

**BARANGA MANUFACTURING AND EXPORT CORPORATION,
PETITIONER, VS. MINISTER OF LABOR, DIRECTOR OF REGION IV,
MINISTRY OF LABOR, SHERIFF OF NATIONAL LABOR RELATIONS
COMMISSION, NATION...**

G.R. No. 50555. September 30, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the exemption of an alleged financially distressed corporation from the payment of the emergency allowance and the thirteenth month pay required in Presidential Decrees Nos. 525 and 851, respectively.

The petitioner is a footwear manufacturer with an office at 14 M. H. del Pilar Street, Calumpang, Marikina, Metro Manila. It was incorporated on July 9, 1975 by the spouses Felipe R. Veneracion and Andrea O. Veneracion, the spouses Eulogio B. Ignacio and Perla M. Ignacio, and Ponciano E. Rivera, Jr. (Annex 8 of NLU's Comment).

Its authorized capital was P300,000. It had a subscribed capital of P60,000 and a paid-up capital of P25,000. (Annex 8 of NLU's Comment). On December 15, 1977, the Central Bank certified that the petitioner was an export-oriented firm (p. 1, Comment and Memo of Solicitor General).

According to the petitioner, the Wage Commission found it to be a "distressed" corporation which sustained losses amounting to P208,270 as of December 31, 1976, thus supposedly impairing its paid-up capital by 73.07% (pp. 4 and 62, Rollo).

In a final and unappealable decision dated November 24, 1977, Acting Secretary of Labor Amado G. Inciong approved petitioner's application for exemption from the obligation to pay the additional cost-of-living allowance (amounting to sixty pesos) prescribed in Presidential Decree No. 1123. The exemption was effective for the one-year period starting on May 1, 1977, when that decree took effect (Annex 3 of NLU's Comment).

On December 7 (not 19), 1977, the National Labor Union, allegedly in representation of its 152 members, filed with Manila Region IV of the Department of Labor a complaint against the petitioner for nonpayment of the emergency and additional cost-of-living allowances and the thirteenth month pay.

After hearing and the filing of position papers, the regional director issued an order dated October 23, 1978, directing the petitioner or employer to pay the total sum of P162,552.25 as emergency allowance and thirteenth month pay of the 152 workers listed therein (Annex B of Petition).

In that order, the emergency allowance was computed up to April, 1977. The Director noted that, while the petitioner was exempted from paying the additional cost-of-living allowance under Presidential Decree No. 1123 because it was a "distressed employer", it would not follow that it should be exempted from the payment of the emergency allowance and the thirteenth month pay since it did not apply for such exemption.

That order of the director was affirmed by the Minister of Labor through his Deputy Minister in his order of February 5, 1979. The Deputy Minister in another order dated May 10, 1979 denied petitioner's motion for reconsideration.

The execution of the award for P162,552.25 was stayed when the petitioner posted a surety bond for that amount executed by Zenith Insurance Corporation.

A few days later, or on May 18, the petitioner filed this special civil action of certiorari for the purpose of annulling the regional director's decision, as affirmed by the Deputy Minister of Labor, requiring the petitioner to pay P162,552.25 as thirteenth month pay and emergency allowance.

Pursuant to this Court's resolution of September 10, 1980, the director recomputed the total amount allegedly due from the petitioner. The amount was reduced to P128, 979.51.

That reduction is an indication that this case was not thoroughly threshed out by the administrative agencies concerned. Not all the factual issues raised by the parties had been squarely resolved.

1. The regional director and the Minister of Labor failed to resolve the issue of whether respondent National Labor Union has the authority to represent the one hundred fifty claimants in this case. According to the certification of the Labor Organizations Division of the Bureau of Labor Relations the said union "has no chapter at Baranga Manufacturing & Export Corporation". It has a chapter at the Baranga Enterprises, an entity distinct from the petitioner and with which it has allegedly no connection at all (p. 101, Rollo).

Moreover, thirty-two claimants in their letter of May 7, 1979 to the petitioner alleged that they did not authorize the said union to file claims in their behalf (p. 102, Rollo).

On the other hand, the union counters that the 150 claimants filed applications for membership with the said union and, therefore, it is their legitimate representative.

To resolve that issue, the 150 claimants, if unable to appear and testify, should at least submit to the regional director their affidavits as to (a) their personal circumstances, (b) the period when they worked for the petitioner, (c) the amounts which they received as compensation and (d) whether they are members of the union and have authorized it to file claims for the emergency allowance and the thirteenth month pay.

The petitioner in a pleading filed with the Ministry of Labor manifested that it would submit "a detailed refutation of the findings of the Director with respect to each employee concerned" (p. 62, Rollo).

2. The other issue is whether the petitioner is a distressed corporation and as such should be exempted from the payment of the emergency allowance and the thirteenth month pay during the years 1975, 1976 and 1977.

The petitioner insists that it is entitled to the exemption under the proviso of section 1 of Presidential Decree No. 525. The Solicitor General contends that the exemption was abolished by Presidential Decree No. 1364 dated May 1, 1978.

That issue should be directly resolved by the regional director and the Ministry of Labor and Employment.

WHEREFORE, in the interest of justice, the enforce-ment of the recomputed allowance is suspended. This case is remanded to the director of Region 4 (now National Capital Region) of the Ministry of Labor and Employment for a rehearing on the above-mentioned factual issues and, after such hearing, to render the appropriate decision, affirming, modifying or setting aside the recomputed award. No costs.

SO ORDERED.

Barredo, (Chairman), Concepcion, Jr., Fernandez, and De Castro, JJ., concur.
Abad Santos, J., on leave.

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