

FRANKLIN BAGUIO AND 15 OTHERS, BONIFACIO IGOT AND 6 OTHERS, ROY MAGALLANES AND 4 OTHERS, CLAUDIO BONGO, EDUARDO ANDALES AND 4 OTHERS, PETITIONERS, VS. NATIONAL LABOR RELATIONS C...

G.R. Nos. 79004-08. October 04, 1991

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

The liability of an employer in job contracting, vis-a-vis his contractor's employees, is the sole issue brought to the fore in this labor dispute.

This Petition for Certiorari seeks to set aside the Resolution, dated 27 February 1987, of public respondent National Labor Relations Commission (NLRC), Third Division, which reversed the Resolution of its First Division, dated 27 December 1985, and absolved private respondent General Milling Corporation (GMC) from any and all liability to petitioners.

Sometime in 1983, private respondent Feliciano LUPO, a building contractor, entered into a contract with GMC, a domestic corporation engaged in flour and feeds manufacturing, for the construction of an annex building inside the latter's plant in Cebu City. In connection with the aforesaid contract, LUPO hired herein petitioners either as carpenters, masons or laborers.

Subsequently, LUPO terminated petitioners' services, on different dates. As a result, petitioners filed Complaints against LUPO and GMC before the NLRC Regional Arbitration Branch No. VII, Cebu City, for unpaid wages, COLA differentials, bonus and overtime pay.

In a Decision, dated 21 November 1984, the Executive Labor Arbiter, Branch VII, found LUPO and GMC jointly and severally liable to petitioners, premised on Article 109 of the Labor Code, *infra*, and ordered them to pay the aggregate amount of P95,382.92. Elevated on appeal on 14 December 1984, the NLRC (First Division) denied the same for lack of merit in a Resolution, dated 27 December 1985.

Upon Motion for Reconsideration, filed on 27 February 1986, the case was reassigned to the Third Division. In a Resolution of 27 February 1987, that Division absolved GMC from any liability. It opined that petitioners were only hired by LUPO as workers in his construction contract with GMC and were never meant to be employed by the latter.

Petitioners now assail that judgment in this Petition for Certiorari.

Petitioners contend that GMC is jointly and severally liable with LUPO for the latter's obligations to them. They seek recovery from GMC based on Article 106 of the Labor Code, *infra*, which holds the employer jointly and severally liable with his contractor for unpaid wages of employees of the latter.

In his "Manifestation in lieu of Comment," the Solicitor General recognizes the solidary liability of GMC and

LUPO but bases recovery on Article 108 of the Labor Code, *infra*, contending that inasmuch as GMC failed to require from LUPO a bond to answer for the latter's obligations to his employees, as required by said provision, GMC should, correspondingly, be deemed solidarily liable.

In their respective Comments, both GMC and the NLRC maintain that Article 106 finds no application in the instant case because it is limited to situations where the work being performed by the contractor's employees are directly related to the principal business of the employer. The NLRC further opines that Article 109 on "Solidary Liability" finds no application either because GMC was neither petitioners' employer nor indirect employer.

Upon the facts and circumstances, we uphold the solidary liability of GMC and LUPO for the latter's liabilities in favor of employees whom he had earlier employed and dismissed.

Recovery, however, should not be based on Article 106 of the Labor Code. This provision treats specifically of "labor-only" contracting, which is not the set-up between GMC and LUPO.

Article 106 provides:

"ART. 106. Contractor or subcontractor. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

"In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

x x x x x x x x

"There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him."

In other words, a person is deemed to be engaged in "labor-only" contracting where (1) the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others; and (2) the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer (See Section 9, Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code; *italics ours*).

Since the construction of an annex building inside the company plant has no relation whatsoever with the employer's business of flour and feeds manufacturing, "labor-only" contracting does not exist. Article 106 is thus inapplicable.

Instead, it is "job contracting," covered by Article 107, which is involved, reading:

"Art. 107. Indirect Employer. — The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project." (*Italics supplied*).

Specifically, there is "job contracting" where (1) the contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free

from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and (2) the contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business. It may be that LUPO subsequently ran out of capital and was unable to satisfy the award to petitioners. That was an after-the-fact development, however, and does not detract from his status as an independent contractor.

Based on the foregoing, GMC qualifies as an "indirect employer." It entered into a contract with an independent contractor, LUPO, for the construction of an annex building, a work, task, job or project not directly related to GMC's business of flour and feeds manufacturing. Being an "indirect employer," GMC is solidarily liable with LUPO for any violation of the Labor Code pursuant to Article 109 thereof, reading:

"Art. 109. Solidary Liability. — The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers."

The provision of existing law referred to is Article 1728 of the Civil Code, which states, among others, that "the contractor is liable for all the claims of laborers and others employed by him x x x."

The foregoing interpretation finds a precedent in the case of *Deferia v. NLRC* (G.R. No. 78713, 27 February 1991), per Sarmiento, J., where Articles 107 and 109 were applied as the statutory basis for the joint and several liability of the employer with his contractor, in addition to Article 106, since the situation in that case was clearly one of "labor-only" contracting.

The NLRC submission that Article 107 is not applicable in the instant case for the reason that the coverage thereof is limited to one "not an employer" whereas GMC is such an employer as defined in Article 97 (b) of the Labor Code,[1] is not well-taken. Under the peculiar set-up herein, GMC is, in fact, "not an employer" (in the sense of not being a direct employer) as understood in Article 106 of the Labor Code, but qualifies as an "indirect employer" under Article 107 of said Code.

The distinction between Articles 106 and 107 lies in the fact that Article 106 deals with "labor-only" contracting. Here, by operation of law, the contractor is merely considered as an agent of the employer, who is deemed "responsible to the workers to the same extent as if the latter were directly employed by him." On the other hand, Article 107 deals with "job contracting." In the latter situation, while the contractor himself is the direct employer of the employees, the employer is deemed, by operation of law, as an indirect employer.

In other words, the phrase "not an employer" found in Article 107 must be read in conjunction with Article 106. A contrary interpretation would render the provisions of Article 107 meaningless considering that everytime an employer engages a contractor, the latter is always acting in the interest of the former, whether directly or indirectly, in relation to his employees.

It should be recalled that a finding that a contractor is a "labor-only" contractor is equivalent to declaring that there is an employer-employee relationship between the owner of the project and the employees of the "labor-only" contractor (*Associated Anglo-American Tobacco Corp. v. Clave*, G.R. No. 50915, 30 August 1990, 189 SCRA 127; *Industrial Timber Corp. v. NLRC*, G.R. No. 83616, 20 January 1989, 169 SCRA 341). This is evidently because, as heretofore stated, the "labor-only" contractor is considered as a mere agent of an employer. In contrast, in "job contracting," no employer-employee relationship exists between the owner and the employees of his contractor. The owner of the project is not the direct employer but merely an indirect employer, by operation of law, of his contractor's employees.

As an indirect employer, and for purposes of determining the extent of its civil liability, GMC is deemed a "direct employer" of his contractor's employees pursuant to the last sentence of Article 109 of the Labor Code. As a consequence, GMC cannot escape its joint and solidary liability to petitioners.

Further, Article 108 of the Labor Code requires the posting of a bond to answer for wages that a contractor fails to pay, thus:

"Article 108. Posting of Bond. — An employer or indirect employer may require the contractor or subcontractor to furnish a bond equal to the cost of labor under contract, on condition that the bond will answer for the wages due the employees should the contractor or subcontractor, as the case may be, fails to pay the same."

Having failed to require LUPO to post such a bond, GMC must answer for whatever liabilities LUPO may have incurred to his employees. This is without prejudice to its seeking reimbursement from LUPO for whatever amount it will have to pay petitioners.

WHEREFORE, the Petition for Certiorari is GRANTED. The Resolution of respondent NLRC, Third Division, dated 27 February 1987, is hereby SET ASIDE, and the Decision of the Labor Arbiter, dated 21 November 1984, is hereby REINSTATED.

SO ORDERED.

Paras, Sarmiento, and Regalado, JJ., concur.
Padilla, J., see concurring and dissenting opinion.

[1] Art. 97. Definitions. — x x x. (b) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the Government and all its branches, subdivisions and instrumentalities, all government-owned or controlled corporations and institutions, as well as non-profit private institutions, or organizations.

CONCURRING AND DISSENTING OPINION

PADILLA, J.:

The present petition seeks to have General Milling Corporation (the Company) held liable for the unpaid wages of the petitioners in solidum with the contractor (Lupo) who recruited the petitioners' services. This majority finds for the petitioners in the total adjudged sum of P95,382.92, a conclusion with which I am in complete accord. But I am not quite comfortable, and therefore disagree, with the legal basis on which the company's liability is determined.

As determined by the majority, such liability of the company is called for by Article 107, Chapter III, Title II, Book III of the Labor Code, which is as follows:

"ART. 107. Indirect employer. — The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project." (italics supplied)

It is strongly urged by the majority that the phrase "not being an employer" found in said Article 107 be given a circumspect appraisal. To my mind, there is no other interpretation of this provision of the Code than that an indirect employer, to be categorized as such, must not be an EMPLOYER as this term is defined under the Code. Article 97 of the same Title of the Labor Code defines an EMPLOYER as —

"ART. 97. Definition. — As used in this Title:

"a) x x x.

"b) 'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the Government and all its branches, subdivision and instrumentalities, all government-owned or controlled corporations and institutions, as well as non-profit private institutions, or organizations."

x x x." (*italics supplied*)

From the foregoing basic premises, it is my submission that the company (General Milling Corporation) is an employer in every sense of the word. It engages in the primary enterprise of manufacturing flour and feeds, it definitely employs employees and workers in its plant and outlets to work in various capacities. Therefore, the company cannot, in any way, be considered an indirect employer, as the term is defined, for purposes of the petitioners' cause of action against it.

To hold as the majority does, that Article 107 does apply in this case, would, in my view, render useless the phrase "not being an employer" contained therein. Evidently, the framers of the Labor Code had a purpose in mind in providing for such qualification. Such a qualification, as I see it, gives protection to those workers hired or recruited by a contractor to work on some job for a person who is not himself engaged in any enterprise. An example easily comes to mind: a person who wishes to have a residential house built. He engages an architect or engineer to undertake the project who, in turn, hires laborers, masons and carpenters. Should the architect or engineer renege on his obligations to the workers he shall have recruited, to whom will the latter seek relief? By mandate of Article 107, above-quoted, the owner of the house, who is not himself an employer as defined by law, shall be held accountable. This is where, in my view, Article 107 properly applies.

In the present case, however, the company's liability to the petitioners properly comes under Article 106, Chapter III, Title II, Book III of the Code, which, in its entirety, provides:

"ART. 106. Contractor or subcontractor. — Whenever an employer enters into a contract with another person for the performance of the formers work, the employees of the contractor and of the latters subcontractor, if any, shall be paid in accordance with the provisions of this Code.

"In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

"The Secretary of Labor may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

"There is 'labor-only' contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such persons are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him."

It appears abundantly clear that the juridical relationship envisioned in Article 106 involves an employer, as

defined by the Code. It thus applies to the juridical situation involved in this case, where the actors are General Milling Corporation (as the employer), Lupo (as the contractor) and the petitioners (as the employees or workers). Article 106, upon careful examination, deals with three (3) situations in the juridical relationship between employer-contractor-employee. It does not deal solely with "labor-only" contracting.

The first situation in Article 106 is where the employer (project owner) enters into a contract with a contractor for the performance of some job or work; the employees recruited by such contractor shall be paid, according to Article 106, first paragraph, in accordance with the requirements of the Labor Code. Stated in another way, the first paragraph of Article 106, provides the manner by which such employees shall be paid their wages and that is, in compliance with the provisions of the Labor Code. This, therefore, would include the rules on manner of payment, minimum wage, place of payment, etc.

In an employer-contractor-employee relationship, it is clear that the contractor is the real employer and, therefore, responsible to his workers for their wages. However, should such contractor fail or renege on his said obligation, to whom will the unpaid workers have recourse? The second paragraph of Article 106 resolves the seeming dilemma of the workers by providing that the EMPLOYER, (i.e. the project owner) shall be solidarily liable to such workers to the extent of the work performed by them, meaning that the EMPLOYER shall solidarily answer for the payment of wages corresponding to the amount of work undertaken by the contractor's employees in the project. This is the second situation contemplated by Article 106.

The third and final situation treated in Article 106 is contained in the fourth paragraph thereof. It pertains to what the majority perceives (erroneously, in my view) as the sole coverage of Article 106 — that of a "labor-only" contracting and the extent of the rights and liabilities of the parties involved in such a relationship. As explained in the ponencia, for this scheme or situation to exist, two (2) circumstances must concur: one, the contractor who recruits the workers must have 'no substantial capital or investment in the form of tools, equipment, machineries and work premises,' and two 'such workers are so engaged to perform activities directly related to the employer's principal business.' Should there be a finding of 'labor-only' contracting, the law expressly provides that the EMPLOYER (or project owner) shall be considered the direct employer of such workers. Such juridical relationship would then spawn a whole gamut of employer's obligations, including obligations under the workmen's compensation, social security, medicare, minimum wage, termination pay and unionism.[1]

From the facts of this case as presented, the second paragraph of Article 106 finds clear application. Because of contractor Lupo's default in the payment of petitioners' wages, owing to his insolvency, the employer (company) must comply with its joint and several obligation to answer for Lupo's accountability to his employees for their unpaid wages. Thereafter, should the company be inclined to do so, it may seek reimbursement from Lupo.

In sum, it is my submission that the company's solidary liability to the petitioners ought to be predicated on the basis, not of Article 107 of the Labor Code (which applies only to non-employers while the company in this case is an employer) but rather, upon the express declaration of paragraph 2, Article 106 of the Labor Code, which covers employers (not non-employers) as the company in the case at bar.

[1] Mafinco Trading Corporation vs. Ople, G.R. No. L-37790, 25 March 1976, 70 SCRA 139

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