

FERNANDO JUAN, PROPRIETOR OF THE BUSINESS ENTITY UNDER THE NAME AND STYLE OF "FOTO ME", PETITIONER, VS. CELSO MUSÑGI AND LABOR ARBITER EDUARDO G. MAGNO, RESPONDENTS.

G.R. No. 76053. October 27, 1987

Ponente: PARAS, J.

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PARAS, J.:

THIS IS A PETITION FOR CERTIORARI AND PROHIBITION WITH PRELIMINARY INJUNCTION SEEKING: (1) TO ANNUL AND SET ASIDE PUBLIC RESPONDENT'S ORDER DATED JULY 22, 1986 AND HIS WRIT OF EXECUTION OF SEPTEMBER 25, 1986; AND, (2) TO ENJOIN HIM FROM FURTHER PROCEEDING WITH NLRC-NCR CASE No. 11-6791-82, ENTITLED "CELSO P. MUSÑGI VS. FOTO ME AND/OR FERNANDO U. JUAN."

THE DISPOSITIVE PORTION OF THE ORDER OF JULY 22, 1986 (ROLLO, P. 29), READS AS FOLLOWS:

"WHEREFORE, PREMISES CONSIDERED, THE RESPONDENTS ARE HEREBY ORDERED TO DEPOSIT THE SUM OF P49,626.40 WITHIN SEVEN (7) WORKING DAYS FROM RECEIPT HEREOF WITH THE ARBITRATION BRANCH, NLRC-NCR SPECIFICALLY WITH MS. NORMA JALALAIN, THE BONDED DISBURSING OFFICER."

THE WRIT OF EXECUTION DATED SEPTEMBER 25, 1986 (ROLLO, P. 30) GAVE THE DEPUTY SHERIFF, NLRC-NCR, ARBITRATION BRANCH THE FOLLOWING ORDER:

"NOW, THEREFORE, YOU ARE HEREBY COMMANDED TO PROCEED WITHOUT DELAY TO THE PREMISES OF RESPONDENT FIRM LOCATED AT 312 LITTON BLDG., SHAW BOULEVARD, MANDALUYONG, METRO MANILA, TO REINSTATE COMPLAINANT TO HIS FORMER OR EQUIVALENT POSITION THEREAT AND TO COLLECT FROM RESPONDENT CORPORATION THE AMOUNT OF FORTY NINE THOUSAND SIX HUNDRED TWENTY SIX PESOS AND FORTY CENTAVOS (P49,626.40) AND TURN OVER THE SAID AMOUNT TO THIS OFFICE FOR RELEASE TO COMPLAINANT, ALLOWING PARTIES AND/OR THEIR REPRESENTATIVE TO OBSERVE ALL STEPS OF YOUR PROCEEDINGS IF THEY SO DESIRE AND WITH AND ADMONITION THAT YOU ARE NOT AUTHORIZED TO SETTLE AND/OR NEGOTIATE THE SETTLEMENT OF THE AWARD, OR DIRECTLY RELEASE FOR WHATEVER REASON(S), THE PROCEEDS OF THIS WRIT TO COMPLAINANT AND/OR HIS REPRESENTATIVE(S).

"IN CASE YOU FAIL TO COLLECT SAID AMOUNT IN CASH FROM RESPONDENT, YOU ARE HEREBY DIRECTED TO CAUSE THE SATISFACTION OF THE SAME OUT OF THE MOVABLE GOODS OR CHATTELS OR IN THE ABSENCE THEREOF, FROM RESPONDENT'S IMMOVABLE PROPERTY, NOT EXEMPT FROM EXECUTION, FURNISHING THE UNDERSIGNED WITH COPIES OF NOTICES AND/OR LETTERS YOU MAY ISSUE IN CONNECTION WITH THE WRIT, EXCEPT ORDERS FOR RELEASE WHICH SHOULD BEAR THE SIGNATURE OF THE UNDERSIGNED.

"FURTHER, YOU ARE DIRECTED TO RETURN THIS WRIT WITHIN FIFTEEN (15) DAYS FROM RECEIPT OF THE SAME SIMULTANEOUSLY WITH YOUR FORMAL REPORT. YOU ARE DIRECTED TO RENDER PROGRESS REPORT ON YOUR PROCEEDINGS FROM TIME TO TIME AS MAY BE REQUIRED BY THE UNDERSIGNED.

"YOU MAY COLLECT YOUR FEES FROM THE RESPONDENTS."

THE FACTS OF THE CASE ARE AS FOLLOWS:

PRIVATE RESPONDENT CELSO P. MUSÑGI FILED A CASE AGAINST HIS EMPLOYER, FOTO ME AND/OR FERNANDO JUAN, FOR ILLEGAL DEDUCTION AND UNJUST DISMISSAL, DOCKETED AS NLRC-NCR-CASE No. 11-6791-82. ON JULY 3, 1984 RESPONDENT LABOR ARBITER PORFIRIO VILLANUEVA RENDERED A DECISION THEREON, DIRECTING PETITIONER TO REINSTATE PRIVATE RESPONDENT WITH FULL BACKWAGES. ON JULY 20, 1984 PETITIONER FILED HIS APPEAL WITH THE NATIONAL LABOR RELATIONS COMMISSION (NLRC). ON NOVEMBER 20, 1985 THE NLRC PROMULGATED A RESOLUTION AFFIRMING THE DECISION OF THE LABOR ARBITER (ROLLO, PP. 5, 90-91).

THEREAFTER THE RECORDS OF THE CASE MYSTERIOUSLY DISAPPEARED (ROLLO, P. 91) AND HAD TO BE RECONSTITUTED. PETITIONER FAILED TO APPEAR IN THE PROCEEDINGS FOR THE RECONSTITUTION OF RECORDS BEFORE THE NLRC DESPITE DUE NOTICE FOR THE HEARINGS HELD ON MARCH 19, 1986 AND APRIL 8, 1986 (ROLLO, P. 28).

ON APRIL 8, 1986, THE NLRC EXECUTIVE DIRECTOR ENDORSED THE RECONSTITUTED RECORDS TO THE EXECUTIVE LABOR ARBITER OF THE NATIONAL CAPITAL REGION, FOR APPROPRIATE ACTION (ROLLO, PP. 92-93). UPON RECEIPT OF THE RECONSTITUTED RECORDS THE THEN LABOR ARBITER FORTHWITH ORDERED THE COMPUTATION OF THE AWARD WHICH COMPUTATION WAS SUBMITTED ON APRIL 10, 1986 BY THE ACTING CHIEF, RESEARCH AND INFORMATION UNIT AND BY THE SENIOR LABOR ARBITRATION ANALYST OF THE NLRC, NATIONAL CAPITAL REGION. THE CASE WAS AFTERWARDS FORWARDED TO LABOR ARBITER PORFIRIO VILLANUEVA FOR EXECUTION (ROLLO, P. 93).

ON APRIL 14, 1986 THE COMPLAINANT IN THE LABOR CASE (PRIVATE RESPONDENT HEREIN) FILED A MOTION TO DEPOSIT THE AMOUNT OF P49,626.40 DUE FROM PETITIONER, AS SHOWN BY THE COMPUTATION. PRIVATE RESPONDENT PRAYED THAT A WRIT OF EXECUTION BE ISSUED SHOULD PETITIONER FAIL TO DEPOSIT THE SAID AMOUNT WITHIN SEVEN (7) DAYS. ON APRIL 15, 1985, ATTY. CONSTANTINO B. DE JESUS FILED HIS ENTRY OF APPEARANCE WITH MOTION FOR EXTENSION OF TIME TO FILE OPPOSITION OR RESPONSIVE PLEADING, PRAYING FOR A PERIOD UNTIL MAY 30, 1986 WITHIN WHICH TO FILE HIS OPPOSITION TO THE MOTION FOR DEPOSIT.

THE MOTION WAS SET FOR HEARING ON APRIL 28, 1986 WITH NOTICE SENT TO HEREIN PETITIONER RECEIVED BY THE NEW COUNSEL ON APRIL 23, 1986 AND BY PETITIONER HIMSELF ON APRIL 24, 1986. ON THE DAY OF THE HEARING PETITIONER THROUGH COUNSEL FILED A MOTION TO DEFER THE HEARING AND TO RESET THE SAME TO JUNE 1, 1986. THE HEARING WAS, HOWEVER, RESET TO MAY 9, 1986. ON THE DAY OF THE HEARING, LABOR ARBITER PORFIRIO VILLANUEVA WAS ON LEAVE AND COUNSEL FOR HEREIN PETITIONER WAS NOT AROUND. PRIVATE RESPONDENT REQUESTED FOR A TRANSFER OF THE CASE TO THE EXECUTIVE LABOR ARBITER. THE CASE WAS THEREUPON ASSIGNED TO LABOR ARBITER

RUBEN ALBERTO BUT WHEN THE NLRC WAS REORGANIZED IT WAS ASSIGNED TO HEREIN PUBLIC RESPONDENT EDUARDO G. MAGNO.

HEARING ON THE MOTION TO DEPOSIT WAS THEREAFTER SET BY PUBLIC RESPONDENT TO JUNE 16, 1986. DESPITE DUE NOTICE SERVED ON PETITIONER ON JUNE 13, 1986, NEITHER PETITIONER NOR HIS COUNSEL APPEARED. ON THE OTHER HAND, PRIVATE RESPONDENT AND HIS COUNSEL APPEARED AND INSISTED THAT THE MOTION BE CONSIDERED SUBMITTED FOR RESOLUTION (ROLLO, P. 94).

PUBLIC RESPONDENT RESET THE HEARING TO JULY 15, 1986 WITH DUE NOTICE TO BOTH PARTIES. ON THAT DATE PETITIONER THROUGH COUNSEL FILED A MANIFESTATION/OPPOSITION/MOTION ALLEGING THAT THEY ARE NOT AWARE OF ANY DECISION OF THE NLRC DATED NOVEMBER 30, 1985 AND PRAYING THAT THE MOTION TO DEPOSIT BE DENIED (ROLLO, PP. 6, 95).

ON JULY 22, 1986, PUBLIC RESPONDENT ISSUED THE QUESTIONED ORDER GRANTING THE MOTION TO DEPOSIT, ON THE PREMISE THAT "THE RESOLUTION OF THE SECOND DIVISION OF THE NLRC IS NOW FINAL AND EXECUTORY, SO IT IS A MATTER OF RIGHT OF THE COMPLAINANT TO REQUEST FOR THE EXECUTION OF SUCH AWARD" (ROLLO, P. 29).

ON SEPTEMBER 25, 1986, THE CORRESPONDING WRIT OF EXECUTION WAS ISSUED BY PUBLIC RESPONDENT (ROLLO, P. 30).

THIS PETITION WAS FILED WITH THE COURT ON OCTOBER 9, 1986 (ROLLO, P. 2). ON OCTOBER 10, 1986 THE SECOND DIVISION OF THIS COURT RESOLVED WITHOUT GIVING DUE COURSE TO THE PETITION TO REQUIRE THE RESPONDENTS TO COMMENT THEREON AND TO ISSUE A TEMPORARY RESTRAINING ORDER (ROLLO, P. 44) ENJOINING PUBLIC RESPONDENT FROM ENFORCING AND/OR CARRYING OUT HIS ORDER DATED JULY 22, 1986 AND THE WRIT OF EXECUTION DATED SEPTEMBER 25, 1986 BOTH ISSUED IN CASE No. NLRC-NCR-11-6791-82 ENTITLED MUSÑGI VS. FOTO ME AND/OR FERNANDO JUAN, OF THE NLRC, NRC, MINISTRY OF LABOR AND EMPLOYMENT, UNTIL FURTHER ORDERS FROM THE COURT (ROLLO, P. 45).

ON OCTOBER 16, 1986, PETITIONER FILED WITH THE COURT AN URGENT MOTION TO DISSOLVE GARNISHMENT ON ITS PHILIPPINE SAVING BANK ACCOUNT, LACSON UNDERPASS BRANCH, QUIAPO, MANILA IN THE AMOUNT OF P49,626.40 (ROLLO, P. 49).

ON OCTOBER 29, 1986, PRIVATE RESPONDENT FILED WITH THE COURT, HIS COMMENT INTERPOSING NO OBJECTION TO THE FORWARDING OF THE RECORDS FROM PUBLIC RESPONDENT TO THE NLRC FOR APPROPRIATE SERVICE OF THE COMMISSION'S DECISION ON PETITIONER, AS WELL AS FOR THE PURPOSE OF CONDUCTING A FULL RECONSTITUTION OF THE RECORDS OF THE CASE, IN ORDER TO FACILITATE THE DISPOSITION OF THE CASE AND SO THAT JUSTICE MAY THEREBY BE SERVED (ROLLO, P. 53). THE OFFICE OF THE SOLICITOR GENERAL FILED ITS COMMENT ON NOVEMBER 4, 1986, STATING THAT HE IS UNABLE TO AGREE WITH THE POSITION ADOPTED BY PUBLIC RESPONDENT IN HIS ORDER DATED JULY 22, 1986 AS WELL AS THE WRIT OF EXECUTION DATED SEPTEMBER 25, 1986. CONVERSELY, HE IS, IN EFFECT, IN AGREEMENT WITH THE PETITIONER THAT WITHOUT SERVICE OF A COPY OF THE NLRC RESOLUTION TO THE LATTER, THERE CAN BE NO FINALITY. HENCE THE ISSUANCE OF THE CHALLENGED ORDER AND WRIT OF EXECUTION IS PREMATURE. ACCORDINGLY, HE RECOMMENDS THAT THE PETITION BE GIVEN DUE COURSE (ROLLO, P. 57). ON THE SAME DATE

THE SOLICITOR GENERAL FILED A MANIFESTATION AND MOTION RECOMMENDING THAT PUBLIC RESPONDENT BE MADE TO PREPARE AND FILE HIS OWN COMMENT ON THE PETITION (ROLLO, P. 61).

ON MARCH 9, 1987, THE COURT RESOLVED TO GIVE DUE COURSE TO THE PETITION (ROLLO, P. 64).

ON MARCH 30, 1987, THE OFFICE OF THE SOLICITOR GENERAL FILED ANOTHER MANIFESTATION AND MOTION ASKING TO BE EXCUSED FROM FILING THE REQUIRED MEMORANDUM BUT THAT THE COMMENT FILED ON NOVEMBER 4, 1986 BE CONSIDERED AS ITS MEMORANDUM (ROLLO, P. 65).

ON MARCH 31, 1987, PRIVATE RESPONDENT FILED ITS OPPOSITION TO THE URGENT MOTION TO DISSOLVE GARNISHMENT (ROLLO, P. 67).

PUBLIC RESPONDENT FILED HIS COMMENT ON APRIL 27, 1987 (ROLLO, P. 90); WHILE PRIVATE RESPONDENT MANIFESTED TO THE COURT ON MAY 7, 1987 THAT IT WILL NO LONGER SUBMIT ANY MEMORANDUM BUT IN LIEU THEREOF IS ADOPTING THE COMMENT OF PUBLIC RESPONDENT AS PRIVATE RESPONDENT'S MEMORANDUM (ROLLO, P. 113). PETITIONER FILED HIS MEMORANDUM ON MAY 25, 1987 (ROLLO, P. 118).

THE MAIN ISSUE IN THIS PETITION IS THE QUESTION OF WHETHER OR NOT THE RESOLUTION OF THE NLRC PROMULGATED ON NOVEMBER 30, 1985 BECAME FINAL AND EXECUTORY DESPITE THE LACK OF NOTICE THEREOF TO PETITIONER.

THE ANSWER IS IN THE AFFIRMATIVE.

UNDER ARTICLE 223 OF THE LABOR CODE IT IS EVIDENT THAT THE DECISIONS, AWARDS OR ORDERS OF A LABOR ARBITER CANNOT BE DECLARED FINAL AND EXECUTORY UPON THE MERE ISSUANCE THEREOF. A PERIOD OF TEN (10) DAYS FROM RECEIPT OF ANY ORDER IS GRANTED TO EITHER OR TO BOTH PARTIES INVOLVED TO APPEAL TO THE NLRC (NAGKAHIUSANG MANGGAGAWA SA CUISON-NATIONAL FEDERATION OF LABOR VS. LIBRON, 124 SCRA 448 [1983]). THE SAME CANNOT BE SAID, HOWEVER, ABOUT THE DECISION OF THE NATIONAL LABOR RELATIONS COMMISSION ITSELF FOR UNDER THE SAME ARTICLE IT IS PROVIDED, THAT "THE DECISION OF THE COMMISSION SHALL BE IMMEDIATELY EXECUTORY, EVEN PENDING APPEAL, UNLESS STAYED BY AN ORDER OF THE SECRETARY OF LABOR FOR SPECIAL REASONS." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY DEFINES "IMMEDIATELY" AS "WITHOUT INTERVAL OF TIME"; "WITHOUT DELAY."

IT WILL BE NOTED HOWEVER THAT SECTION 2 OF RULE XI OF THE RULES OF THE NATIONAL LABOR RELATIONS COMMISSION PROVIDES THAT THE DECISIONS, RESOLUTIONS OR ORDERS OF THE COMMISSION SHALL BECOME EXECUTORY AFTER TEN (10) CALENDAR DAYS FROM RECEIPT OF THE SAME, BUT SUCH RULE CANNOT PREVAIL OVER THE ABOVE-CITED PROVISION OF THE LABOR CODE. ARTICLE 7 OF THE CIVIL CODE EMBODIES THE BASIC PRINCIPLE THAT ADMINISTRATIVE OR EXECUTIVE ACTS, ORDERS AND REGULATIONS SHALL BE VALID ONLY WHEN THEY ARE NOT CONTRARY TO THE LAWS OR THE CONSTITUTION. IN FURTHER AMPLIFICATION THIS COURT HAS CONSISTENTLY RULED THAT ADMINISTRATIVE REGULATIONS UNDER LEGISLATIVE AUTHORITY BY A PARTICULAR DEPARTMENT MUST BE IN HARMONY WITH THE PROVISION OF THE LAW, AND SHOULD BE FOR THE SOLE PURPOSE OF

CARRYING INTO EFFECT ITS GENERAL PROVISIONS. BY SUCH REGULATION, OF COURSE, THE LAW ITSELF CANNOT BE EXTENDED. AN ADMINISTRATIVE AGENCY CANNOT AMEND AN ACT OF CONGRESS (PEOPLE VS. MACEREN, 79 SCRA 450 [1977]). UNDER THIS PRINCIPLE, THE COURT RULED IN INSULAR BANK OF ASIA AND AMERICA EMPLOYEE'S UNION (IBAAEU) VS. INCIONG, THAT SEC. 2, RULE IV, BOOK III OF THE IMPLEMENTING RULES AND POLICY INSTRUCTION NO. 9 ISSUED BY THE THEN SECRETARY OF LABOR ARE NULL AND VOID SINCE IN THE GUISE OF CLARIFYING THE LABOR CODE'S PROVISIONS ON HOLIDAY PAY, THEY IN EFFECT AMENDED THEM BY ENLARGING THE SCOPE OF THEIR EXCLUSIONS. (132 SCRA 663 [1984]).

MOREOVER, IT IS NOT TRUE THAT A COPY OF THE RESOLUTION OF THE NLRC PROMULGATED ON NOVEMBER 20, 1985 AFFIRMING THE DECISION OF THE LABOR ARBITER WAS NOT SERVED ON PETITIONER.

FROM THE RECONSTITUTED RECORDS OF THIS CASE IT APPEARS THAT THE BAILIFF WHO DELIVERED THE COPY TO THE OFFICE OF PETITIONER'S COUNSEL OF RECORD CERTIFIED UNDER OATH THAT HE IN FACT SERVED THE SAME ON DECEMBER 9, 1985, BUT THE EMPLOYEE PRESENT IN THE OFFICE OF PETITIONER'S COUNSEL OF RECORD REFUSED TO RECEIVE THE SAME FOR THE REASON THAT ATTY. IÑIGO S. FOJAS WAS NO LONGER THE COUNSEL OF PETITIONER (ROLLO, P. 107). HOWEVER, NO NOTICE OF WITHDRAWAL OR SUBSTITUTION OF COUNSEL WAS SHOWN THEREBY YIELDING TO THE RULE THAT NOTICE TO THE COUNSEL OF RECORD IS, FOR ALL PURPOSES, NOTICE TO THE CLIENT. (FRANCISCO VS. PUNO, 108 SCRA 427 [1981]). SUCH NOTICE IS PROPERLY SENT TO THE ADDRESS OF THE COUNSEL OF RECORD IN THE ABSENCE OF DUE NOTICE TO THE COURT OF CHANGE OF ADDRESS (PLDT VS. NLRC, 128 SCRA 402 [1984]), AND THE DATE OF RECEIPT IS CONSIDERED THE STARTING POINT FROM WHICH THE PERIOD OF APPEAL PRESCRIBED BY LAW SHALL BEGIN TO RUN (CUBAR VS. MENDOZA, 120 SCRA 768 [1983]).

STILL FURTHER, IN ONE OF THE HEARINGS FOR THE RECONSTITUTION OF THE RECORDS ATTY. EMMANUEL D. LAUREA APPEARED ON BEHALF OF PETITIONER. HE WAS PROVIDED WITH A XEROX COPY OF THE DECISION OF THE LABOR ARBITER AND THE NLRC RESOLUTION DATED NOVEMBER 20, 1985 SUBMITTED BY PRIVATE RESPONDENT (ROLLO, P. 92). IN THE CASE OF CITY OF LAOAG VS. PUBLIC SERVICE COMMISSION (89 SCRA 207 [1979]) WHERE COUNSEL FOR THE PETITIONER ACTUALLY OBTAINED A COPY OF THE DECISION OF THE COMMISSION FROM ITS SECRETARY AND ON THE BASIS OF SAID COPY, HE WAS ABLE TO PREPARE THE MOTION FOR RECONSIDERATION THE COURT RULED THAT THE COPY OF THE DECISION OBTAINED BY COUNSEL SERVES AS A SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENT OF NOTICE OF JUDGMENT.

PREMISES CONSIDERED, THIS PETITION IS HEREBY DISMISSED FOR LACK OF MERIT AND THE TEMPORARY RESTRAINING ORDER ISSUED BY THE COURT ON OCTOBER 10, 1986 ENJOINING THE ENFORCEMENT OF THE ORDER OF PUBLIC RESPONDENT, DATED JULY 21, 1986 AND THE WRIT OF EXECUTION DATED SEPTEMBER 5, 1986 BOTH ISSUED IN CASE NO. NLRC-NCR-11-6791-82 OF THE NATIONAL LABOR RELATIONS COMMISSION, NCR, MINISTRY OF LABOR AND EMPLOYMENT, IS PERMANENTLY LIFTED.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Gancayco, JJ., concur.

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