

**LUZON POLYMERS CORPORATION, PETITIONER, VS. HON. PRESIDENTIAL EXECUTIVE ASSISTANT JACOBO C. CLAVE, HON. MINISTER OF LABOR BLAS OPLE AND LUZON POLYMERS LABOR UNION (FFW), RESPOND...**

*G.R. No. 51009. June 10, 1992*

Ponente: ROMERO, J.

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**ROMERO, J.:**

This special civil action of certiorari questions the administrative grant of an emergency allowance of fifty pesos to the employees of a corporation with a capital stock of one million pesos.

The emergency allowance of employees in the private sector has its origin in Presidential Decree No. 390, granting said allowance to government employees. On March 6, 1974, subsequent to the promulgation of P.D. No. 390, then President Marcos issued Letter of Instructions No. 174 to implement the policy enunciated in said decree in the private sector. He directed the Secretary of Labor "to take such measures as may be necessary to ensure orderly and effective response by employers in the private sector." A pertinent provision of said LOI reads:

"3. Determination of Amount of Allowances. - In the spirit of Presidential Decree No. 390 granting allowances to government employees receiving less than P600.00 monthly, employers are urged to give top priority to their lowest paid workers without prejudice, however, to extending similar assistance to higher grades of their personnel.

For purposes of construing the minimum guidelines for the private sector, the following scales are recommended:

For large-scale and medium-scale enterprises capitalized at P1 million to P4 million or more, P50.00 or higher;

For small-scale enterprises capitalized at P100,000 to P1 million, P30 or higher;

For enterprises lower than these categories, P15 or higher." (Underscoring supplied.)

To explain the meaning and scope of application of LOI No. 174, on March 11, 1974, the Department of Labor issued an Interpretative Bulletin, a relevant section of which states:

"SEC. 5. Determination of Amount of Allowances. - In determining the amount of allowances that should be given by employers to meet the recommended minimum standards, the LOI has classified employers into three general categories. As an implementation policy, the Department of Labor shall consider as sufficient compliance with the scales of allowances recommended by the LOI if the following monthly allowances are given by employers:

(a) P50.00 or higher where the authorized capital stock of the corporation, or the total assets in the case of other undertakings, exceeds P1 million;

(b) P30.00 or higher where the authorized capital stock of the corporation, or the total assets in the case of

other undertakings, is not less than P100,000.00 but not more than P1 million; and

(c) P15.00 or higher where the authorized capital stock or total assets, as the case may be, is less than P100,000.00." (Underscoring supplied.)

On July 31, 1974, the President issued P.D. No. 525 making mandatory the payment of emergency allowance under LOI No. 174. Pertinent sections thereof provide:

"SECTION 1. Effective 1 August 1974, all employers who have not paid their employees emergency allowance in accordance with Letter of Instructions No. 174 shall pay their employees who are receiving less than P600.00 a month emergency allowance of P50.00 a month if their capitalization is more than 1 million pesos, P30.00 if their capitalization is more than 100 thousand pesos but does not exceed 1 million pesos, and P15.00 if their capitalization is 100 thousand pesos or less; Provided, that this Decree shall not apply to any severely distressed industry or branch thereof, or enterprise therein, as defined by the Department of Labor in accordance with established standards and methods of determining the same." (Underscoring supplied.)

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"SECTION 3. The Department of Labor and the National Labor Relations Commission shall not entertain any complaints under this Decree against employers who have complied with Letter of Instructions No. 174 and filed the necessary reports with the Department of Labor."

For the guidance of those concerned, on August 5, 1974 then Secretary of Labor Blas F. Ople promulgated the Rules and Regulations Implementing P.D. No. 525 with the following provisions:

"Section 7. Amount of Allowances. - Every covered employer shall give to each of his employees who is receiving less than P600.00 a month not less than the following monthly allowances:

(a) P50.00 where the authorized capital stock or total assets, whichever is applicable and higher, is P1 million or more;

(b) P30.00 where the authorized capital stock or total assets, whichever is applicable and higher, is at least P100,000.00 but less than P1 million; and

(c) P15.00 where the authorized capital stock or total assets, whichever is applicable and higher, is less than P100,000.00.

Nothing herein shall prevent employers from grant-ing allowances to their employees who will receive more than P600.00 a month, including the allowances. An employer, however, may grant his employees an allowance which, if added to their monthly salary, will not yield to them more than P600.00 a month." (Underscoring supplied.)

"Section 8. Compliance Under LOI No. 174. - The Department of Labor and any of its entities, including the National Labor Relations Commission and its regional units, shall not entertain complaints against employers who have fully complied with Letter of Instructions No. 174.

Where an employer has not granted to his employees the full minimum monthly allowance provided in LOI No. 174, such employer shall, within two (2) months from the effective date of these regulations, grant at least the difference between the applicable monthly allowance provided in the Decree and that actually paid the employees, retroactive to 1 August 1974."

Under this statutory backdrop, petitioner, a corporation with an authorized capital stock of P1 million and total assets of P2,656,793.45 as of December 31, 1974, was named a respondent in a complaint for underpayment of emergency allowance filed before Regional Office No. 4 of the Department of Labor in 1976 by the Luzon Polymers Labor Union (FFW) on behalf of 185 of its members.[1] Alleging that since February 1974, regular

employees of petitioner corporation who were members of the union had been receiving P1.15 daily or P30.00 monthly emergency allowance, complainant-union contended that its members were entitled to P50.00 monthly emergency allowance inasmuch as their employer's total assets were over and above P1 million.

For its part, petitioner corporation claimed that since it had fully complied with LOI No. 174, it had not underpaid its employees. Moreover, citing Sec. 3 of P.D. No. 525, it questioned the jurisdiction of the Department of Labor to entertain and hear the complaint.

Noting that petitioner corporation had total assets of more than one million in 1973 and 1974 or P1,920,529.04 and P2,676,793.45, respectively, Officer-in-Charge and Assistant Secretary Vicente Leogardo, Jr. ruled that petitioner had not fully complied with LOI No. 174 and therefore it could not validly invoke Sec. 8 of the Rules and Regulations Implementing P.D. No. 525. Citing the decision of the Office of the President in "Kalinisan Workers Association (FFW) v. Kalinisan Incorporated"[2] which held that "capitalization" means the "authorized capital stock or total assets, whichever is applicable or higher" which meaning was reflected in the Rules and Regulations Implementing P.D. No. 525, the Assistant Secretary's order of May 23, 1977 accordingly directed the petitioner corporation to pay its complainant-employees the deficiency of the emergency allowance equivalent to P20 a month from the start of their employment but not earlier than August 1, 1974.

Petitioner appealed to Secretary Ople but the latter dismissed the appeal for lack of merit in the order of February 21, 1978 and directed petitioner "to pay the difference of P20.00 as awarded in the appealed order." [3] Hence, petitioner elevated the case to the Office of the President which, through Presidential Executive Assistant Jacobo C. Clave, likewise dismissed the appeal in an undated decision. [4]

Having failed to obtain administrative relief, petitioner filed the instant petition for certiorari praying that Sec. 7 of the Rules and Regulations Implementing P.D. No. 525 be declared null and void "insofar as it increases the liability of employers capitalized at P1 million from P30.00 a month to P50.00 a month" and that the decision of Presidential Assistant Clave be re-versued. Petitioner further prayed that execution of the questioned decision be stayed pending the resolution of the instant petition. [5] Granting this last prayer, on August 8, 1979 the Court issued a temporary restraining order enjoining the public respondents from executing the questioned decision. [6]

Petitioner contends herein that: (a) in issuing the Rules and Regulations Implementing P.D. No. 525, particularly paragraph 7 thereof, the then Secretary of Labor exceeded his rule-making power inasmuch as said paragraph substantially altered and contradicted the provisions of P.D. No. 525; (b) the Secretary of Labor's order of February 21, 1978 requiring petitioner to pay the deficiency of the emergency allowance it had paid its employees, is contrary to Sec. 3 of P.D. No. 525 providing that the Department of Labor shall not entertain any complaint under said decree against employers who have complied with LOI No. 174; and (c) the decision of Presidential Executive Assistant Clave is contrary to law as it upholds the illegal exercise of law-making powers by the Secretary of Labor.

At the outset, it should be clarified that P.D. No. 525 had been superseded by other decrees, notably P.D. Nos. 1123, 1614, 1634 and 1678. [7] This fact, however, is not a deterrent to the resolution of the instant petition in view of the apparent confusing provisions of the issuances and rules and regulations involved.

To start with, paragraph 3 of LOI No. 174 mandates the grant of P50 a month emergency allowance for employees of "enterprises capitalized at P1 million to P4 million or more" and P30 for employees of "enterprises capitalized at P100,000 to P1 million." While the determinative factor for the amount of emergency allowance is simply the capitalization [8] of the employer concerned, the problem lies in the fact that the same provision of LOI No. 174 categorizes an enterprise capitalized at P1 million as under both the P50 and the P30 brackets of emergency allowance.

This grey area, however, was clarified by the Interpretative Bulletin on LOI No. 174 issued by the Department of Labor. Sec. 5 thereof which is quoted above states that an employer has to pay the fifty-peso allowance "where the authorized capital stock of the corporation, or the total assets in the case of other undertakings, exceeds P1 million" or thirty pesos "where the authorized capital stock of the corporation, or the total assets in the case of other undertakings, is not less than P100,000 but not more than P1 million." Clearly then, the petitioner falls under the bracket of employers required to give a thirty-peso monthly emergency allowance under LOI No. 174 in view of the undisputed fact that it is a "domestic corporation duly organized and existing under Philippine laws" with an authorized capital stock of one million pesos.[9]

While said administrative interpretation of LOI No. 174 is at best merely advisory for it is only the courts which have the power to determine what LOI No. 174 really means,[10] it is significant to note that said Sec. 5 of the Interpretative Bulletin was adopted in P.D. No. 525. As aforequoted, Sec. 1 of said decree states that an emergency allowance of thirty pesos shall be given to employees of corporations with a capitalization of "more than 100 thousand pesos but does not exceed 1 million pesos."

What seems to have muddled the matter are the provisions of Sec. 7 of the Rules and Regulations Implementing P.D. No. 525. Under that section, petitioner appears to have been covered by the fifty-peso bracket for it states that a monthly emergency allowance of fifty pesos is required "where the authorized capital stock or total assets, whichever is applicable and higher, is P1 million or more." It should be observed that this provision not only injects a new determinative factor, i.e., the total assets of the employer, but also provides a choice for the determinative factor: whichever is higher between the employer's authorized capital stock and its total assets.

An examination of the issuances of the Department of Labor, however, reveals that said option is more apparent than real. In its Interpretative Bulletin aforementioned, the Department uses as a basis for granting the emergency allowance the "authorized capital stock, or the total assets in the case of other undertakings." The phrase "authorized capital stock" clearly refers to employers which are incorporated by law and therefore have authorized capital stocks to speak of. Total assets as a determinative factor should only refer to "other undertakings." The same Interpretative Bulletin gives a clue as to what "other undertakings" mean. Section 2 thereof states:

"Section 2. Employers Covered. - The LOI appeals (sic) to all employers in the private sector. Included within the scope of its application are commercial, industrial, and agricultural establishments and enterprises, as well as all undertakings, institutions and organizations which are not operated or established for profit or gain, such as schools and other institutions of learning, hospitals, and charitable and religious organizations.

Excluded from the application of the LOI are employers of house-helpers and persons in the personal service of another in relation to such workers." (Under-scoring supplied) (Rollo, p. 25).

Considering the provisions of this section and in view of the rule of ejusdem generis, the word "undertakings" in Sec. 5 of the Interpretative Bulletin should refer only to non-profit institutions. Therefore, in categorizing said institutions for the purpose of determining the amount of emergency allowance for their employees, their "total assets" is the criterion. The petitioner herein, not being a non-profit enterprise, the determinative factor in gauging the amount of emergency allowance to be granted to its employees is its authorized capital stock.

Sec. 2 of the Interpretative Bulletin is reflected in the Department of Labor's Rules and Regulations Implementing P.D. No. 525, Sec. 1 provides:

"Section 1. Employers Covered. The Decree shall apply to all commercial, industrial, and agricultural establishments and enterprises, as well as to all undertakings, institutions and organizations which are not primarily organized for profit or gain, except to those specifically exempted under Section 3 of these

regula-tions." (Rollo, p. 32).

Thus, the same interpretation should necessarily be attached to the phrase "total assets" in Sec. 7 of the Rules and Regulations Implementing P.D. No. 525: it should refer only to employers which are not incorporated by law and which are strictly non-profit "undertakings." Corollarily, however, "total assets" may be the measure for determining the amount of emergency allowance for enterprises such as single proprietorships and partnerships which are not backed up by capital stocks.

Sec. 7 of the Rules and Regulations, therefore, introduced a matter which is not germane to the provisions of P.D. No. 525 by considering total assets as a criterion. Moreover, it further complicated the law by the addition of the phrase "whichever is applicable and higher." In practice, the exercise of the option expressed in such phrase may lead to absurd situations. As demon-strated in this case, that which is higher, meaning petitioner's total assets, may not also be applicable because petitioner is not an "undertaking" within the purview of the Interpretative Bulletin and the Rules and Regulations Implementing P.D. No. 525.

Consequently, Sec. 7 of the said Rules has not conformed with the standards that P.D. No. 525 prescribes.[11] Having been based on an erroneous decision of the Office of the President, it is further rendered obnoxious by the principle that an administrative agency like the Department of Labor cannot amend the law it seeks to implement.[12]

We need not concern ourselves unduly with regard to petitioner's contention that the complaint for underpayment of emer-gency allowance is barred by Sec. 3 of P.D. 525. Suffice it to say that Sec. 7 of the Rules is not the proper basis for taking cognizance of the case. As alleged by public respondents, Sec. 3 clearly states that compliance should be with LOI No. 174 and not with the implementing rules which were subsequently issued by the Department of Labor.

The issue of the sufficiency of the emergency allowance granted by employers to its employees has been ventilated before this Court.[13] In none of them, however, was the validity of Sec. 7 of the Rules and Regulations Implementing P.D. No. 525 specifically put in issue as in the instant case. While this Court has always been guided by the principle that in labor cases, any doubt shall be resolved in favor of the workers, we cannot close our eyes to the possible abuse of the rule-making power on the part of the Secretary of Labor under the guise of promoting social justice and affording protection to labor.

WHEREFORE, the instant petition for certiorari is GRANTED. Sec. 7 of the Rules and Regulations Implementing P.D. No. 525 insofar as it is contradictory to the provisions of said decree as herein discussed, is hereby declared NULL and VOID. The tempo-rary restraining order issued by this Court on August 8, 1979 is hereby made PERMANENT. No costs.

**SO ORDERED.**

Gutierrez, Jr., (Chairman), Feliciano, Bidin, and Davide, Jr., JJ., concur.

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[1] Case No. R04-9-9217-76; Rollo, p. 38.

**[2] BLR - S - S - 133.**

[3] Rollo, p. 50.

[4] Ibid, p. 51.

[5] Ibid, p. 22.

[6] Ibid, p. 58-A2.

[7] P.D. No. 1123 dated April 21, 1977 mandated an across-the-board increase of P60 in the emergency allowance provided for in P.D. No. 525 for employees in the private sector. P.D. No. 1614 dated March 14, 1979 provided for minimum wage increases and granted emergency cost-of-living allowance of sixty pesos to non-agricultural workers receiving not more than P1,000; forty pesos for plantation agricultural workers receiving not more than P1,000, and P20 to non-plantation agricultural workers. P.D. No. 1634 dated August 21, 1979 provided for a monthly additional mandatory emergency living allowance of P60 effective September 1, 1979 and another P30 a month effective January 1, 1980 to all employees in the private sector receiving wage or salary of not more than P1,500. P.D. No. 1678 dated February 20, 1980 granted an additional mandatory living allowance of P2.00 a day for non-agricultural workers receiving not more than P1,500 monthly wage or salary and P1.50 a day for agricultural workers. (See: *Tiangco v. Leogardo, Jr.*, G.R. No. 57636, May 16, 1983, 122 SCRA 267.)

[8] This term should be understood in its legal signification, meaning that which represents the total amount of the various securities issued by a corporation. It may include bonds, debentures, preferred and common stock and surplus (*Black's Law Dictionary*, 5th ed., 190).

[9] *Petition*, p. 2; *Rollo*, p. 10.

[10] *The Chartered Bank Employees Association v. Ople*, L-44717, August 28, 1985, 138 SCRA 273 citing *Insular Bank of Asia & America Employees' Union (IBAAEU) v. Inciong*, G.R. No. 52415, October 23, 1984, 132 SCRA 663; *Philippine Apparel Workers Union v. National Labor Relations Commission*, 50320, July 31, 1981, 106 SCRA 444 citing *Teozon v. Members of the Board of Administrators, PVA*, L-25619, June 30, 1970, 33 SCRA 585; *Victories Milling Co., Inc. v. Social Security Commission*, 114 Phil. 555 (1962); *Santos v. Hon. Estenzo, et al.*, 109 Phil. 419 (1960); *Hilado v. Collector of Internal Revenue*, 100 Phil. 288, 295 (1956); *Sy Man v. Jacinto & Fabros*, 93 Phil. 1093 (1953), and *Olsen & Co., Inc. v. Aldanese and Trinidad*, 43 Phil. 259 (1922).

[11] *Director of Forestry v. Muñoz*, L-25459, June 28, 1968, 23 SCRA 1184; *People v. Exconde*, 101 Phil. 1125 (1957), and *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660 (1919).

[12] *Manuel v. General Auditing Office*, L-28952, December 29, 1971, 42 SCRA 660 at 666; *Teoxon v. Members of the Board of Administrators, PVA*, *supra*, at p. 589.

[13] *Liberty Flour Mills Employees v. Liberty Flour Mills, Inc.*, G.R. Nos. 58768-70, December 29, 1989, 180 SCRA 668; *Tiangco v. Leogardo, Jr.*, *supra*.

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