

**ROLANDO SASAN, SR., LEONILO DAYDAY, MODESTO AGUIRRE,
ALEJANDRO ARDIMER, ELEUTERIO SACIL, WILFREDO JUEGOS,
PETRONILO CARCEDO AND CESAR PACIENCIA, PETITIONERS, VS.
NATIONAL LABOR ...**

G.R. No. 176240. October 17, 2008

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Assailed in this Petition for Review under Rule 45 of the Rules of Court are the Decision[1] dated 24 April 2006 of the Court of Appeals in CA-G.R. SP No. 79912, which affirmed the Decision dated 22 January 2003 of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000241-2002 finding that Helpmate, Inc. (HI) is a legitimate independent job contractor and that the petitioners were not illegally dismissed from work; and the Resolution[2] dated 31 October 2006 of the same court denying the Motion for Reconsideration filed by the petitioners.

Respondent Equitable-PCI Bank (E-PCIBank),[3] a banking entity duly organized and existing under and by virtue of Philippine laws, entered into a Contract for Services[4] with HI, a domestic corporation primarily engaged in the business of providing janitorial and messengerial services. Pursuant to their contract, HI shall hire and assign workers to E-PCIBank to perform janitorial/messengerial and maintenance services. The contract was impliedly renewed year after year. Petitioners Rolando Sasan, Sr.,[5] Leonilo Dayday,[6] Modesto Aguirre,[7] Alejandro Ardimer,[8] Eleuterio Sacil,[9] Wilfredo Juegos,[10] Petronilo Carcedo,[11] and Cesar Paciencia[12] were among those employed and assigned to E-PCIBank at its branch along Gorordo Avenue, Lahug, Cebu City, as well as to its other branches in the Visayas.[13]

O 23 July 2001, petitioners filed with the Arbitration Branch of the NLRC in Cebu City separate complaints[14] against E-PCIBank and HI for illegal dismissal, with claims for separation pay, service incentive leave pay, allowances, damages, attorney's fees and costs. Their complaints were docketed as NLRC RAB-VII Case No. 07-1381-2001 and raffled to Labor Arbiter Jose G. Gutierrez (Labor Arbiter Gutierrez) for their proper disposition. Subsequently, on 22 August 2001, the petitioners[15] amended their complaints to include a claim for 13[th] month-pay.

Several conciliation hearings were scheduled by Labor Arbiter Gutierrez but the parties still failed to arrive at a mutually beneficial settlement; hence, Labor Arbiter Gutierrez ordered that they submit their respective position papers.

In their position papers, petitioners claimed that they had become regular employees of E-PCIBank with respect to the activities for which they were employed, having continuously rendered janitorial and messengerial services to the bank for more than one year; that E-PCIBank had direct control and supervision over the means and methods by which they were to perform their jobs; and that their dismissal by HI was null and void because the latter had no power to do so since they had become regular employees of E-PCIBank.

For its part, E-PCIBank averred that it entered into a Contract for Services with HI, an independent job contractor which hired and assigned petitioners to the bank to perform janitorial and messengerial services thereat. It was HI that paid petitioners' wages, monitored petitioners' daily time records (DTR) and uniforms, and exercised direct control and supervision over the petitioners and that therefore HI has every right to terminate their services legally. E-PCIBank could not be held liable for whatever misdeed HI had committed against its employees.

HI, on the other hand, asserted that it was an independent job contractor engaged in the business of providing janitorial and related services to business establishments, and E-PCIBank was one of its clients. Petitioners were its employees, part of its pool of janitors/messengers assigned to E-PCIBank. The Contract for Services between HI and E-PCIBank expired on 15 July 2000. E-PCIBank no longer renewed said contract with HI and, instead, bidded out its janitorial requirements to two other job contractors, Able Services and Puritan. HI designated petitioners to new work assignments, but the latter refused to comply with the same. Petitioners were not dismissed by HI, whether actually or constructively, thus, petitioners' complaints before the NLRC were without basis.

Labor Arbiter Gutierrez focused on the following issues: (a) whether petitioners were regular employees of HI; (b) whether petitioners were illegally dismissed from their employment; and (c) whether petitioners were entitled to their money claims.

On 7 January 2002, on the basis of the parties' position papers and documentary evidence, Labor Arbiter Gutierrez rendered a Decision finding that HI was not a legitimate job contractor on the ground that it did not possess the required substantial capital or investment to actually perform the job, work, or service under its own account and responsibility as required under the Labor Code.[16] HI is therefore a labor-only contractor and the real employer of petitioners is E-PCIBank which is held liable to petitioners. According to Labor Arbiter Gutierrez:

[T]he undisputed facts show that the [herein petitioners] were made to perform not only as janitors but also as messengers, drivers and one of them even worked as an electrician. For us, these jobs are not only directly related to the main business of the principal but are, likewise deemed necessary in the conduct of respondent Equitable-PCI Bank's principal business. Thus, based on the above, we so declare that the [petitioners] are employees of respondent Equitable-PCI Bank. And having worked with respondent Equitable-PCI Bank for more than one (1) year, they are deemed regular employees. They cannot, therefore, be removed from employment without cause and without due process, which is wanting in this case. Hence, the severance of their employment in the guise of termination of contract is illegal.[17]

In the dispositive portion of his 7 January 2002 Decision, Labor Arbiter Gutierrez awarded to petitioners the following amounts:

I. - CESAR PACIENCIA

a) Backwages

July 15, 2001 to January 8, 2002

= P190.00 per day

= 5 months and 6 days

= 136 days x P190.00 = P25,840.00

b) Separation Pay

June 10, 1996 to July 15, 2001

= 5 years
= P190.00 x 26 days x 5 years / 2
= P12,350.00

c) 13th Month Pay
= P190.00 x 26 days
Total

= P 4,940.00
P 43,130.00

II - Dominador Suico, Jr. (did not file Amended Complaint)

a) Backwages
July 15, 2001 to January 15, 2002
same as Paciencia = P25,840.00

b) Separation Pay
Feb. 2, 1999 to July 15, 2001
= P190.00 x 26 days x 2.5 years / 2
Total = P6,175.00
= P32,015.00

III - Roland Mosquera (did not file Amended Complaint)

a) Backwages
(same as Paciencia)
= P25,840.00

b) Separation Pay
March 8, 1998 to July 15, 2001
= P190.00 x 26 days x 3 yrs. / 2
Total = P7,410.00
= P33,250.00

IV - Petronillo Carcedo

a) Backwages (same as Paciencia) = P25,840.00

b) Separation Pay

Sept. 16, 1984 to July 15, 2001

= P190.00 x 26 days x 17 yrs. / 2

= P41,990.00

c) 13th Month Pay

= P190.00 x 26 days

Total

= P4,940.00

= P72,770.00

V - Rolando Sasan, Sr.

a) Backwages

(same as Paciencia) = P25,840.00

b) Separation Pay

October 1989 to July 15, 2001

= P190.00 x 26 days x 12 yrs. / 2

= P29,640.00

c) 13th Month Pay

= P190.00 x 26 days

Total

= P4,940.00

= P60,420.00

VI - Leonilo Dayday

a) Backwages (same as Paciencia) = P25,840.00

b) Separation Pay

Feb. 8, 1983 to July 15, 2001

$$= P190.00 \times 26 \text{ days} \times 18 \text{ yrs.} / 2 = P44,460.00$$

c) 13th Month Pay

$$= P190.00 \times 26 \text{ days}$$

Total

$$= P4,940.00$$

$$= P75,240.00$$

VII - Eleuterio Sacil

a) Backwages

$$(\text{same as Paciencia}) = P25,840.00$$

b) Separation Pay

June 2, 1992 to July 15, 2001

$$= P190.00 \times 26 \text{ days} \times 9 \text{ yrs.} / 2 = P22,230.00$$

c) 13th Month Pay

$$= P190.00 \times 26 \text{ days}$$

Total

$$= P4,940.00$$

$$= P53,010.00$$

VIII - Mario Juntilla

a) Backwages

$$(\text{same as Pacencia}) = P25,840.00$$

b) Separation Pay

October 7, 1987 to July 15, 2001

$$= P190.00 \times 26 \text{ days} \times 14 \text{ yrs.} / 2 = P34,580.00$$

c) 13th Month Pay
= P190.00 x 26 days
Total

= P4,940.00
= P65,360.00

IX - Wilfredo Juegos

a) Backwages
(same as Pacencia)

= P25,840.00

b) Separation Pay
July 23, 1990 to July 15, 2001
= P190.00 x 26 days x 11 yrs. / 2 = P27,170.00

c) 13th Month Pay
= P190.00 x 26 days
Total = P4,840.00
= P57,950.00

X - Modesto Aguirre

a) Backwages
(same as Pacencia)

= P25,840.00

b) Separation Pay
= Jan. 5, 1992 to July 15, 2001
= P190.00 x 26 days x 9.5 yrs. / 2 = P23,465.00

c) 13th Month Pay
= P190.00 x 26 days
Total = P4,940.00

= P54,245.00

XI - Alejandro Ardimer

a) Backwages (same as Paciencia) = P25,840.00

b) Separation Pay

= Jan. 20, 1990 to July 15, 2001

= P190.00 x 26 days x 11.5 yrs. / 2 = P28,405.00

c) 13[th] Month Pay

= P190.00 x 26 days

Total = P4,940.00

= P59,185.00

x x x x

WHEREFORE, the foregoing premises considered, judgment is hereby rendered directing the respondents Equitable PCI Bank and Helpmate, Inc. to pay jointly and solidarily the complainants as follows:

1. Cesar Paciencia - P 43,130.00
2. Dominador Suico, Jr. - 32,015.00
3. Roland Mosquera - 33,250.00
4. Petronilo Carceda - 72,770.00
5. Roland Sasan, Sr. - 60,420.00
6. Leonilo Dayday - 75,240.00
7. Eleuterio Sacil - 53,010.00
8. Mario Juntilla - 65,360.00
9. Wilfredo Juegos - 57,950.00
10. Modesto Aguirre - 54,245.00
11. Alejandro Ardimer - 59,185.00

TOTAL - P606,575.00[18]

Aggrieved by the decision of Labor Arbiter Gutierrez, respondents E-PCIBank and HI appealed the same to the NLRC, 4[th] Division, stationed in Cebu City. Their appeals were docketed as NLRC Case No. V-000241-2002. In support of its allegation that it was a legitimate job contractor, HI submitted before the NLRC several documents which it did not present before Labor Arbiter Gutierrez. These are:

- Certificate of Filing of Certificate of Increase of Capital Stock, Certificate of Filing Amended Articles of

Incorporation, and General Information Sheet Stock Corporation of HI showing therein that it increased its authorized capital stock from P1,500,000.00 to P20,000,000.00 on 12 March 1999 with the Securities and Exchange Commission;

- Audited Financial Statement of HI showing therein that it has Total Assets of P20,939,935.72 as of 31 December 2000;

- Transfer Certificate of Title No. 110173 and Tax Declaration No. GR2K-09-063-00582 registered under the name of HI showing that it has a parcel of land with Market Value of P1,168,860.00 located along Rizal Avenue (now Bacalso Avenue), Cebu City, and

- Tax Declaration No. GR2K-09-063-00583 registered under the name of HI showing that it has a commercial building constructed on the preceding lot located along Bacalso Avenue, Cebu City with market value of P2,515,170.00.[19]

The NLRC promulgated its Decision on 22 January 2003 modifying the ruling of Labor Arbiter Gutierrez. The NLRC took into consideration the documentary evidence presented by HI for the first time on appeal and, on the basis thereof, declared HI as a highly capitalized venture with sufficient capitalization, which cannot be considered engaged in "labor-only contracting."

On the charge of illegal dismissal, the NLRC ruled that:

The charge of illegal dismissal was prematurely filed. The record shows that barely eight (8) days from 15 July 2001 when the complainants were placed on a temporary "off-detail," they filed their complaints on 23 July 2001 and amended their complaints on 22 August 2001 against the respondents on the presumption that their services were already terminated. Temporary "off-detail" is not equivalent to dismissal. x x x.[20]

The NLRC deleted Labor Arbiter Gutierrez's award of backwages and separation pay, but affirmed his award for 13[th] month pay and attorney's fees equivalent to ten percent (10%) of the 13[th] month pay, to the petitioners.[21] Thus, the NLRC decreed in its 22 January 2003 Decision, the payment of the following reduced amounts to petitioners:

WHEREFORE, premises considered, the decision of Labor Arbiter Jose G. Gutierrez dated 7 January 2002 is MODIFIED, to wit:

Ordering respondents Helpmate, Inc. and Equitable PCI Bank to jointly and severally[22] pay the complainants of their 13[th] month pay and attorney's fees in the aggregate amount of Forty-Three Thousand Four Hundred Seventy-Two and 00/100 (P43,472.00), broken down as follows:

1. Aguirre, Modesto

- P 5,434.00

2. Ardimer, Alejandro - 5,434.00

3. Carcedo, Petronilo - 5,434.00

4. Dayday, Leonilo - 5,434.00

5. Juegos, Wilfredo - 5,434.00

6. Juntilla, Mario - 5,434.00

7. Paciencia, Cesar - 5,434.00

8. Sacil, Eleuterio - 5,434.00

TOTAL P43,472.00[23]

Petitioners' Motion for Reconsideration was denied by the NLRC in its Resolution dated 1 July 2003.[24]

Distressed by the decision of the NLRC, petitioners sought recourse with the Court of Appeals by filing a Petition for Certiorari[25] under Rule 65 of the 1997 Rules of Civil Procedure docketed as CA-G.R. SP No. 79912.

In its Decision dated 24 April 2006, the Court of Appeals affirmed the findings of the NLRC that HI was a legitimate job contractor and that it did not illegally dismiss petitioners:

As to the question of whether or not, as a legitimate independent job contractor, respondent HI illegally dismissed the petitioners. We rule in the negative.

It is undisputed that the contract between respondent HI and its client E-PCIBank expired on July 15, 2000. The record shows that after said expiration, respondent HI offered the petitioners new work assignments to various establishments which are HI's clients. The petitioners, therefore, were not even placed on "floating status." They simply refused, without justifiable reason, to assume their new work assignments which refusal was tantamount to abandonment. There being no illegal dismissal, petitioners are not entitled to backwages or separation pay.[26]

The fallo of the 24 April 2006 Decision of the appellate court reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us DENYING the petition filed in this case and AFFIRMING the decision of the NLRC, Fourth Division, in NLRC Case No. V-000145-2003 promulgated on June 22, 2003.[27]

Petitioners now come before us via the instant Petition raising the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ACTED IN EXCESS OF THEIR JURISDICTION AND/OR COMMITTED GRAVE ABUSE OF DISCRETION IN UPHOLDING THE NLRC 4[TH] DIVISION'S DECISION AND GRAVELY ERRED IN:

- ACCEPTING AND APPRECIATING THE PIECES OF EVIDENCE SUBMITTED BY RESPONDENTS DURING APPEAL, ALL EXISTING DURING THE TIME THE NLRC RAB 7'S TRIAL, CONTRARY TO THIS HONORABLE COURT'S PREVIOUS ESTABLISHED DECISIONS.
- REVERSING, WITHOUT ANY LEGAL BASIS, THE FACTUAL FINDING OF NLRC RAB 7 THAT THE RESPONDENT HI WAS LABOR ONLY CONTRACTOR.
- RULING, WITHOUT ANY LEGAL BASIS, THAT THE ILLEGAL DISMISSAL COMPLAINTS WERE PREMATURELY FILED.[28]

Before proceeding to the substantive issues, we first address the procedural issues raised by petitioners.

Petitioners object to the acceptance and consideration by the NLRC of the evidence presented by HI for the first time on appeal. This is not a novel procedural issue, however, and our jurisprudence is already replete with cases[29] allowing the NLRC to admit evidence, not presented before the Labor Arbiter, and submitted to the NLRC for the first time on appeal. Technical rules of evidence are not binding in labor cases. Labor officials should use every reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.[30]

The submission of additional evidence before the NLRC is not prohibited by its New Rules of Procedure. After all, rules of evidence prevailing in courts of law or equity are not controlling in labor cases. The NLRC and labor arbiters are directed to use every and all reasonable means to ascertain the facts in each case speedily and

objectively, without regard to technicalities of law and procedure all in the interest of substantial justice. In keeping with this directive, it has been held that the NLRC may consider evidence, such as documents and affidavits, submitted by the parties for the first time on appeal. The submission of additional evidence on appeal does not prejudice the other party for the latter could submit counter-evidence.[31]

In *Clarion Printing House, Inc. v. National Labor Relations Commission*,[32] we again emphasized that:

[T]he NLRC is not precluded from receiving evidence, even for the first time on appeal, because technical rules of procedure are not binding in labor cases.

The settled rule is that the NLRC is not precluded from receiving evidence on appeal as technical rules of evidence are not binding in labor cases. In fact, labor officials are mandated by the Labor Code to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process. Thus, in *Lawin Security Services v. NLRC*, and *Bristol Laboratories Employees' Association-DFA v. NLRC*, we held that even if the evidence was not submitted to the labor arbiter, the fact that it was duly introduced on appeal to the NLRC is enough basis for the latter to be more judicious in admitting the same, instead of falling back on the mere technicality that said evidence can no longer be considered on appeal. Certainly, the first course of action would be more consistent with equity and the basic notions of fairness.

For the same reasons, we cannot find merit in petitioners' protestations against the documentary evidence submitted by HI because they were mere photocopies. Evidently, petitioners are invoking the best evidence rule, espoused in Section 3, Rule 130 of the Rules of Court. It provides that:

Section 3. - Original document must be produced; exceptions. - When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself x x x.

The above provision explicitly mandates that when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself. Notably, certified true copies of these documents, acceptable under the Rules of Court[33] were furnished to the petitioners. Even assuming that petitioners were given mere photocopies, again, we stress that proceedings before the NLRC are not covered by the technical rules of evidence and procedure as observed in the regular courts. Technical rules of evidence do not apply if the decision to grant the petition proceeds from an examination of its sufficiency as well as a careful look into the arguments contained in position papers and other documents.[34]

Petitioners had more than adequate opportunity when they filed their motion for reconsideration before the NLRC, their Petition to the Court of Appeals and even to this Court, to refute or present their counter-evidence to the documentary evidence presented by HI. Having failed in this respect, petitioners cannot now be heard to complain about these documentary evidences presented by HI upon which the NLRC and the Court of Appeals based its finding that HI is a legitimate job contractor.

The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, a fair and reasonable opportunity to explain one's side. It is also an opportunity to seek a reconsideration of the action or ruling complained of. It is not the denial of the right to be heard but denial of the opportunity to be heard that constitutes violation of due process of law. Petitioners herein were afforded every opportunity to be heard and to seek reconsideration of the adverse judgment against them. They had every opportunity to strengthen their positions by presenting their own substantial evidence to controvert those submitted by E-PCIBank and HI before the NLRC, and even before the Court of Appeals. It cannot win its case by merely raising unsubstantiated doubt or relying on the weakness of the adverse parties' evidence.

We now proceed to the resolution of the substantive issues submitted by petitioners for our consideration,

particularly, whether HI is a labor-only contractor and E-PCIBank should be deemed petitioners' principal employer; and whether petitioners were illegally dismissed from their employment.

Permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out to a contractor or subcontractor the performance or completion 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.[35] A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur:

- (a) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;
- (b) The contractor or subcontractor has substantial capital or investment; and
- (c) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.[36]

In contrast, labor-only contracting, a prohibited act, is an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal.[37] In labor-only contracting, the following elements are present:

- (a) The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility; and
- (b) The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal.[38]

In distinguishing between permissible job contracting and prohibited labor-only contracting,[39] we elucidated in *Vinoya v. National Labor Relations Commission*,[40] that it is not enough to show substantial capitalization or investment in the form of tools, equipment, etc. Other facts that may be considered include the following: 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 and manner or terms of payment.[41] Simply put, the totality of the facts and the surrounding circumstances of the case are to be considered.[42] Each case must be determined by its own facts and all the features of the relationship are to be considered.[43]

In the case at bar, we find substantial evidence to support the finding of the NLRC, affirmed by the Court of Appeals, that HI is a legitimate job contractor.

We take note that HI has been issued by the Department of Labor and Employment (DOLE) Certificate of Registration[44] Numbered VII-859-1297-048. The said certificate states among other things:

"CERTIFICATE OF REGISTRATION

Numbered VII-859-1297-048

is issued to

HELPMATE, INCORPORATED

330 N. Bacalso Avenue, Cebu City

for having complied with the requirements as provided for under the Labor Code, as amended, and its Implementing Rules and having paid the registration fee in the amount of ONE HUNDRED PESOS (P100.00) per Official Receipt Number 9042769, dated October 16, 1997.

In witness whereof, and by authority vested in me by the Labor Code, as amended, and its Implementing Rules specifically Department Order No. 10 series of 1997, I have hereunto set my hand and affixed the Official on this 23[rd] day of December 1997."[45]

Having been issued by a public officer, this certification carries with it the presumption that it was issued in the regular performance of official duty.[46] In the absence of proof, petitioner's bare assertion cannot prevail over this presumption. Moreover, the DOLE being the agency primarily responsible for regulating the business of independent job contractors, we can presume in the absence of evidence to the contrary that it thoroughly evaluated the requirements submitted by HI as a precondition to the issuance of the Certificate of Registration.

The evidence on record also shows that HI is carrying on a distinct and independent business from E-PCIBank. The employees of HI are assigned to clients to perform janitorial and messengerial services, clearly distinguishable from the banking services in which E-PCIBank is engaged.

Despite the afore-mentioned compliance by HI with the requisites for permissible job contracting, Labor Arbiter Gutierrez still declared that HI was engaged in prohibited labor-only contracting because it did not possess substantial capital or investment to actually perform the job, work or service under its own account or responsibility. Both the NLRC and the Court of Appeals ruled to the contrary, and we agree.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipments, 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.[47] An independent contractor must have either substantial capital or investment in the form of tools, equipment, machineries, work premises, among others. The law does not require both substantial capital and investment in the form of tools, equipment, machineries, etc.[48] It is enough that it has substantial capital. In the case of HI, it has proven both.

We have expostulated that once it is established that an entity such as in this case, HI has substantial capital, it was no longer necessary to adduce further evidence to prove that it does not fall within the purview of "labor-only" contracting.[49] There is even no need for HI to refute the contention of petitioners that some of the activities they performed such as those of messengerial services are directly related to the principal business of E-PCIBank.

In any event, we have earlier declared that while these services rendered by the petitioners as janitors, messengers and drivers are considered directly related to the principal business of a bank, in this case E-PCIBank, nevertheless, they are not necessary in the conduct of its (E-PCIBANK's) principal business.[50]

HI has substantial capital in the amount of P20,939,935.72. It has its own building where it holds office and it has been engaged in business for more than a decade now.[51] As observed by the Court of Appeals, surely, such a well-established business entity cannot be considered a labor-only contractor.

Etched in an unending stream of cases are four standards in determining the existence of an employer-employee relationship, 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." [52]

The presence of the first requisite for the existence of an employer-employee relationship to wit, the selection and engagement of the employee is shown by the fact that it was HI which selected and engaged the services of petitioners as its employees. This is fortified by the provision in the contract of services between HI and E-PCIBank which states:

Selection, Engagement, Discharge. [HI] shall have exclusive discretion in the selection, engagement, investigation, discipline and discharge of its employees.[53]

On the second requisite regarding the payment of wages, it was HI who paid petitioners their wages and who provided their daily time records and uniforms and other materials necessary for the work they performed. Therefore, it is HI who is responsible for petitioner's claims for wages and other employee's benefits. Precisely, the contract of services between HI and E-PCIBank reveals the following:

Indemnity for Salaries and Benefits, etc. [HI] shall be responsible for the salaries, allowances, overtime and holiday pay, and other benefits of its personnel including withholding taxes.[54]

As to the third requisite on the power to control the employee's conduct, and the fourth requisite regarding the power of dismissal, again E-PCIBank did not have the power to control petitioners with respect to the means and methods by which their work was to be accomplished. It likewise had no power of dismissal over the petitioners. All that E-PCIBank could do was to report to HI any untoward act, negligence, misconduct or malfeasance of any employee assigned to the premises. The contract of services between E-PCIBank and HI is noteworthy. It states:

[HI] shall have the entire charge, control and supervision over all its employees who may be fielded to [E-PCIBank]. For this purpose, [HI] shall assign a regular supervisor of its employees who may be fielded to the Bank and which regular supervisor shall exclusively supervise and control the activities and functions defined in Section 1 hereof. x x x.[55]

All these circumstances establish that HI undertook said contract on its account, under its own responsibility, according to its own manner and method, and free from the control and direction of E-PCIBank. Where the control of the principal is limited only to the result of the work, independent job contracting exists. The janitorial service agreement between E-PCIBank and HI is definitely a case of permissible job contracting.

Considering the foregoing, plus taking judicial notice of the general practice in private, as well as in government institutions and industries, of hiring an independent contractor to perform special services,[56] ranging from janitorial, security and even technical services, we can only conclude that HI is a legitimate job contractor. As such legitimate job contractor, the law creates an employer-employee relationship between HI and petitioners[57] which renders HI liable for the latter's claims.

In view of the preceding conclusions, petitioners will never become regular employees of E-PCIBank regardless of how long they were working for the latter.[58]

We further rule that petitioners were not illegally dismissed by HI. Upon the termination of the Contract of Service between HI and E-PCIBank, petitioners cannot insist to continue to work for the latter. Their pull-out from E-PCIBank did not constitute illegal dismissal since, first, petitioners were not employees of E-PCIBank; and second, they were pulled out from said assignment due to the non-renewal of the Contract of Service between HI and E-PCIBank. At the time they filed their complaints with the Labor Arbiter, petitioners were not even dismissed by HI; they were only "off-detail" pending their re-assignment by HI to another client. And when they were actually given new assignments by HI with other clients,[59] petitioners even refused the same. As the NLRC pronounced, petitioners' complaint for illegal dismissal is apparently premature.

WHEREFORE, premises considered, the Petition is DENIED for lack of merit. The Decision dated 24 April 2006

and Resolution dated 31 October 2006 of the Court of Appeals are AFFIRMED. Costs against petitioners.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Azcuna,[*] and Nachura, JJ., concur.

* Per Special Order No. 521, dated 29 September 2008, signed by Chief Justice Reynato S. Puno, designating Associate Justice Adolfo S. Azcuna to replace Associate Justice Ruben T. Reyes, who is on official leave.

[1] Penned by Associate Justice Isaias P. Dicdican with Associate Justices Ramon M. Bato, Jr. and Enrico A. Lanzanas; rollo, pp. 159-167.

[2]Rollo, p. 169.

[3]Now Banco De Oro Unibank; rollo, p. 489.

[4]Records are silent as to the date of the initial Contract for Services between HI and E-PCIBank; rollo, p. 383.

[5]Commenced work on 27 October 1989 as driver; rollo, p. 46.

[6] Commenced work on 8 February 1983 janitor-messenger; id.

[7] Commenced work on 15 June 1992 as janitor-messenger; id.

[8] Commenced work on 20 January 1990 as electrician; id.

[9]Commenced work on 2 June 1992 as driver-messenger; id.

[10] Commenced work on 23 July 1990 as driver-messenger; id.

[11] Commenced work on 16 September 1984 as janitor-messenger; id.

[12]Commenced work on 10 June 1996 as driver-messenger; id.

[13]The original complainants before the Labor Arbiter included Dominador Suico, Jr., Roland Mosquera and Mario Juntilla. These three later accepted and reported to their new assignments; rollo, p. 66.

[14] Complaints of Alejandro Ardimer, Eleuterio Sacil, Leonilo Dayday, Rolando Sasan, Sr., Modesto Aguirre, Petronilo Carcedo, Cesar Paciencia, Wilfredo Juegos; rollo, pp. 24-45.

[15] Dominador Suico, Jr. and Roland Mosquera did not amend their complaint to include a claim for 13th month pay; rollo, p. 73.

[16]Book VII, Rule VIII, sec. (d) Contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion 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 as hereinafter qualified.

Subject to the provision of Section 6, 7 and 8 of this Rule, contracting or subcontracting shall be legitimate if the following circumstance concur:

(i) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility, according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof.

(ii) The contractor or subcontractor has substantial capital or investment; and

(iii) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.

[17] Rollo, p. 71.

[18] Id. at 73-77.

[19] Rollo, pp. 119-120.

[20] Id. at 124-125.

[21] Petitioner Rolando Sasan, Sr. was not awarded 13th month pay because according to the NLRC, he did not amend his Complaint to include a prayer for such award. (Rollo, p. 131.)

[22] The Labor Code provides for the solidary liability of any person, partnership, association or corporation which not being an employer contracts with an independent contractor.

Pertinent provisions of the Labor Code are hereunder quoted:

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.

ART. 109. Solidary liability. - The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

[23] Rollo, p. 127.

[24] Id. at 129.

[25] Id at 133.

[26] Id. at 166.

[27] Id.

[28] Id. at 531-532.

[29] *Mayon Hotel and Restaurant v. Adana*, G.R. No. 157634, 16 May 2005, 458 SCRA 609, 628; *Genuino Ice Co. v. Magpantay*, G.R. No. 147790, 27 June 2006, 493 SCRA 195, 204.

Art. 221 of the Labor Code is clear:

Art. 221. Technical rules not binding and prior resort to amicable settlement. - In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling x x x.

[30] *Panlilio v. National Labor Relations Commission*, 346 Phil. 30, 35-36 (1997).

[31] *NFD International Manning Agents v. National Labor Relations Commission*, G.R. No. 116629. 16 January 1998, 284 SCRA 239, 245; see also *Tanjuan v. Philippine Postal Savings Bank, Inc.*, 457 Phil. 993, 1005 (2003);

Andaya v. National Labor Relations Commission, G.R. No. 157371, 15 July 2005, 463 SCRA 577, 584.

[32] G.R. No. 148372, 27 June 2005, 461 SCRA 272, 289.

[33] Sec. 24. Proof of official records. - The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. (RULES OF COURT, Rule 132.)

[34] See *Furusawa Rubber Philippines, Inc. v. Secretary of Labor and Employment*, 347 Phil. 293, 300-301 (1997).

[35] Omnibus Rules Implementing the Labor Code, Book III, Rule VIII-A, Section 4(d).

[36] *Id.*

[37] Omnibus Rules Implementing the Labor Code, Book III, Rule VIII-A, 16 Section 4(d).

[38] *Vinoya v. National Labor Relations Commission*, 381 Phil. 460, 472 (2000).

[39] 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.

On the other hand, in labor-only contracting, the statute creates an employer-employee relationship for a comprehensive purpose: to prevent a circumvention of labor laws. The contractor is considered merely an agent of the principal employer and the latter is responsible to the employees of the labor-only contractor as if such employees had been directly employed by the principal employer. The principal employer therefore becomes solidarity liable with the labor-only contractor for all the rightful claims of the employees (*San Miguel Corporation v. MAERC Integrated Services, Inc.*, 453 Phil. 543, 566-567 (2003)).

[40] *Supra* note 38.

[41] *Acevedo v. Advanstar Company, Inc.*, G.R. No. 157656, 11 November 2005, 474 SCRA 656, 668.

[42] *San Miguel Corporation v. MAERC Integrated Services, Inc.*, *supra* note 39.

[43] *Encyclopedia Britannica (Phils), Inc. v. National Labor Relations Commission*, 332 Phil. 1, 9 (1996).

[44] *Rollo*, p. 68.

[45] *Id.* at 69.

[46] *Dr. Grieve v. Judge Jaca*, 465 Phil. 825, 831 (2004).

[47] *Manaya v. Alabang Country Club, Incorporated*, G.R. No. 168988, 19 June 2007, 525 SCRA 140, 157-158.

[48] See *Neri v. National Labor Relations Commission*, G.R. Nos. 97008-09, 21 July 1993, 224 SCRA 717-721.

[49] *Id.*

[50] *Id.*

[51] Rollo, p. 165.

[52] De los Santos v. National Labor Relations Commission, 423 Phil. 1020, 1029 (2001).

[53] Rollo, p. 385.

[54] Id. at 384.

[55] Id. at 385.

[56] Filsyn v. National Labor Relations Commission, 327 Phil. 144, 150 (1996); Kimberly Independent Labor Union For Solidarity, Activism and Nationalism-Organized Labor Association In Line Industries and Agriculture v. Drilon, G.R. No. 77629, 9 May 1990, 185 SCRA 190, 204; Coca Cola Bottlers v. National Labor Relations Commission, 366 Phil. 581, 589 (1999).

[57] Philippine Bank of Communications v. National Labor Relations Commission, 230 Phil. 430, 439 (1986).

[58] Extension of service contract is not a source of employer-employee relation. (Philippine Airlines, Inc. v. National Labor Relations Commission, 358 Phil. 919, 936 [1998].)

[59] Rollo, p. 122.

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