

**NAGKAHIUSANG MAMUMUO SA PICOP RESOURCES, INC. –
SOUTHERN PHILIPPINES FEDERATION OF LABOR (NAMAPRI – SPFL),
ARTEMIO Q. AVILA, ET AL., PETITIONERS, VS. THE HON. COURT OF
APPEALS (...)**

G.R. NOS. 148839-40. November 02, 2006

Ponente: VELASCO, JR., J.

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VELASCO, JR., J.:

This Petition for Certiorari and Prohibition puts to use both Rules 45 and 65 of the Rules of Court, to reverse the March 7, 2001 Resolution[1] of the Court of Appeals which enjoined the enforcement of the November 20, 2000 Writ of Execution[2] of the Secretary of Labor and Employment; and its July 4, 2001 Resolution[3] which granted the writ of preliminary injunction to respondent PICOP Resources, Inc. and likewise denied the Motion for Reconsideration filed by petitioner.

Petitioner Nagkahiusang Mamumuo sa PICOP Resources Inc., –Southern Philippines Federation of Labor (NAMAPRI-SPFL)[4] is the recognized labor union of the rank and file employees in the paper mill and plywood manufacturing plant of respondent Picop Resources, Inc. (PICOP) located in Bislig, Surigao Del Sur in Mindanao. Respondent PICOP is owned by Far East Cement Corporation, which operates the paper mill and plywood manufacturing plant and was the former employer of said employees.[5]

In 1997, PICOP suffered serious financial and operational problems that led to a declaration of a temporary shutdown for six months. Doubting the motives behind the short term closure, NAMAPRI-SPFL filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB) Regional Office for CARAGA Region in Butuan City.[6]

On January 11, 1998, the NAMAPRI-SPFL members staged a strike by picketing and barricading all roads leading to and from the premises of PICOP. In order to protect its interests, PICOP filed on January 13, 1998 a Petition for Preliminary Prohibitory Injunction with the Fifth Division of the National Labor Relations Commission (NLRC) located in Cagayan de Oro City, which issued a Temporary Restraining Order (TRO) on January 14, 1998, enjoining the union to remove all obstructions, man-made barricades, and to refrain from committing other acts that would prevent the resumption of the normal business operations of the company. Despite the NLRC directive, the NAMAPRI-SPFL members continued to prevent ingress to and egress from the company premises. Due to such unjustified defiance, respondent PICOP, on January 22, 1998, filed a complaint with the NLRC to declare the strike illegal.[7]

On January 27, 1998, PICOP filed a Petition for Assumption of Jurisdiction[8] over the labor dispute before the Office of the Secretary of Labor and Employment. On January 28, 1998, the Labor Secretary saw merit in the petition, assumed jurisdiction over the controversy, and issued an Assumption Order, directing all the striking employees to lift their picket and return to work. However, PICOP was required to accept the employees in the plywood division once the plant resumed operation, and with respect to the Paper and Kraft divisions, all

returning employees should be admitted under the same terms and conditions prevailing before the strike. In the same Order, the Petition for Preliminary Prohibitory Injunction filed with the NLRC, and the Petition to Declare the Strike Illegal filed with the NLRC Branch XI Regional Arbitration were consolidated with the instant petition with the Labor Secretary.[9]

On February 21, 1998, respondent PICOP notified the Department of Labor and Employment (DOLE) that effective March 31, 1998, it was permanently shutting down the operations of its plywood plant, including its administrative and support services. As a result, NAMAPRI-SPFL members engaged in another strike and picketed PICOP's plant and mill on March 8, 1998.

On March 31, 1998, PICOP dismissed the remaining workers and went through with the permanent closure of the paper mill and plywood manufacturing plant.

After the parties submitted their position papers, the Labor Secretary issued the September 9, 1999 Order,[10] the decretal portion of which states:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

- Declaring the temporary shutdown at the paper and plywood plants of Picop Resources, Inc. legitimate and the temporary lay-off of the affected workers therein likewise legal;
- Declaring the permanent retrenchment of the workers at the plywood plant and its administrative and support services valid;
- Declaring the impeachment of Union President, Mr. Edgardo Diaz, illegal;
- Dismissing the NAMAPRI-Avila Group's 16 demands;
- Dismissing the NAMAPRI-Avila Group's prayer for actual, moral, exemplary damages and costs of litigation and attorneys [sic]; and
- Ordering Picop Resources, Inc. to pay, if it has not yet done so, separation benefits to all other workers at the plywood plant and its administrative and support services who have been permanently retrenched (emphasis supplied).

Pending resolution of the issue of illegal strike which is yet to be heard, all the striking workers, except those already validly retrenched and paid their separation pay, are directed to return to work within 24 hours from receipt of this Order and Picop Resources, Inc. is hereby directed to unconditionally accept back to work all striking Union officers and members under the same terms and conditions prior to the strike. The parties are directed to cease and desist from committing any act that may aggravate the situation.

Atty. Lita Aglibut, Officer-in-Charge of the Legal Service, is hereby designated as the Hearing Officer to hear and receive evidence on the matter of illegality of the strikes within a period of thirty (30) days from receipt of this Order and, thereafter, to submit a report/recommendation within twenty (20) days from the termination of the proceeding.

The parties are further directed to submit their respective position papers within ten (10) days from receipt of this Order.

SO ORDERED.[11]

On September 20, 1999, the NAMAPRI-SPFL registered a Motion for Reconsideration of the aforequoted Order of the Labor Secretary. On the other hand, PICOP also filed its Motion for Reconsideration on September 21, 1999 questioning the reinstatement of the striking employees. Both Motions for Reconsideration were rejected in

the November 5, 1999 Order, the fallo of which reads:

WHEREFORE, in view of the foregoing, the Motion for Reconsideration filed by the NAMAPRI-Avila Group is hereby DENIED for lack of merit. The Partial Motion for Reconsideration filed by Picop Resources, Inc. is likewise hereby DENIED. In view, however, of the clarification made above, the Order dated September 9, 1999 is hereby MODIFIED, as follows:

Pending resolution of the illegal strike and the consequent termination issues which are yet to be heard, all the striking workers, except those already validly retrenched and paid their separation pay, are directed to return to work within 24 hours from receipt of this Order. Picop Resources, Inc. is hereby directed to unconditionally accept back to work all striking employees, except those already excluded, under the same terms and conditions prior to the strike. The parties are directed to cease and desist from committing any act that may aggravate the situation.

Atty. Lita Aglibut, Officer-in-Charge of the Legal Service, is hereby designated as Hearing Officer to hear and receive evidence thereon within a period of thirty (30) days from receipt of this Order and, thereafter, to submit a report/recommendation within twenty (20) days from the termination of the proceeding.

The parties are further directed to submit their respective position papers within ten (10) days from receipt of this Order.

The NAMAPRI-Avila Group's Urgent Manifestation and Motion to Cite in Contempt is likewise DENIED, in view of the clarification.

SO ORDERED.[12]

Petitioner NAMAPRI-SPFL filed a petition for certiorari with the Court of Appeals (CA) entitled *Nagkahiusang Mamumuo sa Picop Resources, Inc. – Southern Philippines Federation of Labor (NAMAPRI-SPFL), Artemio Avila, et al. v. Hon. Bienvenido Laguesma, et al.* docketed as CA-G.R. SP No. 56566 disputing the legality and propriety of the September 9, 1999 and the November 5, 1999 Orders of the Labor Secretary. Not to be outdone, respondent PICOP also filed a petition for certiorari with the CA entitled *PICOP Resources, Inc. v. Hon. Bienvenido Laguesma, et al.* and docketed as CA-G.R. SP No. 56204 assailing the same Orders issued by the Labor Secretary.

Despite the pendency of these actions before the CA, petitioner NAMAPRI-SPFL submitted a Motion to the Labor Secretary asking for a writ of execution to implement the September 9, 1999 and November 5, 1999 Orders. This was granted by the Labor Secretary on July 5, 2000. Consequently, on November 20, 2000, the Labor Secretary issued a Writ of Execution[13] directing the NLRC Sheriff to proceed to the premises of PICOP to enforce its September 9, 1999 and the November 5, 1999 Orders. On November 29, 2000, Sheriff Edwin G. Manilag garnished the funds of PICOP deposited with the BPI-Bislig branch in Bislig City, amounting to PhP 51,170,198.42.[14]

Threatened, on December 14, 2000, PICOP filed an Urgent Motion for Issuance of Temporary Restraining Order and/or Preliminary Injunction or Mandatory Injunction with the appellate court in CA G.R. SP No. 56204.

Finding merit in the plea, the CA issued the March 7, 2001 Resolution, the fallo of which reads:

WHEREFORE, in order not to render the instant petition moot and academic and to preserve the rights of petitioner, the public respondents are enjoined from enforcing the writ of execution issued on November 20, 2000, as well as the Order dated February 23, 2001.

Respondents are directed to show cause, within a period of ten (10) days from receipt hereof, why the writ of preliminary injunction should not be granted.

SO ORDERED.[15]

Petitioner NAMAPRI-SPFL asked the court a quo to reconsider the March 7, 2001 ruling, but the relief prayed for was declined in the July 4, 2001 CA Resolution. Worse, the CA decided to grant a writ of preliminary injunction against petitioner contained in the fallo of the July 4, 2001 Resolution which we quote in toto:

WHEREFORE, private respondents' motion for reconsideration and/or motion to dissolve temporary order [sic] is DENIED for lack of merit.

Let a writ of preliminary injunction issue upon the posting by petitioner of a bond in the amount of Fifty Million (P50,000,000.00) Pesos to answer for all damages which private respondents may sustain by reason of the injunction if the Court should finally decide that it is not entitled thereto.

Petitioner's motion for extension of thirty (30) days from June 5, 2001 within which to file its memorandum is GRANTED.

SO ORDERED.[16]

Aggrieved by the grant of injunctive writ, petitioner NAMAPRI-SPFL now entreats the Court to overturn the assailed Resolutions of the CA.

The Issue

The main issue for consideration is whether the CA committed grave abuse of discretion in the issuance of its March 7, 2001 and July 4, 2001 Resolutions.

On a procedural matter, respondent PICOP makes much of the unconventional manner by which petitioner styles the instant action as one under Rule 45 which is an appeal by certiorari from a CA decision to the Supreme Court and simultaneously, also a special civil action under Rule 65 based on alleged grave abuse of discretion in a decision of the CA. However, in its Memorandum,[17] NAMAPRI-SPFL clarified that it was actually a petition under Rule 45.

We cannot give our imprimatur to this unorthodox strategy.

As a general rule, a party cannot file a petition both under Rules 45 and 65 of the Rules of Court because said procedural rules pertain to different remedies and have distinct applications.[18]

Meanwhile, in *Hanjin Engineering and Construction Co., Ltd., v. CA*, we held that the remedy of appeal under Rule 45 and an original action for certiorari under Rule 65 are mutually exclusive and not alternative or cumulative.[19] Thus, a party should not join both petitions in one pleading. In *Mercado v. Court Appeals*, we held that "when a party adopts an improper remedy," as in this case, "his petition may be dismissed outright." [20] We then further elucidated that:

Indeed, not infrequently, litigants and parties to a petition have invoked liberal construction of the Rules of Court to justify lapses in its observance. Hopefully, it is not simply a cover-up of their own neglect or sheer ignorance of procedure. While indeed this Court has on occasion set aside procedural irregularities in the interest of justice, it must be stressed that liberality of construction of the rules should not be a panacea for all procedural maladies. For this Court will not tolerate wanton disregard of the procedural rules under the guise of liberal construction.[21]

Petitioner however relented and decided to stick it out with Rule 45 as the procedural rule to govern its petition.

As provided in Sec. 1, Rule 45,[22] the petition for review must be from a judgment or final order or resolution of the CA, Sandiganbayan, Regional Trial Court, and other courts, whenever authorized by law. Since a petition for

review is a mode of appeal, the judgment, order, or resolution must be one that completely disposes of the case or of a particular matter in it. It is clear however, that the assailed March 7, 2001 and July 4, 2001 CA Resolutions are merely interlocutory orders or provisional remedies. The aggrieved party must await the final decision in the petition and then appeal from the adverse judgment, in the course of which the party may question the issuance of the interlocutory orders as errors of judgment. As there was still no final judgment from the CA at the time of the filing of the petition, then a petition for review under Rule 45 is not the appropriate remedy.

However, when an interlocutory order is rendered without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or in excess of jurisdiction, then a petition for certiorari, prohibition, or mandamus under Rule 65 can be availed of depending on the circumstances of each case. In the case at bar, granting *arguendo* that petitioner NAMAPRI-SPFL instituted the instant petition under Rule 65 on the ground that the CA rendered the disputed Resolutions with grave abuse of discretion, still, the petition must fail because the CA did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction.

In *Toyota Motor Phils. Corp. Workers' Association (TMPCWA) v. Court of Appeals*, we held:

In *Placido Urbanes, Jr. v. Court of Appeals*, we held that the matter of the issuance of a writ of preliminary injunction is addressed to the sound discretion of the trial court, unless the court commits a grave abuse of discretion. Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment that is equivalent to lack of jurisdiction or whether the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined, or to act at all in contemplation of law. For the extraordinary writ of certiorari to lie, there must be a capricious, arbitrary and whimsical exercise of power.

Section 1, Rule 58 of the Rules of Court, as amended, defines a preliminary injunction as an order granted at any stage of an action prior to the judgment or final order requiring a party or a court, agency or a person to refrain from a particular act or acts. Injunction is accepted as the strong arm of equity or a transcendent remedy to be used cautiously as it affects the respective rights of the parties, and only upon full conviction on the part of the court of its extreme necessity. As an extraordinary remedy, injunction is designed to preserve or maintain the status quo of things and is generally availed of to present actual or threatened acts until the merits of the case can be heard. It may be resorted to only by a litigant for the preservation or protection of his rights or interests and for no other purpose during the pendency of the principal action. It is resorted to only when there is a pressing necessity to avoid injurious consequences, which cannot be remedied under any standard compensation. The resolution of an application for a writ of preliminary injunction rests upon the existence of an emergency or of a special recourse before the main case can be heard in due course of proceedings. [23]

More so, in *Civil Service Commission v. Court of Appeals*, we held that "[a]bsent a clear showing of grave abuse of discretion, the exercise of judgment by the courts in injunctive matters should not be interfered with." [24]

In the present case, petitioner NAMAPRI-SPFL miserably failed to demonstrate even an iota of the alleged capricious and whimsical exercise of judgment on the part of the court *a quo*. Without such showing, the grant of the extraordinary writ of certiorari has no basis. The monetary award to the NAMAPRI-SPFL members is fully secured by the PhP 50 million bond posted by respondent PICOP. The resort to Rule 45 is premature as petitioner could still question the said interlocutory orders once the CA case has been decided on the merits.

To write *finis* to this action, the March 7, 2001 and July 4, 2001 CA Resolutions which enjoined the July 5, 2000 Labor Secretary Order were maintained by the court *a quo* in its March 22, 2001 Decision in CA G.R. SP No. 60586, the decretal portion of which reads:

WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for [is] accordingly GRANTED. Consequently, the Order dated July 5, 2000 of the then Secretary of

Labor and Employment Bienvenido E. Laguesma in "In Re: Labor Dispute at Picop Resources, Inc.," docketed as OS-AJ-0002-98 (NCMB-RB13-11-005-97) is hereby ANNULLED and SET ASIDE.

No pronouncements as to costs.

SO ORDERED.[25]

Upon review, the said March 22, 2001 CA Decision was affirmed by this Court in NAMAPRI-SPFL-Avila Group v. NAMAPRI-SPFL-TRUGILLO GROUP[26] on September 12, 2001, the salient disposition of which is the annulment of the July 5, 2000 Order of the Labor Secretary. In effect, the legality of the two questioned CA Resolutions have been upheld and affirmed. Evidently, this petition is now moot and academic.[27]

WHEREFORE, the instant petition is hereby DENIED for lack of merit.

No costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and Tinga, JJ., concur.

[1] Rollo, pp. 77-79.

[2] Id. at 160-161.

[3] Id. at 81-83.

[4] Id at 9 & 634.

[5] Id. at 293 & 700.

[6] Id. at 294-295 & 702.

[7] Id. at 296-297 & 703-704.

[8] Id. at 85-98.

[9] Id. at 99-102.

[10] Signed by Bienvenido E. Laguesma as Secretary of Labor, id. at 108-116.

[11] Id. at 116.

[12] Id. at 120-121.

[13] Supra note 2.

[14] Rollo, pp. 48-49.

[15] Supra note 1, at 79.

[16] Supra note 3, at 83.

[17] Rollo, p. 638.

[18] See G & S Transport Corporation v. Court of Appeals, G.R. No. 120287, May 28, 2002 , 382 SCRA 262, 273 for an exception to this general rule.

[19] G.R. No. 165910, April 10, 2006, 487 SCRA 78, 96; see *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 129368, August 25, 2003, 409 SCRA 455.

[20] G.R. No. 150241, November 4, 2004, 441 SCRA 463, 469.

[21] *Id.* at 470.

[22] SEC. 1. Filing of petition with Supreme Court. – A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth (emphasis supplied).

[23] G.R. No. 148924, September 24, 2003, 412 SCRA 69, 85-86.

[24] G.R. No. 159696, November 17, 2005, 475 SCRA 276, 285.

[25] The Decision was penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Conrado M. Vasquez, Jr. (Chairman, Thirteenth Division) and Eliezer R. delos Santos concurring, rollo, pp. 739-743, at 743.

[26] G.R. No. 148531 (unpublished in SCRA).

[27] See *Tantoy v. Abrogar*, G.R. No. 156128, May 9, 2005, 458 SCRA 301.

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