finding no grave abuse of discretion on the part of the Office of the Secretary of DOLE. The appellate court held that the issue on the legitimacy of KML as a labor organization has already been settled with finality in Case No. RO300-0108-CP-001. The March 26, 2002 Decision of the Bureau of Labor Relations upholding the legitimacy of KML as a labor organization had long become final and executory for failure of LEGEND to appeal the same. Thus, having already been settled that KML is a legitimate labor organization, the latter could properly file a petition for certification election. There was nothing left for the Office of the Secretary of DOLE to do but to order the holding of such certification election.

The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, and finding that no grave abuse of discretion amounting to lack or excess of jurisdiction has been committed by the Department of Labor and Employment, the assailed May 22, 2002 Decision and August 20, 2002 Resolution in Case No. RO300-106-RU-001 are UPHELD and AFFIRMED. The instant petition is DENIED due course and, accordingly, DISMISSED for lack of merit.[18]

LEGEND filed a Motion for Reconsideration[19] alleging, among others, that it has appealed to the Court of Appeals the March 26, 2002 Decision in Case No. RO300-0108-CP-001 denying its petition for cancellation and that it is still pending resolution.

On September 14, 2005, the appellate court denied LEGEND's motion for reconsideration.

Hence, this Petition for Review on Certiorari raising the lone assignment of error, viz:

WHETHER X X X THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS IN THE APPLICATION OF LAW IN DENYING THE PETITIONER'S PETITION FOR CERTIORARI.[20]

#### Petitioner's Arguments

LEGEND submits that the Court of Appeals grievously erred in ruling that the March 26, 2002 Decision denying its Petition for Cancellation of KML's registration has already become final and executory. It asserts that it has seasonably filed a Petition for Certiorari[21] before the CA docketed as CA-G.R. SP No. 72659 assailing said Decision. In fact, on June 30, 2005, the Court of Appeals granted the petition, reversed the March 26, 2002 Decision of the Bureau of Labor Relations and reinstated the November 7, 2001 Decision of the DOLE Regional Office III ordering the cancellation of KML's registration.

Finally, LEGEND posits that the cancellation of KML's certificate of registration should retroact to the time of its issuance.[22] It thus claims that the petition for certification election and all of KML's activities should be nullified because it has no legal personality to file the same, much less demand collective bargaining with LEGEND.[23]

LEGEND thus prays that the September 20, 2001 Decision of the Med-Arbiter dismissing KML's petition for certification election be reinstated.[24]

## Respondent's Arguments

In its Comment filed before this Court dated March 21, 2006, KML insists that the Decision of the Bureau of Labor Relations upholding its legitimacy as a labor organization has already attained finality<sup>[25]</sup> hence there was no more hindrance to the holding of a certification election. Moreover, it claims that the instant petition has become moot because the certification election sought to be prevented had already been conducted.

## Our Ruling

The petition is partly meritorious.

LEGEND has timely appealed the March 26, 2002 Decision of the Bureau of Labor Relations to the Court of Appeals.

We cannot understand why the Court of Appeals totally disregarded LEGEND's allegation in its Motion for Reconsideration that the March 26, 2002 Decision of the Bureau of Labor Relations has not yet attained finality considering that it has timely appealed the same to the Court of Appeals and which at that time is still pending resolution. The Court of Appeals never bothered to look into this allegation and instead dismissed outright LEGEND's motion for reconsideration. By doing so, the Court of Appeals in effect maintained its earlier ruling that the March 26, 2002 Decision of the Bureau of Labor Relations upholding the legitimacy of KML as a labor organization has long become final and executory for failure of LEGEND to appeal the same.

This is inaccurate. Records show that (in the cancellation of registration case) LEGEND has timely filed on September 6, 2002 a petition for certiorari<sup>[26]</sup> before the Court of Appeals which was docketed as CA-G.R. SP No. 72659 assailing the March 26, 2002 Decision of the Bureau of Labor Relations. In fact, KML received a copy of said petition on September 10, 2002<sup>[27]</sup> and has filed its Comment thereto on December 2, 2002.<sup>[28]</sup> Thus, we find it quite interesting for KML to claim in its Comment (in the certification petition case) before this Court dated March 21, 2006<sup>[29]</sup> that the Bureau of Labor Relations' Decision in the petition for cancellation case has already attained finality. Even in its Memorandum<sup>[30]</sup> dated March 13, 2007 filed before us, KML is still insisting that the Bureau of Labor Relations' Decision has become final and executory.

Our perusal of the records shows that on June 30, 2005, the Court of Appeals rendered its Decision<sup>[31]</sup> in CA-G.R. SP No. 72659 reversing the March 26, 2002 Decision of the Bureau of Labor Relations and reinstating the November 7, 2001 Decision of the Med-Arbitrator which canceled the certificate of registration of KML.<sup>[32]</sup> On September 30, 2005, KML's motion for reconsideration was denied for lack of merit.<sup>[33]</sup> On November 25, 2005, KML filed its Petition for Review on Certiorari<sup>[34]</sup> before this Court which was docketed as G.R. No. 169972. However, the same was denied in a Resolution<sup>[35]</sup> dated February 13, 2006 for having been filed out of time. KML moved for reconsideration but it was denied with finality in a Resolution<sup>[36]</sup> dated June 7, 2006. Thereafter, the said Decision canceling the certificate of registration of KML as a labor organization became final and executory and entry of judgment was made on July 18, 2006.<sup>[37]</sup>

The cancellation of KML's certificate of registration should not retroact to the time of its issuance.

Notwithstanding the finality of the Decision canceling the certificate of registration of KML, we cannot subscribe to LEGEND's proposition that the cancellation of KML's certificate of registration should retroact to the time of its issuance. LEGEND claims that KML's petition for certification election filed during the pendency of the

petition for cancellation and its demand to enter into collective bargaining agreement with LEGEND should be dismissed due to KML's lack of legal personality.

This issue is not new or novel. In *Pepsi-Cola Products Philippines, Inc. v. Secretary of Labor*,<sup>[38]</sup> we already ruled that:

Anent the issue of whether or not the Petition to cancel/revoke registration is a prejudicial question to the petition for certification election, the following ruling in the case of *Association of the Court of Appeals Employees (ACAE) v. Hon. Pura Ferrer-Calleja*, x x x is in point, to wit:

x x x It is well-settled rule that 'a certification proceedings is not a litigation in the sense that the term is ordinarily understood, but an investigation of a non-adversarial and fact finding character.' (*Associated Labor Unions (ALU) v. Ferrer-Calleja*, 179 SCRA 127 [1989]; *Philippine Telegraph and Telephone Corporation v. NLRC*, 183 SCRA 451 [1990]). Thus, the technical rules of evidence do not apply if the decision to grant it proceeds from an examination of the sufficiency of the petition as well as a careful look into the arguments contained in the position papers and other documents.

At any rate, the Court applies the established rule correctly followed by the public respondent that an order to hold a certification election is proper despite the pendency of the petition for cancellation of the registration certificate of the respondent union. The rationale for this is that at the time the respondent union filed its petition, it still had the legal personality to perform such act absent an order directing the cancellation.<sup>[39]</sup> (Emphasis supplied.)

In *Capitol Medical Center, Inc. v. Hon. Trajano*,<sup>[40]</sup> we also held that "the pendency of a petition for cancellation of union registration does not preclude collective bargaining."<sup>[41]</sup> Citing the Secretary of Labor, we held viz:

That there is a pending cancellation proceedings against the respondent Union is not a bar to set in motion the mechanics of collective bargaining. If a certification election may still be ordered despite the pendency of a petition to cancel the union's registration certificate x x x more so should the collective bargaining process continue despite its pendency. <sup>[42]</sup>(Emphasis supplied.)

In *Association of Court of Appeals Employees v. Ferrer-Calleja*,<sup>[43]</sup> this Court was tasked to resolve the issue of whether "the certification proceedings should be suspended pending [the petitioner's] petition for the cancellation of union registration of the UCECA<sup>[44]</sup>."<sup>[45]</sup> The Court resolved the issue in the negative holding that "an order to hold a certification election is proper despite the pendency of the petition for cancellation of the registration certificate of the respondent union. The rationale for this is that at the time the respondent union filed its petition, it still had the legal personality to perform such act absent an order directing a cancellation."<sup>[46]</sup> We reiterated this view in *Samahan ng Manggagawa sa Pacific Plastic v. Hon. Laguesma*<sup>[47]</sup> where we declared that "a certification election can be conducted despite pendency of a petition to cancel the union registration certificate. For the fact is that at the time the respondent union filed its petition for certification, it still had the legal personality to perform such act absent an order directing its cancellation."<sup>[48]</sup>

Based on the foregoing jurisprudence, it is clear that a certification election may be conducted during the pendency of the cancellation proceedings. This is because at the time the petition for certification was filed, the petitioning union is presumed to possess the legal personality to file the same. There is therefore no basis for LEGEND's assertion that the cancellation of KML's certificate of registration should retroact to the time of its issuance or that it effectively nullified all of KML's activities, including its filing of the petition for certification election and its demand to collectively bargain.

The legitimacy of the legal personality of KML cannot be collaterally attacked

in a petition for certification election.

We agree with the ruling of the Office of the Secretary of DOLE that the legitimacy of the legal personality of KML cannot be collaterally attacked in a petition for certification election proceeding. This is in consonance with our ruling in *Laguna Autoparts Manufacturing Corporation v. Office of the Secretary, Department of Labor and Employment*[49] that "such legal personality may not be subject to a collateral attack but only through a separate action instituted particularly for the purpose of assailing it." [50] We further held therein that:

This is categorically prescribed by Section 5, Rule V of the Implementing Rules of Book V, which states as follows:

SEC. 5.[51] Effect of registration. - The labor organization or worker's association shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration. Such legal personality cannot thereafter be subject to collateral attack but may be questioned only in an independent petition for cancellation in accordance with these Rules.

Hence, to raise the issue of the respondent union's legal personality is not proper in this case. The pronouncement of the Labor Relations Division Chief, that the respondent union acquired a legal personality x x x cannot be challenged in a petition for certification election.

The discussion of the Secretary of Labor and Employment on this point is also enlightening, thus:

. . . Section 5, Rule V of D.O. 9 is instructive on the matter. It provides that the legal personality of a union cannot be the subject of collateral attack in a petition for certification election, but may be questioned only in an independent petition for cancellation of union registration. This has been the rule since *NUBE v. Minister of Labor*, 110 SCRA 274 (1981). What applies in this case is the principle that once a union acquires a legitimate status as a labor organization, it continues as such until its certificate of registration is cancelled or revoked in an independent action for cancellation.

Equally important is Section 11, Paragraph II, Rule IX of D.O. 9, which provides for the dismissal of a petition for certification election based on the lack of legal personality of a labor organization only in the following instances: (1) appellant is not listed by the Regional Office or the BLR in its registry of legitimate labor organizations; or (2) appellant's legal personality has been revoked or cancelled with finality. Since appellant is listed in the registry of legitimate labor organizations, and its legitimacy has not been revoked or cancelled with finality, the granting of its petition for certification election is proper.[52]

"[T]he legal personality of a legitimate labor organization x x x cannot be subject to a collateral attack. The law is very clear on this matter. x x x The Implementing Rules stipulate that a labor organization shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration. Once a certificate of registration is issued to a union, its legal personality cannot be subject to a collateral attack. It may be questioned only in an independent petition for cancellation in accordance with Section 5 of Rule V, Book V of the Implementing Rules." [53]

WHEREFORE, in view of the foregoing, the petition is PARTLY GRANTED. The Decision of the Court of Appeals dated September 18, 2003 in CA-G.R. SP No. 72848 insofar as it affirms the May 22, 2002 Decision and August 20, 2002 Resolution of the Office of the Secretary of Department of Labor and Employment is AFFIRMED. The Decision of the Court of Appeals insofar as it declares that the March 26, 2002 Decision of the Bureau of Labor Relations in Case No. RO300-0108-CP-001 upholding that the legitimacy of KML as a labor organization has long become final and executory for failure of LEGEND to appeal the same, is REVERSED and SET ASIDE.

**SO ORDERED.**

Corona, C.J., (Chairperson), Velasco, Jr., Nachura,[\*] and Perez, JJ., concur.

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[\*] In lieu of Justice Teresita J. Leonardo-De Castro per Special Order No. 947 dated February 11, 2011.

[1] CA rollo, pp. 51-54.

[2] Id. at 56-74.

[3] Id. at 144-152.

[4] Atty. Brigida C. Fadrigon.

[5] CA rollo, pp. 290-301.

[6] Id. at 43-47; per Acting Secretary Manuel G. Imson.

[7] Section 5. Effect of registration. - The labor organization or workers' association shall be deemed registered and vested with legal personality on the date of issuance of its certificate of registration. Such legal personality cannot thereafter be subject to collateral attack, but may be questioned only in an independent petition for cancellation in accordance with these Rules. (Id. at 44.)

[8] Id. at 46-47.

[9] Id. at 347-358.

[10] Id. at 176-197.

[11] The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered cancelling the registration of Kilusang Manggagawa sa Legenda. Let copy of this Decision be furnished the Bureau of Labor Relations, the central registry of unions and collective bargaining agreements under Article 231 of the Labor Code. (Id. at 346.)

[12] Id. at 333-346; penned by Atty. Ana C. Dione.

[13] Id. at 49-50; per Secretary Patricia A. Sto. Tomas.

[14] Id. at 2-41.

[15] See KML's Comment, id. at 385-402.

[16] Id. at 459-465.

[17] Id. at 497-503; penned by Associate Justice Sergio L. Pestaño and concurred in by Associate Justices Perlita J. Tria Tirona and now Supreme Court Associate Justice Jose C. Mendoza.

[18] Id. at 502.

[19] Id. at 505-525.

[20] Rollo of G.R. No. 169754, p. 826.

[21] Id. at 461-494.

[22] Id. at 838.

[23] Id.

[24] Id. at 851.

[25] Id. at 720.

[26] Id. at 461-494.

[27] Rollo of G.R. No. 169972 (Kilusang Manggagawa ng Legenda-KML Independent v. Legend International Resorts, Ltd.), p. 59.

[28] Rollo of G.R. No. 169754, p. 559.

[29] Id. at 721.

[30] Id. at 796.

[31] Rollo of G.R. No. 169972, pp. 35-45; penned by Associate Justice Rebecca De Guia-Salvador and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Aurora Santiago-Lagman.

[32] The dispositive portion of the Decision reads:

WHEREFORE, public respondent's impugned March 26, 2002 decision is REVERSED and SET ASIDE. In lieu thereof, another is entered ordering the REINSTATEMENT of the November 7, 2001 Decision in Case No. RO300-0108-P-001.

SO ORDERED. (Id. at 45.)

[33] Id. at 47.

[34] Id. at 10-33.

[35] Id. at 316.

[36] Id. (unpaged).

[37] Id. (unpaged).

[38] 371 Phil. 30 (1999).

[39] Id. at 44-45.

[40] 501 Phil. 144 (2005).

[41] Id. at 150.

[42] Id.

[43] G.R. No. 94716, November 15, 1991, 203 SCRA 596.

[44] Union of Concerned Employees of the Court of Appeals.

[45] Association of Court of Appeals Employees v. Ferrer-Calleja, supra note 43 at 606.

[46] Id. at 607. Emphasis supplied.

[47] 334 Phil. 955 (1997).

[48] Id. at 965. Emphasis supplied.

[49] 497 Phil. 255 (2005).

[50] *Id.* at 266.

[51] Now Section 8, Rule IV, Book V of the Omnibus Rules Implementing the Labor Code.

[52] *Laguna Autoparts Manufacturing Corporation v. Office of the Secretary, Department of Labor and Employment*, *supra* note 49 at 266-267. *Italics in the original.*

[53] *San Miguel Corporation Employees Union-Phil. Transport and General Workers Org. v. San Miguel Packaging Products Employees Union-Pambansang Diwa ng Manggagawang Pilipino*, G.R. No. 171153, September 12, 2007, 533 SCRA 125, 145-146.

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