

DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. THE NATIONAL LABOR RELATIONS COMMISSION, ONG PENG, ET. AL., RESPONDENTS.

G.R. Nos. 100264-81. January 29, 1993

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In this petition for certiorari, petitioner Development Bank of the Philippines (DBP) asserts its preferential right as a foreclosing creditor over private respondents' claims for separation pay against Republic Hardwood, Inc. (RHI).

On November 14, 1986, the private respondents filed with the Provincial Extension Office of the Department of Labor and Employment (DOLE) in Daet, Camarines Norte seventeen individual complaints against RHI for unpaid wages and separation pay. These complaints were thereafter endorsed to the Regional Arbitration Branch (Branch V of Legaspi City) of the National Labor Relations Commission (NLRC) since the petitioners had already been terminated from employment.

In its position paper dated March 1987, RHI alleged that it had ceased to operate in 1983 due to the government ban against tree cutting. It further alleged that in May 24, 1981, its sawmill was totally burned resulting in enormous losses and that due to its financial setbacks, RHI failed to pay its loan with the DBP. RHI contended that since DBP foreclosed its mortgaged assets on September 24, 1985, then any adjudication of monetary claims in favor of its former employees must be satisfied against DBP.

On April 29, 1987, the private respondents filed a motion to implied DBP. On July 13, 1987, DBP filed its opposition to said motion.

On October 28, 1988, Executive Labor Arbiter Gelacio Rivera rendered a joint decision on the complaints, the relevant and dispositive portions of which read:

"To say that workers of bankrupt or insolvent employers must first file an insolvency or bankruptcy proceeding against the latter before their unpaid workers may be satisfied will cause additional burden, unnecessary expenses, unwanted hardship which are conditions not so intended under the Social Justice policy of the State.
x x x.

"x x x To require petitioners to file insolvency proceedings against RHI and later file against DBP their claims is to prolong the agony of petitioners. To give a technical and legal meaning to the words of Art. 110 is to subvert the rights of the petitioners. We hold therefore that as against the contention of respondent DBP, Art. 4 of the Labor Code is the answer. The social justice clause of the Constitution is our guide."

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"WHEREFORE, premises considered, judgment is hereby rendered in favor of petitioners and adversely against respondent Republic Hardwood, Inc. and Development Bank of the Philippines, ordering the latter to

jointly and severally pay petitioners the amount of P59,610.00 as separation pay within ten (10) days upon receipt of this Decision through this Regional Arbitration Branch. Further, respondents are ordered to pay the amount of P308.00 as deposit fee pursuant to PD 1177 under Budget Circular No. 304 and Secs. 4 and 8 of Batas Pambansa Blg. 230. (Rollo, pp. 38, 40-41)

DBP appealed to the NLRC which rendered a decision on April 15, 1991 affirming the labor arbiter's judgment. DBP filed a motion for reconsideration which was likewise dismissed by the NLRC on May 17, 1991.

Hence, this petition for certiorari.

The petitioner alleges that the NLRC committed grave abuse of discretion in issuing the assailed decision dated April 15, 1991 and its resolution of May 17, 1991 and raises the following issues:

"1. Whether or not the Joint Decision of Executive Labor Arbiter Gelacio L. Rivera is violative of procedural due process on the part of DBP;

"2. Whether or not the complainant-private respondents are entitled to separation pay;

"3. Whether or not there was retroactive application of Executive Order No. 81 in this case;

"4. Whether or not Executive Labor Arbiter Gelacio L. Rivera and the NLRC correctly applied Article 110 of the Labor Code in this case; and

"5. Whether or not there is a basis for the NLRC (Labor Arbiter Rivera) to order the payment of deposit fee." (Rollo, pp. 17-18)

DBP asserts that it was deprived of due process since there was no formal order impleading it in the complaints against RHI. Moreover, DBP points out, the cases were never set for hearing thus depriving it of the opportunity to peruse the documentary evidence of the complainants and to confront the complainants' witnesses. Additionally, DBP was not given an opportunity to present its own evidence.

There is no merit to this contention of DBP. Denial of due process means the total lack of opportunity to be heard. There is no denial of due process where a party is given an opportunity to be heard and to present his case. The petitioner in this case filed an opposition to the motion to implead it as a party defendant. It likewise filed a motion for reconsideration of the labor arbiter's decision. Thereafter, DBP filed an appeal with the NLRC and, later on, a motion for reconsideration of the NLRC decision. The petitioner, thus, was given ample opportunity to present its case. It was not denied due process.

There is no merit to DBP's contention that the workers are not entitled to separation pay. Despite the enormous losses incurred by RHI due to the fire that gutted the sawmill in 1981 and despite the logging ban in 1983, the uncontroverted claims for separation pay show that most of the private respondents still worked up to the end of 1985 (See Rollo, p. 39). RHI would still have continued its business had not the petitioner foreclosed all of its assets and properties on September 24, 1985. Thus, the closure of RHI's business was not primarily brought about by serious business losses. Such closure was a consequence of DBP's foreclosure of RHI's assets. We therefore apply Article 283 which provides:

"x x x 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. x x x"

However, because of the petitioner's assertion that the labor arbiter and respondent NLRC incorrectly applied the provisions of Article 110 of the Labor Code, we are constrained to grant the petition for certiorari.

Article 110, prior to its amendment by Republic Act No. 6715, reads:

ART. 110. 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 wages due them for services rendered during the period prior to the bankruptcy or liquidation, any provision of law to the contrary notwithstanding. Unpaid wages shall be paid in full before other creditors may establish any claim to a share in the assets of the employer.

Section 10, Rule VIII, Book III of the Implementing Rules and Regulations of the Labor Code states:

Sec. 10. Payment of wages in case of bankruptcy. - Unpaid wages earned by the employees before the declaration of bankruptcy or judicial liquidation of the employer's business shall be given first preference and shall be paid in full before other creditors may establish any claim to a share in the assets of the employer.

In *Republic v. Peralta*, 150 SCRA 37 (1987), the Court held that the term "wages" includes separation pay. But the Court declared:

"Article 110 of the Labor Code, in determining the reach of its terms, cannot be viewed in isolation. Rather, Article 110 must be read in relation to the provisions of the Civil Code concerning the classification, concurrence and preference of credits, which provisions find particular application in insolvency proceedings where the claims of all creditors, preferred or non-preferred, may be adjudicated in a binding manner."

We have repeatedly stressed that before the workers' preference provided by Article 110 may be invoked, there must first be a declaration of bankruptcy or a judicial liquidation of the employer's business. (See *DBP v. Minister of Labor*, 195 SCRA 463 [1991]; *DBP v. NLRC*, 186 SCRA 841 [1990]; *DBP v. NLRC*, 183 SCRA 328 [1990]; *DBP v. Secretary of Labor*, 179 SCRA 630 [1989]; *DBP v. Santos*, 171 SCRA 138 [1989]; *Republic v. Peralta*, supra).

In *DBP v. Santos*, supra, the Court discussed the import of Article 110 and Section 10 of Rule VIII, Book III and stated:

"It is quite clear from the provisions that a declaration of bankruptcy or a judicial liquidation must be present before the worker's preference may be enforced. Thus, Article 110 of the Labor Code and its implementing rule cannot be invoked by the respondents in this case absent a formal declaration of bankruptcy or a liquidation order.

x x x x x x x x

"Moreover, the reason behind the necessity for a judicial proceeding or a proceeding in rem before the concurrence and preference of credits may be applied was explained by this Court in the case of *Philippines Savings Bank v. Lantin* (124 SCRA 476 [1983]). We said:

"The proceedings in the court below do not partake of the nature of the insolvency proceedings or settlement of a decedent's estate. The action filed by Ramos was only to collect the unpaid cost of the construction of the duplex apartment. It is far from being a general liquidation of the estate of the Tabligan spouses.

'Insolvency proceedings and settlement of a decedent's estate are both proceedings in rem which are binding against the whole

world. All persons having interest in the subject matter involved, whether they were notified or not, are equally bound. Consequently, a liquidation of similar import or other equivalent general liquidation must also necessarily be a proceeding in rem so that all interested persons whether known to the parties or not may be bound by such proceeding.

'In the case at bar, although the lower court found that 'there were no known creditors other than the plaintiff and the defendant

herein', this can not be conclusive. It will not bar other creditors in the event they show up and present their claims against the petitioner bank, claiming that they also have preferred liens against the property involved. Consequently, Transfer Certificate of Title No. 101864 issued in favor of the bank which is supposed to be indefeasible would remain constantly unstable and questionable. Such could not have been the intention of Article 2243 of the Civil Code although it considers claims and credits under Article 2242 as statutory liens. Neither does the De Barreto case x x x.'

"The claims of all creditors whether preferred or non-preferred, the identification of the preferred ones and the totality of the employer's asset should be brought into the picture. There can then be an authoritative, fair, and binding adjudication instead of the piece meal settlement which would result from the questioned decision in this case." (At pp. 144-145)

The NLRC, therefore, committed grave abuse of discretion when it affirmed the labor arbiter's ruling that the workers' preference espoused in Article 110 may be applied even in the absence of a declaration of bankruptcy or a liquidation order.

We must also emphasize that DBP's lien on RHI's mortgaged assets, being a mortgage credit, is a special preferred credit under Article 2242 of the Civil Code while the workers' preference is an ordinary preferred credit under Article 2244.

Thus, in *DBP v. NLRC*, (*supra*) it was held:

"4. A distinction should be made between a preference of credit and a lien. A preference applies only to claims which do not attach to specific properties. A lien creates a charge on a particular property. The right of first preference as regards unpaid wages recognized by Article 110 does not constitute a lien on the property of the insolvent debtor in favor of workers. It is but a preference of credit in their favor, a preference in application. It is a method adopted to determine and specify the order in which credits should be paid in the final distribution of the proceeds of the insolvent's assets. It is a right to a first preference in the discharge of the funds of the judgment debtor.

"In the words of *Republic v. Peralta*, *supra*.

'Article 110 of the Labor Code does not purport to create a lien in favor of workers or employees for unpaid wages either upon all of the properties or upon any particular property owned by their employer. Claims for unpaid wages do not therefore fall at all within the category of specially preferred claims established under Articles 2241 and 2242 of the Civil Code, except to the extent that such claims for unpaid wages are already covered by Article 2241, number 6: 'claims for laborers' wages, on the goods manufactured or the work done; or by Article 2242, number 3: 'claims of laborers and other workers engaged in the construction, reconstruction or repair of buildings, canals and other works, upon said buildings, canals and other works.' To the extent that claims for unpaid wages fall outside the scope of Article 2241, number 6 and 2242, number 3, they would come within the ambit of the category of ordinary preferred credits under Article 2244.'"

"5. The DBP anchors its claim on a mortgage credit. A mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted (Article 2176, Civil Code). It creates a real right which is enforceable against the whole world. It is a lien on an identified immovable property, which a preference is not. A recorded mortgage credit is a special preferred credit under Article 2242 (5) of the Civil Code on classification of credits. The preference given by Article 110, when not falling within Article 2241 (6) and Article 2242 (3) of the Civil Code and not attached to any specific property, is an ordinary preferred credit although its impact is to move it from second priority to first priority in the order of preference established by Article 2244 of the

Civil Code (Republic v. Peralta, supra)."

Clearly, even if DBP and the private respondents assert their preferred credits in a judicial proceeding, the former's claim must first be satisfied.

Article 110 of the Labor Code has been amended by R.A. No. 6715 and now reads:

"Article 110. 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 unpaid wages and other monetary claims, any provision of law to the contrary notwithstanding. Such unpaid wages, and monetary claims shall be paid in full before the claims of the Government and other creditors may be paid." (Underlining ours.)

We ruled in DBP v. NLRC, supra, that the amendment "expands worker preference to cover not only unpaid wages but also other monetary claims to which even claims of the Government must be deemed subordinate." Hence, under the new law, even mortgage credits are subordinate to workers' claims.

In this connection, respondent NLRC ruled:

"Lastly, while we are cognizant of the pronouncement of the Supreme Court with respect to Art. 110 and while we hold in respect said pronouncements, we are of the earnest view that considering that art. 110 has been amended by RA 6715, complainants preference over government claims and other creditors be adhered to." (Rollo, p. 65)

R.A. No. 6715, however, took effect only on March 21, 1989. The amendment cannot therefore be retroactively applied to, nor can it affect, the mortgage credit which was secured by the petitioner several years prior to its effectivity.

This was our pronouncement in DBP v. NLRC, supra:

"6. Even if Article 110 and its Implementing Rule, as amended, should be interpreted to mean 'absolute preference,' the same should be given only prospective effect in line with the cardinal rule that laws shall have no retroactive effect, unless the contrary is provided (Article 4, Civil Code). Thereby, any infringement on the constitutional guarantee on non-impairment of the obligation of contracts (Section 10, Article III, 1987 Constitution) is also avoided. In point of fact, DBP's mortgage credit antedated by several years the amendatory law, RA No. 6715. To give Article 110 retroactive effect would be to wipe out the mortgage in DBP's favor and expose it to a risk which it sought to protect itself against by requiring a collateral in the form of real property."

The public respondent, therefore, committed grave abuse of discretion when it retroactively applied the amendment introduced by R.A. No. 6715 to the case at bar.

With the foregoing discussion, we no longer find it necessary to discuss the two other issues raised by the petitioner.

WHEREFORE, the petition is hereby GRANTED. The assailed decision of public respondent National Labor Relations Commission dated April 15, 1991 and its resolution dated May 17, 1991 are SET ASIDE. The temporary restraining order issued by the Court on July 29, 1991 is made PERMANENT.

Bidin, Davide, Jr., Romero, and Melo, JJ., concur.

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