

NEW PANGASINAN REVIEW, INC., PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION, LABOR ARBITER RICARDO N. OLAIREZ, PROVINCIAL & CITY SHERIFF EX-OFFICIO ALICIA BRAVO-FABIA, ...

G.R. No. 85939. April 19, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

Before Us are consolidated petitions for prohibition and certiorari with prayer for restraining order and/or writ of preliminary injunction.

In G.R. No. 85939

Petitioner New Pangasinan Review Inc. (hereafter "NPRI") seeks to annul the proceedings in NLRC Case No. SUB-RAB-I-071-86, entitled "Constancia Adajar, et al. v. Pangasinan Review, Inc., dated May 30, 1988 (Annex "Q") which affirmed the decision dated June 10, 1987 (Annex "P") of Labor Arbiter Irenarco R. Rimando, which disposed as follows:

"IN THE LIGHT OF THE FOREGOING OBSERVATIONS, it appearing that the respondent ceased its operations by virtue of the expiration of its corporate charter, and the closure is not due to serious business losses or financial reverses, the complainants are therefore entitled to a separation pay, in accordance with the provisions of Art. 284 (now Art. 283) of the Labor Code. The corporation through the Board of Liquidators are directed to pay the separation pay of the following employees:

Name of Employees

Separation Pay

1. Constancia Adajar

18,900.00

2. Salud G. Magsano

13,770.00

3. Bienvenido Meneses

12,187.50

4. Amado P. Bolsico

16,884.00

5. Regino P. Velasco

13,507.20

6. Canuto E. Abalos

12,542.40

7. Myrna S. Maramba

10,922.70

8. Epifania M. Magsano

9,498.00

9. Juan D. Alcaide

11,095.20

10. Antonio T. Maramba

9,165.60

11. Teresita A. Adajar

5,223.90

12. Roberto F. Garcia

7,718.40

13. Rodolfo S. Callanta

5,223.90

14. Pedro C. Calimlim

2,894.40

15. Alexander G. Urbana

7,123.50

16. Victorio B. Natividad

1,507.50

17. Cresencio Ravancho

2,040.00

18. Isagani Fernandez

3,220.00

19. Jose Fermil

17,340.00

TOTAL ----

180,764.00"

(pp. 64-65, Rollo)

The following facts, as culled from the Solicitor General's Comments, are undisputed:

1. Private respondents were employees of the Pangasinan Review, Inc. (hereafter "PRI"), a corporation engaged in the business of printing, bookbinding and publishing newspapers whose corporate life legally expired on October 27, 1982 after fifty years of corporate existence.
2. Notwithstanding the expiry of its corporate life, PRI, however, actually continued its business operations until it was advised by the Securities and Exchange Commission (SEC) in a letter dated January 10, 1985 (Annex 'D', Petition) that its corporate term had already expired.
3. On January 21, 1985, the Board of Directors of PRI, complying with the SEC advice, passed a resolution authorizing the current Board of Directors to undertake the liquidation of the company by reason of the expiry of its corporate term.
4. Earlier, on January 20, 1985, a splinter group led by Director Anastacio T. Zamuco, together with several others, filed with the SEC a petition for authority to allow PRI to renew its corporate existence and to continue its usual business operations. The SEC, however, in an Order dated May 3, 1985, denied Zamuco's petition and

instead ordered them to liquidate the assets of the company (Annex 'E', Petition).

5. On April 29, 1985, the Board of Directors minus Zamuco and Mrs. Corazon C. Fernandez who were then absent, acting as a Board of Liquidators of the company passed, inter alia, Resolution No. 1985-2 (pp. 403-404, NLRC Record) conveying corporate properties of the defunct PRI, to the NPRI which had been newly incorporated, thus:

"That the Pangasinan Review, Inc. had only a period of three years from its dissolution on September 23, 1982, within which to wind up its affairs.

"WHEREFORE, resolved, as it is hereby resolved, as the most speedy and feasible means of winding up its affairs, to convey the corporate properties, including the right to publish the Courier, for the benefit of stockholders and creditors, to the New Pangasinan Review, Inc., which was just granted a certificate of registration on March 27, 1985 by the SEC, in which case, claims against the defunct Pangasinan Review, Inc., may be presented as long as the New Pangasinan Review, Inc., exists subject, however, to the statute of limitations; Resolved further that as consideration of the transfer, conveyance and assignment mentioned, the New Pangasinan Review, Inc., will undertake to issue and deliver unto the stockholders of the defunct Pangasinan Review, Inc., such number of fully paid shares of the capital stock of the former of the par value of P100.00 each, equivalent to the net book value of the assets of the defunct Pangasinan Review, Inc., without prejudice to the rights of third parties; and Resolved finally to constitute and authorize the President Dr. Josefina V. Fernandez to represent the defunct Pangasinan Review, Inc., in the execution of the aforementioned transfer or assignment of corporate properties with full power to do and perform all and every act and thing whatsoever necessary to be done in and about the premises. (Emphasis ours) (pp. 116-117, Rollo).

6. Pursuant to the said Resolution No. 1985-2, a Deed of Assignment was executed on the same day, April 29, 1985 by and between PRI thru its President, Josefina F. de Venecia-Fernandez, and NPRI thru its Treasurer, Salvacion M. Hernando (pp. 405-407, NLRC Record) stipulating, among others, as follows:

"x x x x x x x x

"WHEREAS, the FIRST PARTY by action of its Board of Directors in its meeting held on the 29[th] day of April, 1985, approved a proposal to transfer and convey to the SECOND PARTY, all the properties of the FIRST PARTY, which are described in Annex 'A' hereof, in exchange for fully paid up shares of the SECOND PARTY, each of the par value of P100.00, equal in number of shares based on the net book value (assets minus liabilities) of the Total Assets of the FIRST PARTY, with the understanding that the SECOND PARTY would assume and pay all the liabilities and obligations of the FIRST PARTY of every kind as may appear outstanding and subsisting in its books as of 19 January 1985; and

"WHEREAS, the liquidation of the FIRST PARTY will not prejudice the rights of third parties.

"x x x x x x x x

"For the consideration mentioned in the second 'WHEREAS' hereof, the FIRST PARTY hereby transfers, conveys and assigns unto the SECOND PARTY, absolutely and forever, effective upon the execution of this Deed, all its (the 'Company's') properties, more particularly described in the list attached hereto and made an integral part hereof as Annex 'A', with the understanding that the SECOND PARTY shall assume and pay all its liabilities and obligations of every kind as may appear outstanding and subsisting in its book as of 19 January 1985.

"x x x x x x x x

"The SECOND PARTY hereby assumes, and hereby undertakes to pay, satisfy, discharge, perform and fulfill, all the debts, liabilities, contracts; engagements and obligations of the FIRST PARTY of every kind, as may

appear outstanding and subsisting in its books as of 19 January 1985, whether these are or thereafter to become due, and to indemnify the FIRST PARTY, its Board of Directors and Officers, against, and keep them free and harmless from, all actions, proceedings, claims and demands in respect thereof.

"x x x x x x x x

"The parties hereto hereby mutually agree to sign, execute, acknowledge and deliver, jointly or each of them separately, such further deeds, documents, agreements, papers and other writings as may be necessary to carry into full effect their intents and purposes as contemplated herein." (pp. 118-119, Rollo)

On June 17, 1985, the nineteen private respondents, together with Jun Velasco, Maximo Cerezo, Victor Quimbay and Generoso Sandaydiego III, filed with the Chairman of the Board of Liquidators thru the SEC a written claim for payment of their separation pay and ECOLA, copy furnished to Atty. Anastacio Zamuco, Chairman of the Board of Liquidators, and to the Ministry of Labor and Employment at Dagupan City (p. 30, NLRC Record) where, apparently, said claim was docketed as NLRC Case No. SUB-RAB-I-540-85 (vide, pp. 1, 4, 5, NLRC Record). (pp. 120 and 226, Rollo)

Atty. Zamuco directed the said claimants to submit supporting papers to the Chairman or Secretary of the Board of Liquidators so that their claims could be processed (p. 30, NLRC Record) prompting the counsel of said claimants to move for the provisional dismissal of the NLRC case (vide, pp. 1, 16, NLRC Record).

On October 9, 1986, however, the private respondents revived their claims with the MOLE Dagupan Office when nothing positive was arrived at. They filed a formal complaint against PRI for payment of their separation pay, 13[th] month pay, ECOLA and damages, docketed as NLRC Case No. SUB-RAB-I-071-86 (pp. 12-15, NLRC Record; Annex 'O', Petition).

PRI contended that they were not entitled to any separation pay, 13[th] month pay and ECOLA because the company had ceased to exist by reason of the expiry of its term and the private respondents were neither removed from office nor their services terminated.

On June 10, 1987, Labor Arbiter Irenarco Rimando rendered the disputed decision.

PRI appealed. On May 30, 1988, NLRC affirmed the appealed Decision of the Labor Arbiter.

Upon receipt by the Dagupan Arbitration Branch of the record for execution of the judgment, Labor Arbiter Dominador Saldares, who replaced Labor Arbiter Irenarco Rimando, called the parties to a conference including Dr. Josefina V. Fernandez, President of the Pangasinan Review, Inc., and Mr. Renato Zabala, Board Chairman of NPRI (pp. 389-393, NLRC Record; Annex 'R', Petition). However, only the private respondents appeared. Dr. Fernandez and Mr. Zabala, filed a joint manifestation (p. 394, NLRC Record; Annex 'S', petition) that they could not participate in the conference alleging that they have no authority to speak for their corporation.

On October 21, 1988, the next scheduled date of the conference, Dr. Fernandez again filed a manifestation reiterating her refusal to participate (p. 395, NLRC Record). The complainants (herein private respondent) submitted copies of Resolution No. 1985-2 of the Board of Pangasinan Review, Inc. (quoted under paragraph 5, above), and Deed of Assignment dated April 29, 1985 showing assumption of the liabilities of PRI by NPRI.

On November 3, 1988, Labor Arbiter Ricardo N. Olarez, who replaced Labor Arbiter Saldares, issued a Special Order which reads as follows:

"NOW, THEREFORE, in the name of the Republic of the Philippines, you are hereby commanded to collect from the Pangasinan Review, Inc. and/or the New Pangasinan Review, Inc. the amount of P180,764.00 by garnishing the monetary deposits of the Pangasinan Review, Inc. and/or the New Pangasinan Review, Inc. at

any of the banks in Dagupan City or in Pangasinan Province, and if you fail to collect the said amount including your legal and sheriff's fees, you are to proceed to the premises of the Pangasinan Review, Inc. and sieze (sic) the Chattels and goods of the Pangasinan Review, Inc. and/or the New Pangasinan Review, Inc. except such as are by law exempt and make sale thereof according to the Rules of Court and deposit the amount collected by you to the Special Disbursing Officer of this Office for proper disposition, except the amount of your legal and sheriff's fees.

"In case sufficient personal property of the Pangasinan Review, Inc. and/or New Pangasinan Review, Inc. cannot be found to satisfy the amount of P180,764.00 and your legal and sheriff's fees thereon, you are ordered to levy upon the real estate of the Pangasinan Review, Inc. and/or New Pangasinan Review, Inc. and sell the same according to the Rules of Court for the satisfaction of the balance of the amount and your legal and sheriff's fees and that you make a return of your proceedings upon this Writ of Execution within 60 days from today." (pp. 19-20, Rollo) (Emphasis ours)

The Deputy Sheriff served the writ of Execution and a Notice of Levy (Annex 'W', Petition) upon NPRI thru its Board Chairman, Mr. Renato Zabala, as well as Dr. Josefina V. Fernandez. A notice of garnishment was also served upon the manager/cashier of the Bank of the Philippine Islands (Bank of P.I.) Dagupan City Branch on November 7, 1988 (Annex 'V', Petition).

On November 10, 1988, NPRI filed a third party claim on the levied/garnished properties (pp. 416-418, NLRC Record; Annex 'X', Petition, p. 125, Rollo, G.R. 85939, p. 10, Rollo, G.R. 86968).

On November 11, 1988, respondent Labor Arbiter Olarez issued a Release Order (p. 420, NLRC Record; Annex 'Y', Petition) on the garnished P111,910.25 deposit with the Bank of P.I., pursuant to which the bank released the said amount to the respondent Deputy Sheriff (Annex 'Z', Petition) who then turned over the same to the private respondents thru their counsel (p. 439, NLRC record).

Another order of release dated November 7, 1988 for the amount of P7,154.00 was not satisfied because of the third party claim, copy of which was received by the deputy sheriff (p. 10, Rollo, G.R. 86968).

On November 14, 1988, respondent Labor Arbiter issued a Resolution (pp. 422-431, NLRC Record) denying the third party claim and directing the Sheriff to enforce the writ of execution already issued (pp. 115-125, Rollo).

NPRI filed this petition on December 8, 1988 in G.R. 85939, on the following issues:

"I

"WHETHER OR NOT THE PROCEEDINGS IN NLRC CASE NO. SUB-RAB-I-071-86 WERE NULL AND VOID ON THE GROUND THAT THE ACTION WAS DIRECTED AGAINST THE DEFUNCT PANGASINAN REVIEW, INC. AND WAS FILED BEYOND THE THREE YEAR PERIOD FOR LIQUIDATION AND WINDING UP OF CORPORATE AFFAIRS WHICH EXPIRED ON OCTOBER 27, 1985;

"II

"WHETHER OR NOT THE HEREIN PRIVATE RESPONDENTS WERE ENTITLED TO SEPARATION PAY, CONSIDERING THAT THE EMPLOYER, THE PANGASINAN REVIEW, INC., CEASED OPERATION BY REASON OF THE EXPIRY OF ITS CORPORATE TERM;

"III

"WHETHER OR NOT THE JUDGMENT IN THE SAID LABOR CASE AGAINST THE DEFUNCT PANGASINAN REVIEW, INC., CAN BE ENFORCED AGAINST THE PETITIONER NPRI WHICH IS A DISTINCT AND DIFFERENT CORPORATION AND IS NOT A PARTY THERETO." (p. 228, Rollo)

In G.R. No. 86968

Also on November 14, 1988, shortly before the third party claim was denied by petitioner Olarez, NPRI filed with the Regional Trial Court, Branch 40 at Dagupan City, a complaint against the labor arbiter and the private respondents for injunction and damages with prayer for restraining order and/or writ of preliminary injunction (Civil Case No. D-9187) questioning the execution of the decision in NLRC Case No. SUB-RAB-I-071-86). Summons was served upon Olarez. Respondent Deputy Sheriff Querimit submitted his Partial Report to the effect that the garnished amount of P111,910.24 had already been withdrawn from the Bank of Philippine Islands and proportionately distributed to the complainants.

Judge Deodoro J. Sison of the Regional Trial Court issued a temporary restraining order and set for hearing NPRI's application for preliminary injunction on November 25, 1988.

Olarez filed a motion to dismiss the complaint on the ground of lack of jurisdiction. The motion was denied in open court. His motion for reconsideration was likewise denied.

Aside from Civil Case D-9187, Dr. Josefina V. Fernandez had filed a letter-complaint with the Ombudsman against petitioner Olarez, questioning the judgment award in the labor case. Olarez received a copy of the complaint (1st Indorsement) on January 5, 1988) requiring his comment thereon (p. 11, Rollo, G.R. 86968).

Hence, this petition in G.R. 86968 attributing grave abuse of discretion on the part of respondent judge in assuming jurisdiction over Civil Case D-9187 and issuing a temporary restraining order against the writ of Execution issued by the NLRC.

On January 9, 1989, We issued a temporary restraining order (TRO) in G.R. 85939 enjoining the execution of the NLRC decision dated June 10, 1987.

In Our Resolution dated March 6, 1989, We directed the consolidation of G.R. No. 86968 with G.R. No. 85939 as they both stemmed from the monetary benefits decreed by Labor Arbiter Ricardo Olarez in favor of private respondents.

At the outset, We declare petitioner guilty of forum shopping when it filed, despite the pendency of G.R. 85939, Civil Case D-9187 before the Regional Trial Court, Branch 40, Dagupan City. We agree with the Solicitor General that the petition (G.R. 85939) and the action before the Regional Trial Court involve "the same transactions, the same essential facts and circumstances":

"In the action before the Regional Trial Court, as in the action before this Honorable Court, the validity and legality of the proceedings in NLRC Case No. SUB-RAB-I-071-86 and the propriety of implementing the decision therein against the petitioner were the basic issues. So, too, the relief was basically the same: the prevention of such implementation or execution." (p. 130, Rollo, G.R. 85939)

In the case of Villanueva v. Adre (G.R. No. 80863, April 27, 1989, 172 SCRA 876), We stated:

"There is forum shopping whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another. The principle applies not only with respect to suits filed in the courts but also in connection with litigations commenced in the courts while an administrative proceeding is pending, as in this case, in order to defeat administrative processes and in anticipation of an unfavorable administrative ruling and a favorable court ruling. This is specially so, as in this case, where the court in which the second suit was brought, has no jurisdiction." (at p. 882)

Corollarily, there is no question that in G.R. 86968, respondent judge acted without jurisdiction and committed grave abuse of discretion in denying Olarez' motion to dismiss Civil Case D-9187. It is basic that the RTC is not

superior to but equal in rank with the NLRC and has no jurisdiction to issue the restraining order against the execution of the NLRC decision dated June 10, 1987 (Imperial Vegetable Worker's Union, et al. v. Benjamin A. Vega, et al., G.R. Nos. 57005-07, November 23, 1988, 167 SCRA 601). Courts cannot enjoin execution of judgment rendered by the National Labor Relations Commission (Villanueva v. Adre, supra).

Likewise explicit in Art. 254 of the Labor Code is the prohibition against courts or other entities on the issuance of injunction or restraining order in cases involving or growing out of labor disputes. In the cases of "Filipino Pipe Workers Union (NLU) v. Demetrio M. Batario, Jr., and Filipino Pipe and Foundry Corp. v. NLRC, et al., (G.R. No. 75951, July 29, 1988; G.R. No. 79417, July 29, 1988, respectively, 163 SCRA 789) Chief Justice Fernan cautioned judges of lower court in entertaining actions involving decisions, demands or orders of the Labor Arbiters as well as the NLRC, particularly where the caption of the complaint is "Prohibition with Preliminary Injunction" which is sufficient to put a judge on guard (supra, p. 796).

Civil Case D-9187 of RTC, Dagupan City, Branch 40 should thus be dismissed for lack of jurisdiction.

On the issue of whether or not complainants' monetary claim had already prescribed and that they are already barred from asserting the same, we shall not disturb the findings of fact by the NLRC; i.e. that complainant had sent a letter, dated June 17, 1985 to the Chairman of the Board of Liquidators, asserting that "they wanted to avail of the benefits under BP 130, or the payment of separation pay of 15 days for every year of service computed at the rate of their last salary received" (p. 72, Rollo). We thus uphold their ruling that while the Pangasinan Review, Inc.'s corporate charter expired on October 27, 1982, complainants' letter operates as an extra-judicial demand within the three-year period and this interrupts the running of the prescriptive period.

The proceedings in NLRC Case No. SUB-RAB-I-071-86 were therefore valid and legal.

As to private respondents' right to separation pay, Art. 283 (formerly Art. 284) as amended by Sec. 15 of BP 130 is explicit:

"Art. 283. Closure of establishment and reduction of personnel. — The employer may also terminate the employment of any employee due to x x x the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. x x x In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year." (Emphasis ours)

Private respondents are, therefore, entitled to their claim for separation pay at the rate of one-half (1/2) month's pay for every year of their service, with a fraction of at least six (6) months being considered as one whole year.

Moreover, pursuant to Art. 110 of the Labor Code as amended by RA 6715, whenever there is liquidation proceedings, workers enjoy first preference as regards wages due them for services rendered during the period including other monetary claims (DBP v. NLRC, et al. G.R. Nos. 82763-62, March 19, 1990, 183 SCRA 328), to be paid in full before claims of the government and other creditors may be paid:

"Worker preference in case of bankruptcy.[*] -- In the event of bankruptcy, or liquidation of an employer's business, his workers shall enjoy first preference as regards their wages and other monetary claims, any provisions of law to the contrary notwithstanding. Such unpaid wages and monetary claims shall be paid in full before claims of the government and other creditors may be paid."

On the question of whether the NLRC decision can legally be enforced against NPRI, it is clear that NPRI is

liable. Aside from being an assignee/transferee of the defunct PRI (pursuant to its Resolution No. 1985-2 and the Deed of Assignment dated April 29, 1985), it categorically assumed and undertook to "pay all the liabilities and obligations of the defunct Pangasinan Review, Inc. (PRI) of every kind." The Resolution also stated that "claims against the defunct Pangasinan Review, Inc. may be presented as long as the New Pangasinan Review, Inc. exists."

We likewise agree with the Solicitor General that petitioner NPRI was not denied due process:

"It is (sic) likewise cannot be disputed that petitioner took over the ownership, management and operations of the Pangasinan Review, Inc. As such, petitioner has for all legal intents and purposes thus become the successor-employer of the private respondents.

"Moreover, the records show that prior to the issuance of the Special Order dated November 3, 1988 (pp. 409-412, NLRC Record; Annex 'T', Petition), which ordered that 'satisfaction of the judgment shall be enforced against the remaining undisposed assets of the defunct Pangasinan Review, Inc. and/or the New Pangasinan Review, Inc. as the successor-employer,' petitioner and counsels were notified of the conference-hearing set for October 5, 1988, but that they refused to participate therein (pp. 394-395, NLRC Record; Annex 'S', Petition)." (pp. 138-139, Rollo) (Emphasis ours).

ACCORDINGLY, in G.R. No. 85939, the NLRC decision is **AFFIRMED** and the petition for certiorari is hereby **DISMISSED**. The temporary restraining order issued in said case is hereby **SET ASIDE**.

In G.R. No. 86968, the writ of certiorari is **GRANTED**. Civil Case No. D-9187 in the Regional Trial Court, Branch 40, Dagupan City is ordered **DISMISSED** for lack of jurisdiction of the said court.

Mr. Renato C. Zabala and Atty. Felipe P. de Vera, Sr., are required to show cause why they should not be held in contempt for having filed a complaint before the Regional Trial Court of Dagupan City and the Ombudsman on the same issue raised in this petition seeking the same prayer and relief. Atty. Felipe P. de Vera, Sr. is likewise directed to show cause why he should not be suspended from the practice of law by reason of his having committed an act of forum shopping, both within ten (10) days from receipt of this decision.

Double costs against private respondent New Pangasinan Review, Inc.

SO ORDERED.

Narvasa, (Chairman), Cruz, Gancayco, and Griño-Aquino, JJ., concur.

[*] As amended by Sec. 1, RA 6715, March 21, 1989, Appendices.

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