SUPREME COURT
SECOND DIVISION

CESAR ARICA, CAMILO BADANGO, AZUCENA EPILEPSIA, NOEMI TABAMO, APOLONIO ANIS, MARIANO LADIERO, ANTONIO DELA CUESTA, BERNARDO ALVARES, MYRNA REYES, NORMA CRUZ, REDENTOR SABINO, LEONARDO SAN JUAN, ESTELITO ZAPANTA, ZOSIMO RABAINO, ANTONIO EUBIEN, JUANITO TOLENTINO, JR., EFREN MAGNAYE, REGALADO POSADAS, WILFREDO AYCARDO, and HERNANI PATRIARCA,

***Petitioners*,**

-versus-

G.R. No. L-53427
June 27, 1985

HON. MINISTER OF LABOR and RIVERSIDE MILLS CORPORATION,

***Respondents*.**

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D E C I S I O N

CUEVAS, *J.*:

In this Special Civil Action for *Certiorari*, petitioners seek the reversal of the Order of the Honorable Minister of Labor which affirmed the Order of the Regional Director, Regional Office No. IV, granting private respondent's application for clearance to terminate petitioners and dismissing the latter's complaint for illegal dismissal.

Petitioners are officers and members of the "Samahang Diwang Manggagawa sa RMC", a local union of the Federation of Free Workers (FFW), the duly-certified bargaining agent of the rank-and-file employees for private respondent.[1]

Private respondent, Riverside Mills Corporation (RMC) on the other hand, is a corporation engaged in the manufacture and processing of textile and garment.[2]

Sometime in July 1977, the Union submitted a set of proposals to the management of RMC for the renewal of the then existing Collective Bargaining Agreement (CBA). A series of negotiations resulted in a deadlock due to the failure of the parties to agree on several economic issues.

On January 25, 1978, the Union filed a notice of strike with the Bureau of Labor Relations (BLR), raising fourteen issues.[3] The BLR unsuccessfully mediated the dispute, prompting the Deputy Minister of Labor to intervene. Conciliation proceedings were then conducted, and on February 17, 1978, an agreement was signed between the parties in the presence of, and attested to, by the then Undersecretary of Labor, settling all the issues raised by the Union in the notice of strike.[4] Among others, the agreement provided for a signing bonus, 50% of which would be paid not later than March 15, 1978. Consequently, a draft CBA was forwarded by RMC to the Union. The officers of the Union however refused to sign the said draft, claiming "there were some provisions of the agreement which were not incorporated in the final draft"; and furthermore, "there were some provisions in said draft which the Union never at anytime agreed (upon)."[5]

When after office hours on March 15, 1978, RMC failed to give part of the signing bonus, the workers staged a walk-out.

On March 16, 1978, public respondent Minister of Labor certified the dispute to the National Labor Relations Commission (NLRC) for compulsory arbitration and directed the striking workers to return to work.[6] Since the Union ignored the order, the Minister issued another order on March 18, 1978, declaring the strike illegal and directing once more the striking employees to return to work "without prejudice to the right of the employer to file the necessary legal action against person or persons for acts contrary to law."[7] As with the first, the second return-to-work order was likewise ignored and remained unheeded.

Finally, on March 20, 1979, the Deputy Minister of Labor, after meeting with the representatives of the Union and RMC, issued an order settling all the unresolved issues in the bargaining negotiations and directing, among others, the execution of a CBA between the contending parties "before the close of office hours on March 21, 1978."[8] RMC manifested that it was not waiving its right under the law or condoning the act of illegality committed by its employees.[9]

On March 21, 1978, a CBA was executed by the parties and the company resumed full normal operations on March 27, 1978.

Thereafter, RMC applied with the Ministry of Labor, Region IV, for clearance to terminate the employment of herein petitioners for violation of Presidential Decree No. 823, specifically, for engaging in an illegal strike.[10] Meantime, petitioners were placed under preventive suspension. In return, petitioners filed a complaint for illegal dismissal which was treated as an opposition to RMC's aforementioned application for clearance to terminate.[11]

On October 25, 1978, Director Francisco L. Estrella of the Ministry of Labor, Region IV, issued an order granting RMC's application for clearance to terminate the employment of petitioners and two (2) of their co-employees, and corollarily, dismissed petitioners' complaint for illegal dismissal.[12] Petitioners appealed to the Minister of Labor who subsequently issued the Order (dated September 3, 1979) now in question affirming the appealed order of said Director.[13]

Hence, the instant petition seeking to annul the two (2) aforementioned orders, petitioners contending that 1) P.D. No. 823

which bans strikes in vital industries is unconstitutional; 2) granting the law is valid, the ground upon which the application for clearance to dismiss has already been completely settled; 3) termination is too drastic a penalty for an act perfectly legal had it not been declared otherwise; and 4) special consideration should be given to petitioners Noemi Tabamo and Leonardo San Juan who were on official leaves of absence from respondent company at the time of the alleged strike.

At the outset, We must make it clear that the provisions of PD No. 823 prohibiting strikes in vital industries, as incorporated in the Labor Code under Article 264, has been done away and/or revoked as of August 21, 1981, by Section 11 of Batas Pambansa Blg. 130 which amended said P.D. Said section recognizes " (t)he right of legitimate labor organizations to strike and picket consistent with the national interest" and subject to certain conditions irrespective of the nature of the industry engaged in by the employer, and whether the ground of the strike is "economic" or "unfair labor practice."[14] Thus, the issue as to the constitutionality of PD No. 823 is moot and academic.

Granting the PD No. 823 is valid, petitioners contend that the ground upon which the application for clearance to dismiss is anchored has already been settled. They cite the Order dated March 20, 1978 of the Undersecretary of Labor, the pertinent portion of which reads:

> "By virtue of the powers of the Secretary of Labor under PD No. 823, as amended and based on consultations with the parties, jointly and separately, the following are hereby ordered as final and complete settlement of all issues on the current deadlock in collective bargaining negotiations between the parties."[15] (Italics supplied)

They go on to argue that since the strike was staged on March 15, 1978, it was well within the issues settled by the Order of March 20, 1978 of the Undersecretary of Labor. And since no appeal or motion for reconsideration was filed by either party, the Order became final.[16] RMC controverts petitioners' submission as bereft of merit[17] on the following grounds —

1) The company has never waived its right to dismiss petitioners as evidenced by the filing of the application for

clearance to dismiss. In fact, when the order of March 20, 1978 was issued calling for the normalization of operation of the company, RMC made a special notification that "it is not waiving its right under the law or condoning the act of illegality committed by its employees." Even the "Return to Work Order" of the Secretary of Labor dated March 18, 1978 expressly provides that the said order is "without prejudice to the right of the employer to file the necessary legal action against person or persons for acts contrary to law";

2) As for the temporary re-admission of petitioners, this was necessary since the Labor Code, as amended, and its implementing rules require a written clearance before an employer may dismiss an employee; and

3) Moreover, as held by the Minister of Labor —

> "What are deemed settled by the said Order are the five (5) additional issues they raised on 23 February 1978 which are the following: retirement plan, distribution of workers' contribution in the provident fund, rewarding of Section 3 of Article 16 of the draft CBA, distribution of P220,000.00 per annum for piece rate workers and the mode of paying of the signing bonus. By using the phrase `final and complete settlement of all issues' the Order emphasizes the fact that all issues in the CBA negotiations are at last settled. The strike of 15 March 1978 was never an issue in the CBA negotiations. It cannot therefore, be deemed to have been settled by the Order of 20 March 1978.
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> "And even if we grant that the said order has settled the issue concerning the strike, the same cannot in any way prevent the respondent from taking whatever action it deems fit under the law and circumstances. This finds support in the "Return to Work" order issued by the Secretary of Labor on 16 March 1978 as it is stated therein that it is 'without prejudice to the right of the employer to file the necessary legal action against person or persons for acts contrary to law.' Added to this is the

> manifestation made by respondent on 20 March 1978 that it was not waiving its right under the law or condoning the act of illegality committed by its employees."[18]

We agree for We find private respondent aforesaid stance well taken.

This brings us to the core of the controversy — the validity of the Union's strike.

RMC in its clearance application[19] alleged that it is "a corporation engaged in the manufacture and processing of textile and garment, classified as vital industry under Section 2, Par. 1 of LOI 368, where strike and picketing is absolutely prohibited under Art. 264, Title VIII of the Labor Code." It is true that Letter of Instruction No. 368, issued by the President on January 26, 1976 lists among the vital industries for purposes of P.D. No. 823, as amended, those engaged in the manufacture or processing of textile and garments.[20] However, in the interpretative Bulletin on Vital Industries issued by the Secretary of Labor on February 4, 1976, such textile and garments companies or firms were delimited to "mean only those companies or firms which produce ordinary fabrics or clothing materials."[21]

Private respondent failed to prove or even allege that it manufactures ordinary fabrics or clothing materials. A fortiori its claim to being engaged in a vital industry rings false and hollow. Nor will RMC's passing mention that it produces textile and garments for export[22] be enough. Letter of Instructions No. 368 includes among the vital industries "(c)ompanies engaged in the production and processing of products for export which are holders of Central Bank or Board of Investment Certificate of Export Orientation."[23] Nowhere in the record is it shown that private respondent is a holder of such certificate so as to qualify it as a vital industry.

But the fact that private respondent is not a vital industry does not necessarily make petitioners' strike legal. Section 1 of P.D. No. 823, as amended, further states:

> "However, any legitimate labor union may strike and any employer may lock out in establishments not covered by General Order No. 5 only on grounds of unresolved economic

> issues in collective bargaining, in which case the union or the employer shall file a notice with the Bureau of Labor Relations at least 30 days before the intended strike or lockout. The Bureau shall exert all-out efforts to effect a voluntary settlement during the 30-day period. Should the dispute remain unsettled thereafter, the union may go on strike and the employer may lock out unless the President or his duly authorized representative certifies the dispute to the National Labor Relations Commission for compulsory arbitration in the interest of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedom of others. Such certification shall have the effect of automatically enjoining the strike or lockout." (Italics supplied)

It is indubitable that the Union went on strike not "on grounds of unresolved economic issues in collective bargaining." For way back in February 17, 1978, an agreement[24] was already ratified by the parties involving economic issues, among which was the provision on signing bonus. Be that as it may, what the Union really struck against was the alleged "unfair labor practice" of management for not paying 50% of the signing bonus on April 15, 1978 as stipulated in the February 17, 1978 agreement. Hence, the Union's strike could be characterized as an Unfair labor practice strike and not an economic strike. On this ground alone, the strike was illegal, being contrary to the above-quoted provision of Section 1 of P.D. No. 823.

Moreover, the Union went on strike without filing any notice with the BLR, in clear defiance of the aforementioned provision of P.D. No. 823 which in no uncertain terms enjoins that before any union may go on strike, it shall file a notice with the Bureau of Labor Relations at least thirty (30) days before the proposed strike.

Finally, the union continued with the strike even after the Minister of Labor certified the dispute to the NLRC for compulsory arbitration, in clear contravention of the provision of P.D. No. 823 which enunciates that such certification has the effect of automatically enjoining the strike. What makes such open defiance more glaring was the Union's persistence in continuing with the strike despite two return-to-work orders of the Minister of Labor.

Indeed, if anyone should be held responsible for the nonpayment of the signing bonus, it was the Union itself. For as pointed out by RMC, the payment of the signing bonus presupposes the existence of a signed CBA, and since petitioners refused to sign the CBA, no signing bonus could be paid to them.[25] And the reason for the union officers refusal to sign the final draft of the CBA was also their own making. For as found by the Regional Director which the Minister of Labor affirmed —

> "When the CBA was about to be formally signed, the union officers refused to sign it and instead, they raised five additional issues in their letter of March 8, 1978. Respondent answered the points raised by the Union on March 10, 1978, but on March 15, 1978, the Union on March 10, 1978, but on March 15, 1978, the Union staged a strike and picketed respondent's premises."[26]

Without considering petitioners' culpability for violating the February 17, 1978 Agreement, it would be too much to expect the parties to come to terms within a week's time concerning the five additional issues. What with management outraged and shocked that the Union should find it convenient not to sign the CBA as they had previously agreed.

Of the twenty (20) petitioners, sixteen (16) are officers of the striking union. They are: Camilo Badango (President), Azucena Epilepsia (Secretary), Efren Magnaye (Treasurer), Mariano Ladiero (Auditor), Redentor Sabino (Sgt. at Arms), Cesar Arica, Zosimo Rabaino, Regalado Posadas, Norma Cruz, Myrna Reyes, Antonio de la Cuesta, Juanito Tolentino, Noemi Tabamo, Estelito Zapanta, Antonio Eubien and Wilfredo Aycardo (Board Members). Only four (4) are mere members, namely: Bernardo Alvarez, Apolonio Anis, Hernani Patriarca and Leonardo San Juan. An examination of the evidence on record failed to disclose any active participation of these latter four in the illegal strike. Such being the case, they incur no liability for the said strike. They cannot be held responsible for an illegal strike solely on the basis of such membership.[27] Only the officers of the union who staged the illegal strike deserved to be punished.[28]

WHEREFORE, the Order of the Ministry of Labor granting the application for clearance to terminate and dismissing the complaint for illegal dismissal in Labor Case No. R4-STF-6-4028-78 is **AFFIRMED** insofar as the aforenamed officers of the Union is concerned; and **REVERSED** with respect to BERNARDO ALVAREZ, APOLONIO ANIS, HERNANI PATRIARCA and LEONARDO SAN JUAN who are hereby ordered REINSTATED under the same terms and conditions of employment existing prior to March 15, 1978.

No costs.

SO ORDERED.

Concepcion, Jr., Abad Santos and Escolin, *JJ.*, concur.
Makasiar and Aquino, *JJ.*, in the result.

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[1] Page 3, Petition.
[2] RMC's Clearance Application, page 136, Original Record.
[3] Annex 1, p. 119, ibid.
[4] Annex 1, Oppositors' Position Paper, p. 14, ibid.
[5] Page 7, Petition.
[6] Annex 6, to RMC's Clearance Application, pp. 100, 101, Original Record.
[7] Annex 7, p. 99, ibid.
[8] Annex 10, p.87, ibid.
[9] Annex 11 p. 85, ibid.
[10] RMC's Clearance Application, p. 136, ibid.
[11] Oppositors' Position Paper, p. 24, ibid.
[12] Order of the Regional Director, p. 178, ibid.
[13] Order of the Minister of Labor, p. 291, ibid.
[14] Article 264(c), Labor Code.
[15] Annex 10, supra.
[16] Page 13, Petition.
[17] Pages 4-5, Private Respondent's Memorandum.
[18] Order of the Minister of Labor, supra.
[19] Supra.
[20] Subsection L, Classification 2.
[21] Section 2.
[22] Page 6, RMC's Clearance Application, supra.
[23] Section 3.
[24] Annex 1, Oppositors' Position Paper, supra.
[25] Page 2, Private Respondent's Comment.
[26] Order of the Regional Director, supra.

[27] Esso Phil. Inc. vs. Malayang Manggagawa sa Esso, 75 SCRA 73.
[28] Pepsi-Cola Labor Union-BFLU TUPAS Local Chapter No. 896 vs. NLRC and Pepsi-Cola Bottling Company of the Phil., Inc., Naga Plant, 114 SCRA 930.