

VIRGINIA G. NERI AND JOSE CABELIN, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION, FAR EAST BANK & TRUST COMPANY (FEBTC) AND BUILDING CARE CORPORATION, RESPONDENTS.

G.R. Nos. 97008-09. July 23, 1993

Ponente: Bellosillo, J.

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Bellosillo, J.:

Respondents are sued by two employees of Building Care Corporation, which provides janitorial and other specific services to various firms, to compel Far East Bank and Trust Company to recognize them as its regular employees and be paid the same wages which its employees receive.

Building Care Corporation (BCC, for brevity), in the proceedings below, established that it had substantial capitalization of P1 Million or a stockholders equity of P1.5 Million. Thus the Labor Arbiter ruled that BCC was only job contracting and that consequently its employees were not employees of Far East Bank and Trust Company (FEBTC, for brevity). On appeal, this factual finding was affirmed by respondent National Labor Relations Commission (NLRC, for brevity). Nevertheless, petitioners insist before us that BCC is engaged in "labor-only" contracting hence, they conclude, they are employees of respondent FEBTC.

Petitioners Virginia G. Neri and Jose Cabelin applied for positions with, and were hired by, respondent BCC, a corporation engaged in providing technical, maintenance, engineering, housekeeping, security and other specific services to its clientele. They were assigned to work in the Cagayan de Oro City Branch of respondent FEBTC on 1 May 1979 and 1 August 1980, respectively, Neri as radio/telex operator and Cabelin as janitor, before being promoted to messenger on 1 April 1989.

On 28 June 1989, petitioners instituted complaints against FEBTC and BCC before Regional Arbitration Branch No. 10 of the Department of Labor and Employment to compel the bank to accept them as regular employees and for it to pay the differential between the wages being paid them by BCC and those received by FEBTC employees with similar length of service.

On 16 November 1989, the Labor Arbiter dismissed the complaint for lack of merit.[1] Respondent BCC was considered an independent contractor because it proved it had substantial capital. Thus, petitioners were held to be regular employees of BCC, not FEBTC. The dismissal was appealed to NLRC which on 28 September 1990 affirmed the decision on appeal.[2] On 22 October 1990, NLRC denied reconsideration of its affirmance,[3] prompting petitioners to seek redress from this Court.

Petitioners vehemently contend that BCC is engaged in "labor-only" contracting because it failed to adduce evidence purporting to show that it invested in the form of tools, equipment, machineries, work premises and other materials which are necessary in the conduct of its business. Moreover, petitioners argue that they perform duties which are directly related to the principal business or operation of FEBTC. If the definition of "labor-only"

contracting[4] is to be read in conjunction with job contracting,[5] then the only logical conclusion is that BCC is a "labor-only" contractor. Consequently, they must be deemed employees of respondent bank by operation of law since BCC is merely an agent of FEBTC following the doctrine laid down in *Philippine Bank of Communications v. National Labor Relations Commission*[6] where we ruled that where "labor-only" contracting exists, the Labor Code itself establishes an employer-employee relationship between the employer and the employees of the "labor-only" contractor; hence, FEBTC should be considered the employer of petitioners who are deemed its employees through its agent, "labor-only" contractor BCC.

We cannot sustain the petition.

Respondent BCC need not prove that it made investments in the form of tools, equipment, machineries, work premises, among others, because it has established that it has sufficient capitalization. The Labor Arbiter and the NLRC both determined that BCC had a capital stock of P1 million fully subscribed and paid for.[7] BCC is therefore a highly capitalized venture and cannot be deemed engaged in "labor-only" contracting.

It is well-settled that there is "labor-only" contracting where: (a) 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, (b) the workers recruited and placed by such person are performing activities which are directly related to the principal business of the employer.[8]

Article 106 of the Labor Code defines "labor-only" contracting thus -

Art. 106. Contractor or subcontractor. - 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 by such persons are performing activities which are directly related to the principal business of such employer x x x x (underscoring supplied).

Based on the foregoing, BCC cannot be considered a "labor-only" contractor because it has substantial capital. While there may be no evidence that it has investment in the form of tools, equipment, machineries, work premises, among others, it is enough that it has substantial capital, as was established before the Labor Arbiter as well as the NLRC. In other words, the law does not require both substantial capital and investment in the form of tools, equipment, machineries, etc. This is clear from the use of the conjunction "or". If the intention was to require the contractor to prove that he has both capital and the requisite investment, then the conjunction "and" should have been used. But, having established that it has substantial capital, it was no longer necessary for BCC to further adduce evidence to prove that it does not fall within the purview of "labor-only" contracting. There is even no need for it to refute petitioners' contention that the activities they perform are directly related to the principal business of respondent bank.

Be that as it may, the Court has already taken judicial notice of the general practice adopted in several government and private institutions and industries of hiring independent contractors to perform special services.[9] These services range from janitorial,[10] security[11] and even technical or other specific services such as those performed by petitioners Neri and Cabelin. While these services may be considered directly related to the principal business of the employer,[12] nevertheless, they are not necessary in the conduct of the principal business of the employer.

In fact, the status of BCC as an independent contractor was previously confirmed by this Court in *Associated Labor Unions-TUCP v. National Labor Relations Commission*,[13] where we held thus -

The public respondent ruled that the complainants are not employees of the bank but of the company contracted to serve the bank. Building Care Corporation is a big firm which services, among others, a university, an international bank, a big local bank, a hospital center, government agencies, etc. It is a qualified

independent contractor. The public respondent correctly ruled against petitioner's contentions x x x x (underscoring supplied).

Even assuming ex argumenti that petitioners were performing activities directly related to the principal business of the bank, under the "right of control" test they must still be considered employees of BCC. In the case of petitioner Neri, it is admitted that FEBTC issued a job description which detailed her functions as a radio/telex operator. However, a cursory reading of the job description shows that what was sought to be controlled by FEBTC was actually the end-result of the task, e.g., that the daily incoming and outgoing telegraphic transfer of funds received and relayed by her, respectively, tallies with that of the register. The guidelines were laid down merely to ensure that the desired end-result was achieved. It did not, however, tell Neri how the radio/telex machine should be operated. In the Shipside case,[14] we ruled -

x x x x If in the course of private respondents' work (referring to the workers), SHIPSIDE occasionally issued instructions to them, that alone does not in the least detract from the fact that only STEVEDORES is the employer of the private respondents, for in legal contemplation, such instructions carry no more weight than mere requests, the privity of contract being between SHIPSIDE and STEVEDORES x x x x

Besides, petitioners do not deny that they were selected and hired by BCC before being assigned to work in the Cagayan de Oro Branch of FEBTC. BCC likewise acknowledges that petitioners are its employees. The record is replete with evidence disclosing that BCC maintained supervision and control over petitioners through its Housekeeping and Special Services Division: petitioners reported for work wearing the prescribed uniform of BCC; leaves of absence were filed directly with BCC; and, salaries were drawn only from BCC.[15]

As a matter of fact, Neri even secured a certification from BCC on 16 May 1986 that she was employed by the latter. On the other hand, on 24 May 1988, Cabelin filed a complaint for underpayment of wages, non-integration of salary adjustments mandated by Wage Orders Nos. 5 & 6 and R.A. 6640 as well as for illegal deduction[16] against BCC alone which was provisionally dismissed on 19 August 1988 upon Cabelin's manifestation that his money claim was negligible.[17]

More importantly, under the terms and conditions of the contract, it was BCC alone which had the power to reassign petitioners. Their deployment to FEBTC was not subject to the bank's acceptance. Cabelin was promoted to messenger because the FEBTC branch manager promised BCC that two (2) additional janitors would be hired from the company if the promotion was to be effected.[18] Furthermore, BCC was to be paid in lump sum unlike in the situation in Philippine Bank of Communications[19] where the contractor, CESI, was to be paid at a daily rate on a per person basis. And, the contract therein stipulated that the CESI was merely to provide manpower that would render temporary services. In the case at bar, Neri and Cabelin were to perform specific special services. Consequently, petitioners cannot be held to be employees of FEBTC as BCC "carries an independent business" and undertakes the performance of its contract with various clients according to its "own manner and method, free from the control and supervision" of its principals in all matters "except as to the results thereof." [20]

Indeed, the facts in Philippine Bank of Communications do not square with those of the instant case. Therein, the Court ruled that CESI was a "labor-only" contractor because upholding the contract between the contractor and the bank would in effect permit employers to avoid the necessity of hiring regular or permanent employees and would enable them to keep their employees indefinitely on a temporary or casual basis, thus denying them security of tenure in their jobs. This of course violates the Labor Code. BCC has not committed any violation. Also, the former case was for illegal dismissal; this case, on the other hand, is for conversion of employment status so that petitioners can receive the same salary being given to regular employees of FEBTC. But, as herein determined, petitioners are not regular employees of FEBTC but of BCC. At any rate, the finding that BCC is a qualified independent contractor precludes us from applying the Philippine Bank of Communications doctrine to

the instant petition.

The determination of employer-employee relationship involves factual findings.[21] Absent any grave abuse of discretion, and we find none in the case before us, we are bound by the findings of the Labor Arbiter as affirmed by respondent NLRC.

IN VIEW OF THE FOREGOING, the Petition for Certiorari is DISMISSED.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, Davide, Jr., and Quiason, JJ., concur.

[1] Annex "7", Petition; Rollo, pp. 38-55.

[2] Annex "5", Petition; Rollo, pp. 17-25.

[3] Annex "9", Petition; Rollo, pp. 62-64.

[4] Sec. 9. Labor-only contracting - Any person who undertakes to supply workers to an employer shall be deemed to be engaged in labor-only contracting where such person: (1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and (2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which the workers are habitually employed (Rule VIII, Book III, Implementing Rules of the Labor Code).

[5] Sec. 8. Job contracting. - There is job-contracting permissible under the Code if the following conditions are met: (1) The contractor carries on an independent business and undertakes the contract work on his 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.

[6] G.R. No. 66598, 19 December 1986, 146 SCRA 347.

[7] NLRC Resolution, 28 September 1990, p. 15; Rollo, p. 53, and Labor Arbiter Decision, 16 November 1989, p. 7; Rollo, p. 24.

[8] *Baguio v. National Labor Relations Commission*, G.R. Nos. 79004-08, 4 October 1991, 202 SCRA 465.

[9] See *Kimberly Independent Labor Union for Solidarity, Activism and Nationalism-Organized Labor Association v. Drilon*, G.R. No. 78791, 9 May 1990, 185 SCRA 191.

[10] *Rhone-Poulenc Agrochemicals Philippines, Inc. v. National Labor Relations Commission*, G.R. Nos. 102633-35, 19 January 1993.

[11] *Shipside, Inc. v. National Labor Relations Commission*, G.R. No. 50358, 2 November 1982, 118 SCRA 99.

[12] See *Guarin v. National Labor Relations Commission*, G.R. No. 86010, 3 October 1989, 178 SCRA 267.

[13] G.R. No. 101784, 21 October 1991, Third Division, Minute Resolution.

[14] See Note 11 at p. 106.

[15] NLRC Resolution, 28 September 1990, p. 15; Rollo, p. 53, and Labor Arbiter Decision, 16 November 1989,

p. 7; Rollo, p. 24.

[16] Solicitor General's Comment, p. 6; Rollo, p. 231.

[17] Id.

[18] Id., p. 7, citing Letter, Annex "7-A", Records, p. 241.

[19] See Note 6.

[20] Sec. 8, Rule VIII, Book III, Implementing Rules of the Labor Code.

[21] See *Canlubang Security Agency Corporation v. National Labor Relations Commission*, G.R. No. 97942, 8 December 1992.

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