

SHIPSIDE, INCORPORATED, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION AND TITA ABEJON, EDUARDO ALVIARNE, FELICIANO ALVIARNE, LIBERATO AMITA, ANACLETO ANCHETA, RICARDO ANCH...

G.R. No. 50358. November 02, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

Petition for certiorari with preliminary injunction to set aside the decision[1] of respondent National Labor Relations Commission dated October 11, 1978, which affirmed the decision of the Labor Arbiter dated November 22, 1977 issued in NLRC Case No. RB-1-38-78, entitled "Tita Abejon, et al., versus La Union Stevedores, Inc. and Shipside, Incorporated", declaring La Union Stevedores, Inc. and Shipside, Incorporated jointly and severally liable to pay herein private respondents their separation pay and the equivalent of their respective two-month salary as penalty for non-compliance with the clearance requirement of the Labor Code, and the said respondent Commission's en banc resolution[2] of February 9, 1979 denying herein petitioner's motion for reconsideration, as well as the Order[3] of the said Labor Arbiter dated April 6, 1979, directing the immediate execution of the aforestated decision and/or resolution.

Briefly, the records show the following undisputed facts: Petitioner Shipside, Incorporated, hereinafter referred to as SHIPSIDE, is a domestic corporation engaged in the hand-ling in bulk of all kinds of materials, products and supplies, and operates harbor and wharfage facilities capable of ser-viceing ocean vessels of deep draft at Barrio Poro, San Fernando, La Union.

On December 27, 1963, SHIPSIDE entered into a "Contract for Services"[4] with La Union Stevedores, Inc., hereinafter referred to as STEVEDORES, a stevedoring company, whereby the former shall give the exclusive right to handle stevedoring services to the latter on all ships that may load or unload cargo at the piers and/or wharves owned and/or controlled by the former in the Port of San Fernando, La Union. The terms and conditions of the contract were as follows:

"(1) Stevedoring work shall embrace the handling of cargo from the ship to the pier and/or from the pier to the ship;

"(2) STEVEDORES shall furnish all the labor needed for the stevedoring work;

"(3) Charges for all stevedoring shall be billed through SHIPSIDE to the shipping company, shipper or consignee, as the case may be. Stevedoring rate to be charged will be worked out by both parties in accordance with standard stevedoring practice, with mutual consent of both parties;

"(4) STEVEDORES shall present its payroll to SHIPSIDE for payment after every operation, and the former shall be responsible in paying its own men individually;

"(5) The net balance from the stevedoring charges collected by SHIPSIDE from the shipping company, shipper

or consignee, as the case may be, after the payroll of STEVEDORES and other operating expenses incurred by STEVEDORES and SHIPSIDE shall have been deducted, will be equally divided between SHIPSIDE and STEVEDORES on a fifty-fifty basis;

"(6) SHIPSIDE shall guarantee the exclusive right of STEVEDORES to do the stevedoring work that may be contracted by the former; while STEVEDORES guarantees not to enter into any contract with any other party or entity for any stevedoring work at the piers and/or wharves owned and/or controlled by SHIPSIDE, without courting the same to SHIPSIDE. STEVEDORES further guarantees to supply all the labor required by SHIPSIDE at all times.

"This contract shall take effect on January 1, 1964, and shall not be terminated by either party unless a three-month termination notice in writing shall have been given to either party. Any violation of the provisions of this contract by either party shall make the guilty party liable for damages that may be suffered by the innocent party, in addition to attorney's fee and other expenses if and when the same is ventilated in the courts of justice."

Pursuant to the above-quoted contract, Stevedores hired private respondents to constitute its labor force.

On August 28, 1974, SHIPSIDE informed STEVEDORES that three (3) months after September 1, 1974, or effective as of the close of business on November 30, following, the aforestated contract would be terminated because of financial reverses. SHIPSIDE, however, proffered its readiness to absorb the operating personnel of STEVEDORES from the lowest rank of stevedores up to the rank of foreman who desire to work under its employ on a vessel to vessel basis, as it would thereafter undertake the stevedoring work independently by itself. Thus, SHIPSIDE requested STEVEDORES to submit a roster of its operating personnel as aforestated who desires to work for the former.[5]

The business relations between SHIPSIDE and STEVEDORES was finally terminated on November 30, 1974, and as a result thereof, several stevedores and office personnel found themselves out of job. Since the dismissed employees, private respondents herein among them, received no separation benefits, said respondents filed their complaint against SHIPSIDE and STEVEDORES sometime in February 1975 for separation pay with the Ministry of Labor, subject of NLRC Case No. RB-1-38-78.

After due hearing, the Labor Arbiter assigned on the case rendered judgment on November 22, 1977, declaring both SHIPSIDE and STEVEDORES the employers of private respondents by virtue of the aforestated "Contract for Services", which said Arbiter construed to be either a "joint venture" or a "partnership" and therefore, jointly and severally liable for the separation pay claimed by private respondents. SHIPSIDE and STEVEDORES were also adjudged liable for an additional amount equivalent to two months salary for each of the private respondents, as penalty for their failure to file or submit with the Ministry of Labor the necessary clearance application or report of the termination of private respondents' employment as required by the new Labor Code.

On separate appeal by SHIPSIDE and STEVEDORES, the above judgment of the Labor Arbiter was affirmed by the respondent Commission in its decision of October 11, 1978, as earlier indicated. The motion for reconsideration of SHIPSIDE was likewise denied by the respondent Commission, sitting en banc, in the resolution of February 9, 1979. Hence, the present recourse. As prayed for, a temporary restraining order was issued on May 7, 1979, restraining the respondent Commission, its agents or representatives, from enforcing and/or carrying out the questioned decision, resolution and writ of execution dated October 11, 1978, February 9, 1979 and April 6, 1979, respectively.

The crux of the present controversy hinges on the question of whether or not SHIPSIDE can be held liable for the money benefits, claimed by private respondents herein, which in turn requires resolution of the more basic and

fundamental issue of existence of employer-employee relationship between SHIPSIDE and private respondents, for in the absence of such relationship the latter have no cause of action against the former.[6]

In determining the existence of employer-employee relationship, the following elements are generally considered, namely; (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct - although the latter is the most important element.[7]

Tested from the foregoing criteria, in connection with the features of the relationship between the parties in this case as may be shown hereunder, We fail to see how SHIPSIDE can be considered as the employer of private respondents, who undisputedly were the employees of STEVEDORES. The records do not show any participation on the part of SHIPSIDE with respect to the selection and engagement of the individual stevedores who will constitute the labor force of STEVEDORES. Who the individual stevedores will be and under what terms and conditions their services will be rendered are matters determined not by SHIPSIDE, but by STEVEDORES. Neither is there any direct employment relationship between SHIPSIDE and private respondents. The former has no separate individual contracts with the latter whose only possible connection with SHIPSIDE is through STEVEDORES which contracted them and in whose favor their services were rendered, thus enabling STEVEDORES to fulfill its contractual obligations with SHIPSIDE. Withal, the individual stevedores, who were not known to SHIPSIDE which dealt only with STEVEDORES on matters pertaining to the contracted task, cannot perform any stevedoring service for SHIPSIDE unless STEVEDORES first accepts them as such.

Under the arrangement between SHIPSIDE and STEVEDORES, the former has no hand in deciding how much salary is to be paid each of the individual stevedores. Payment of such salary is made not by SHIPSIDE, but by STEVEDORES to the individual stevedores and said amount is beyond the power of SHIPSIDE to determine, which merely paid STEVEDORES the aggregate amount as indicated in the payroll of the latter presented after every operation to the former for payment, pursuant to their contract for services. Neither does SHIPSIDE reserve the power to dismiss the individual stevedores, as We fail to see any evidence on record that it wielded such power.

We likewise found nothing in the records which would indicate that private respondents were under the control of SHIPSIDE in respect of the means and methods they employed in the performance of their work, to be considered as the employees of the latter.[8] On the contrary, it is sufficiently established that STEVEDORES exercised supervision and control over its labor force. If in the course of private respondents' work, SHIPSIDE occasionally issued instructions to them, that alone does not in the least detract from the fact that only STEVEDORES is the employer of private respondents, for in legal contemplation, such instructions carry no more weight than mere requests, the privity of contract being between SHIPSIDE and STEVEDORES, not between the former and the private respondents. Corollarily, such giving of instruction inevitably springs from SHIPSIDE's right predicated on the "Contract for Services" entered into by it with STEVEDORES.

There are other considerations that militate against a finding of employer-employee relationship between SHIPSIDE and private respondents. To start with, the contract between the former and STEVEDORES had already expired or terminated in accordance with the last paragraph thereof, as earlier quoted. Indeed, after the expiration of said contract, SHIPSIDE does the stevedoring work by itself and in fact had offered to absorb the operating personnel of STEVEDORES from the lowest rank of stevedores up to the rank of foreman who desire to work under its employ on a vessel to vessel basis, but for one reason or another, private respondents rejected said offer, although some of the stevedores who found themselves out of job by reason of the termination of said contract, had accepted the offer and were thereupon hired by SHIPSIDE. In other words, to now hold private respondents as the employees of SHIPSIDE and therefore entitled to labor benefits as such, would not only be

unfair to the latter, but would likewise violate its exclusive prerogative to determine whether it should enter into an employment contract or not.

As succinctly held in *Allied Free Workers' Union v. Compania Maritima*, 19 SCRA 258, 277:

"Lastly, to uphold the court a quo's conclusion would be tantamount to the imposition of an employer-employee relationship against the will of MARITIMA. This cannot be done, since it would violate MARITIMA's exclusive prerogative to determine whether it should enter into an employment contract or not, i.e., whether it should hire others or not. In *Pampanga Bus Co. vs. Pambusco Employees' Union*, We said:

'x x x The general right to make a contract in relation to one's business is an essential part of the liberty of the citizens protected by the due process clause of the constitution. The right of a laborer to sell his labor to such person as he may choose is, in its essence, the same as the right of an employer to purchase labor from any person who it chooses. The employer and the employee have thus an equality of right guaranteed by the constitution. If the employer can compel the employee to work against the latter's will, this is servitude. If the employee can compel the employer to give him work against the employer's will, this is oppression.

What legal relationship existed between SHIPSIDE and STEVEDORES is a matter We cannot touch in this present petition, the same being sub-judice, it appearing that prior to the institution of this suit sometime in February 1975, STEVEDORES had filed a petition^[9] against SHIPSIDE on December 2, 1974 in the Court of First Instance of La Union, docketed as Civil Case No. 2624, for accounting, dissolution and winding up of partnership, wherein the concomitant issue of whether a partnership and not simply a contract for services existed between the parties therein is raised. Said case appears to be still pending before said court, of which the labor arbiter was properly apprised when SHIPSIDE had filed a motion to dismiss the labor case, stating among others, that said civil case constitutes a pre-judicial question determinative of the Validity of private respondents' claim which is grounded on the theory that SHIPSIDE and STEVEDORES being then "joint adventurers" or "partners" in the stevedoring business, were their employers and are therefore liable for their claim. As such, said labor arbiter should have refrained from declaring the questioned contract for services as a partnership or joint venture arrangement if only to give due deference to the well-settled rule, assuming that the labor arbiter or respondent Commission has jurisdiction to resolve the issue concurrently with the Court of First Instance, that when two or more courts have concurrent jurisdiction, the first validly acquiring jurisdiction does so to the exclusion of all other courts. As the Court of First Instance had previously assumed jurisdiction over the particular issue, it is unwarranted for the labor arbiter to pass upon this issue and for the respondent Commission to uphold such undue assumption of jurisdiction by the labor arbiter. Moreover, even assuming that the contract for services could partake of the nature of a joint venture, or that of a partnership agreement, that does not by itself justify the holding that SHIPSIDE may also be considered as the employer of the employees of STEVEDORES absent a showing of the criteria above set forth.

Not being an employer of private respondents herein, SHIPSIDE has no duty to file or submit with the Ministry of Labor the necessary clearance application or report of the termination of the services of private respondents. In so far as SHIPSIDE is concerned, there is no termination of employment to speak of, but merely a termination of its contract for services with STEVEDORES.

WHEREFORE, the petition is hereby granted. The questioned decision, resolution and order are hereby set aside in so far as they hold petitioner liable to herein private respondents for the money claims therein stated. The temporary restraining order heretofore issued is hereby made permanent. No costs.

SO ORDERED.

Makasiar, (Chairman), Aquino, Concepcion, Jr., Guerrero, and Escolin, JJ., concur.

Abad Santos, J., no part.

[1] Annex "A" Petition, pp. 21-34, Rollo.

[2] Annex "B" Petition, pp. 35-41, Id.

[3] Annex "C" Petition, pp. 42-45, Id.

[4] Annex "D" Petition, pp. 47-48, Id.

[5] Annex "E" Petition, pp. 49-50, Id.

[6] Cruz v. Manila Hotel Co., 101 Phil 358, cited in Investment Planning Corp. v. Social Security System, 21 SCRA 924.

[7] Viaña v. Al-Lagadan, 99 Phil 408; Social Security System v. Court of Appeals, 39 SCRA 629; Mafinco Trading Corporation v. Ople, 70 SCRA 139.

[8] see LVN Pictures v. Philippine Musicians Guild, 1 SCRA 132; Social Security System v. Court of Appeals, 26 SCRA 458; Social Security System v. Court of Appeals, 30 SCRA 210.

[9] Annex "G" Petition, p. 56, Rollo.

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