SUPREME COURT
SECOND DIVISION

COCA COLA BOTTLERS PHILS., INC.,
***Petitioners*,**

-versus-

G.R. No. 120466
May 17, 1999

NATIONAL LABOR RELATIONS COMMISSION and RAMON B. CANONICATO,
***Respondents*.**
x----------x

D E C I S I O N

BELLOSILLO, *J.*:

This Petition for Certiorari under Rule 65 of the Revised Rules of Court assails the 3 January 1995 Decision[1] of the National Labor Relations Commission (NLRC) holding that private respondent Ramon B. Canonicato is a regular employee of petitioner Coca Cola Bottlers Phils. Inc. (COCA COLA) entitled to reinstatement and back wages. The NLRC reversed the decision of the Labor Arbiter of 28 April 1994[2] which declared that no employer-employee relationship

existed between COCA COLA and Canonicato thereby foreclosing entitlement to reinstatement and back wages.

On 7 April 1986 COCA COLA entered into a contract of janitorial services with Bacolod Janitorial Services (BJS) stipulating[3] among others —

> That the First Party (COCA COLA) desires to engage the services of the Second Party (BJS), as an Independent Contractor, to perform and provide for the maintenance, sanitation and cleaning services for the areas hereinbelow mentioned, all located within the aforesaid building of the First Party.
>
> 1. The scope of work of the Second Party includes all floors, walls, doors, vertical and horizontal areas, ceiling, all windows, glass surfaces, partitions, furniture, fixtures and other interiors within the aforestated covered areas.
>
> 2. Except holidays which are rest days, the Second Party will undertake daily the following: 1) Sweeping, damp-mopping, spot scrubbing and polishing of floors; 2) Cleaning, sanitizing and disinfecting agents to be used on commodes, urinals and washbasins, water spots on chrome and other fixtures to be checked; 3) Cleaning of glass surfaces, windows and glass partitions that require daily attention; 4) Cleaning and dusting of horizontal and vertical surfaces; 5) Cleaning of fixtures, counters, panels and sills; 6) Clean, pick-up cigarette butts from sandburns and ashtrays and trash receptacles; 7) Trash and rubbish disposal and burning.
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> In addition, the Second Party will also do the following once a week, to wit: 1) Cleaning, waxing and polishing of lobbies and offices; 2) Washing of windows, glasses that require cleaning; 3) Thorough disinfecting and cleaning of toilets and washrooms.
>
> 3. The Second Party shall supply the necessary utensils, equipment and supervision, and it shall only employ the services of fifteen (15) honest, reliable, carefully screened,

cooperative and trained personnel, who are in good faith, in the performance of its herein undertaking;

4. The Second Party hereby guarantees against unsatisfactory workmanship. Minor repair of comfort rooms are free of charge provided the First Party will supply the necessary materials for such repairs at its expense. As may be necessary, the Second Party shall also report on such part or areas of the premises covered by this contract which may require repairs from time to time. (Emphasis supplied).

Every year thereafter a service contract was entered into between the parties under similar terms and conditions until about May 1994.[4]

On 26 October 1989 COCA COLA hired private respondent Ramon Canonicato as a casual employee and assigned him to the bottling crew as a substitute for absent employees. In April 1990 COCA COLA terminated Canonicato's casual employment. Later that year COCA COLA availed of Canonicato's services, this time as a painter in contractual projects which lasted from fifteen (15) to thirty (30) days.[5]

On 1 April 1991 Canonicato was hired as a janitor by BJS[6] which assigned him to COCA COLA considering his familiarity with its premises. On 5 and 7 March 1992 Canonicato started painting the facilities of COCA COLA and continued doing so several months thereafter or so for a few days every time until 6 to 25 June 1993.[7]

Goaded by information that COCA COLA employed previous BJS employees who filed a complaint against the company for regularization pursuant to a compromise agreement,[8] Canonicato submitted a similar complaint against COCA COLA to the Labor Arbiter on 8 June 1993.[9] The complaint was docketed as RAB Case No. 06-06-10337-93.

Without notifying BJS, Canonicato no longer reported to his COCA COLA assignment starting 29 June 1993. On 15 July 1993 he sent his sister Rowena to collect his salary from BJS.[10] BJS released his salary but advised Rowena to tell Canonicato to report for work. Claiming that he was barred from entering the premises of COCA

COLA on either 14 or 15 July 1993, Canonicato met with the proprietress of BJS, Gloria Lacson, who offered him assignments in other firms which he however refused.[11]

On 23 July 1993 Canonicato amended his complaint against COCA COLA by citing instead as grounds therefor illegal dismissal and underpayment of wages. He included BJS therein as a co-respondent.[12] On 28 September 1993 BJS sent him a letter advising him to report for work within three (3) days from receipt, otherwise, he would be considered to have abandoned his job.[13]

On 28 April 1994 the Labor Arbiter ruled that: (a) there was no employer-employee relationship between COCA COLA and Ramon Canonicato because BJS was Canonicato's real employer; (b) BJS was a legitimate job contractor, hence, any liability of COCA COLA as to Canonicato's salary or wage differentials was solidary with BJS in accordance with pars. 1 and 2 of Art. 106, Labor Code; (c) COCA COLA and BJS must jointly and severally pay Canonicato his wage differentials amounting to P2,776.80 and his 13th month salary of P1,068.00, including ten (10%) percent attorney's fees in the sum of P384.48. The Labor Arbiter also ordered that all other claims by Canonicato against COCA COLA be dismissed for lack of employer-employee relationship; that the complaint for illegal dismissal as well as all the other claims be likewise dismissed for lack of merit; and that COCA COLA and BJS deposit P4,429.28 with the Department of Labor Regional Arbitration Branch Office within ten (10) days from receipt of the decision.[14]

The NLRC rejected on appeal the decision of the Labor Arbiter on the ground that the janitorial services of Canonicato were found to be necessary or desirable in the usual business or trade of COCA COLA. The NLRC accepted Canonicato's proposition that his work with the BJS was the same as what he did while still a casual employee of COCA COLA. In so holding the NLRC applied Art. 280 of the Labor Code and declared that Canonicato was a regular employee of COCA COLA and entitled to reinstatement and payment of P18,105.10 in back wages.[15]

On 26 May 1995 the NLRC denied COCA COLA's motion for reconsideration for lack of merit.[16] Hence, this petition, assigning as

errors: (a) NLRC's finding that janitorial services were necessary and desirable in COCA COLA's trade and business; (b) NLRC's application of Art. 280 of the Labor Code in resolving the issue of whether an employment relationship existed between the parties; (c) NLRC's ruling that there was an employer-employee relationship between petitioner and Canonicato despite its virtual affirmance that BJS was a legitimate job contractor; (d) NLRC's declaration that Canonicato was a regular employee of petitioner although he had rendered the company only five (5) months of casual employment; and, (e) NLRC's order directing the reinstatement of Canonicato and the payment to him of six (6) months back wages.[17]

We find good cause to sustain petitioner. Findings of fact of administrative offices are generally accorded respect by us and no longer reviewed for the reason that such factual findings are considered to be within their field of expertise. Exception however is made, as in this case, when the NLRC and the Labor Arbiter made contradictory findings.

We perceive at the outset the disposition of the NLRC that janitorial services are necessary and desirable to the trade or business of petitioner COCA COLA. But this is inconsistent with our pronouncement in Kimberly Independent Labor Union vs. Drilon[18] where the Court took judicial notice of the practice adopted in several government and private institutions and industries of hiring janitorial services on an "independent contractor basis." In this respect, although janitorial services may be considered directly related to the principal business of an employer, as with every business, we deemed them unnecessary in the conduct of the employer's principal business.[19]

This judicial notice, of course, rests on the assumption that the independent contractor is a legitimate job contractor so that there can be no doubt as to the existence of an employer-employee relationship between the contractor and the worker. In this situation, the only pertinent question that may arise will no longer deal with whether there exists an employment bond but whether the employee may be considered regular or casual as to deserve the application of Art. 280 of the Labor Code.

It is an altogether different matter when the very existence of an employment relationship is in question. This was the issue generated by Canonicato's application for regularization of his employment with COCA COLA and the subsequent denial by the latter of an employer-employee relationship with the applicant. It was error therefore for the NLRC to apply Art. 280 of the Labor Code in determining the existence of an employment relationship of the parties herein, especially in light of our explicit holding in Singer Sewing Machine Company vs. Drilon[20] that —

> The definition that regular employees are those who perform activities which are desirable and necessary for the business of the employer is not determinative in this case. Any agreement may provide that one party shall render services for and in behalf of another for a consideration (no matter how necessary for the latter's business) even without being hired as an employee. This is precisely true in the case of an independent contractorship as well as in an agency agreement. The Court agrees with the petitioner's argument that Article 280 is not the yardstick for determining the existence of an employment relationship because it merely distinguishes between two kinds of employees, i.e., regular employees and casual employees, for purposes of determining the right of an employee to certain benefits, to join or form a union, or to security of tenure. Article 280 does not apply where the existence of an employment relationship is in dispute.

In determining the existence of an employer-employee relationship it is necessary to determine whether the following factors are present: (a) the selection and engagement of the employee; (b) the payment of wages; (c) the power to dismiss; and, (d) the power to control the employee's conduct.[21] Notably, these are all found in the relationship between BJS and Canonicato and not between Canonicato and petitioner COCA COLA. As the Solicitor-General manifested —[22]

In the instant case, the selection and engagement of the janitors for petitioner were done by BJS. The application form and letter submitted by private respondent (Canonicato) to BJS show that he acknowledged the fact that it was BJS who did the hiring and not petitioner.

BJS paid the wages of private respondent, as evidenced by the fact that on July 15, 1993, private respondent sent his sister to BJS with a note authorizing her to receive his pay.

Power of dismissal is also exercised by BJS and not petitioner. BJS is the one that assigns the janitors to its clients and transfers them when it sees fit. Since BJS is the one who engages their services, then it only follows that it also has the power to dismiss them when justified under the circumstances.

Lastly, BJS has the power to control the conduct of the janitors. The supervisors of petitioner, being interested in the result of the work of the janitors, also give suggestions as to the performance of the janitors, but this does not mean that BJS has no control over them. The interest of petitioner is only with respect to the result of their work. On the other hand, BJS oversees the totality of their performance.

The power of the employer to control the work of the employee is said to be the most significant determinant. Canonicato disputed this power of BJS over him by asserting that his employment with COCA COLA was not interrupted by his application with BJS since his duties before and after he applied for regularization were the same, involving as they did, working in the maintenance department and doing painting tasks within its facilities. Canonicato cited the Labor Utilization Reports of COCA COLA showing his painting assignments. These reports, however, are not expressive of the true nature of the relationship between Canonicato and COCA COLA; neither do they detract from the fact that BJS exercised real authority over Canonicato as its employee.

Moreover, a closer scrutiny of the reports reveals that the painting jobs were performed by Canonicato sporadically, either in a few days within a month and only for a few months in a year.[23] This infrequency or irregularity of assignments countervails Canonicato's submission that he was assigned specifically to undertake the task of painting the whole year round. If anything, it hews closely to the assertion of BJS that it assigned Canonicato to these jobs to maintain

and sanitize the premises of petitioner COCA COLA pursuant to its contract of services with the company.[24]

It is clear from these established circumstances that NLRC should have recognized BJS as the employer of Canonicato and not COCA COLA. This is demanded by the fact that it did not disturb, and therefore it upheld, the finding of the Labor Arbiter that BJS was truly a legitimate job-contractor and could by itself hire its own employees. The Commission could not have reached any other legitimate conclusion considering that BJS satisfied all the requirements of a job-contractor under the law, namely, (a) the ability to carry on an independent business and undertake the contract work on its own account under its own responsibility according to its own manner and method, free from the control and direction of its principal or client in all matters connected with the performance of the work except as to the results thereof; and, (b) the substantial capital or investment in the form of tools, equipment, machinery, work premises, and other materials which are necessary in the conduct of its business.[25]

It is to be noted that COCA COLA is not the only client of BJS which has its roster of clients like San Miguel Corporation, Distilleria Bago Incorporated, University of Negros Occidental-Recolletos, University of St. La Salle, Riverside College, College Assurance Plan Phil., Inc., and Negros Consolidated Farmers Association, Inc.[26] This is proof enough that BJS has the capability to carry on its business of janitorial services with big establishments aside from petitioner and has sufficient capital or materials necessary therefor.[27] All told, there being no employer-employee relationship between Canonicato and COCA COLA, the latter cannot be validly ordered to reinstate the former and pay him back wages.

WHEREFORE, the petition is **GRANTED**. The NLRC decision of 3 January 1995 declaring Ramon B. Canonicato a regular employee of petitioner Coca Cola Bottlers Phils., Inc., entitled to reinstatement and back wages is REVERSED and SET ASIDE. The decision of the Labor Arbiter of 28 April 1994 finding no employer-employee relationship between petitioner and private respondent but directing petitioner Coca Cola Bottlers Phils., Inc., instead and Bacolod Janitorial Services to pay jointly and severally Ramon B. Canonicato

P2,776.80 as wage differentials, P1,068.00 as 13th month pay and P384.48 as attorney's fees, is **REINSTATED**.

SO ORDERED.

Puno, Mendoza and Quisumbing, *JJ.*, concur.
Buena, *J.*, is on leave.

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[1] Decision penned by Commissioner Amorito Canete, concurred in by Presiding Commissioner Irenea E. Ceniza and Commissioner Bernabe S. Batuhan, NLRC-Cebu City, Fourth Division, Rollo, pp. 54-58.
[2] Decision penned by Labor Arbiter Ray Allan T. Drilon, NLRC Regional Arbitration Branch No. VI, Bacolod City, id., pp. 28-51.
[3] Records, pp. 334-336.
[4] Id., pp. 35-37, 331-333.
[5] Projects were contracted on 3 August 16-31, 1990, September 1-15 & 15-30, 1990, October 1-15 & 16-31, 1990, Records, pp. 182-184.
[6] Records, pp. 38-39.
[7] Painting jobs were done on 27-29 March 1992; 19, 22 and 29 August 1992; 5, 12, 28 and 29 September 1992; 3, 11 and 31 October 1992; 14 December 1992; 10, 17-20 January 1993; 1-6, 20 and 27 February 1993; 6, 10, 15-17, 19 and 20 March 1995; and 1, 9 and 14 May 1993; Records, pp. 185-232.
[8] Records, pp. 38-39.
[9] Id., p. 1.
[10] Id., p. 54.
[11] Id., p. 71.
[12] Id., p. 5.
[13] Id., p. 56.
[14] See Note 2, pp. 50-51.
[15] See Note 1.
[16] NLRC Resolution issued by same Division, Rollo, pp. 68-72.
[17] Petition, pp. 12-21, id., pp. 13-22.
[18] G.R. No. 78791, 9 May 1990, 185 SCRA 191; see also Rhone-Poulenc Agrochemicals Phils., Inc. vs. NLRC, G.R. Nos. 102633-35, 19 January 1993, 217 SCRA 249.
[19] Neri vs. NLRC, G.R. Nos. 97008-09, 23 July 1993, 224 SCRA 717.
[20] G.R. No. 91307, 24 January 1991, 193 SCRA 270, 279.
[21] Philippine Airlines, Inc. vs. NLRC, G.R. No. 120506, 28 October 1996, 263 SCRA 638.
[22] Manifestation and Motion In Lieu of Comment, Rollo, pp. 112-114.
[23] See Note 7.
[24] See Note 3.
[25] Nagusara vs. NLRC, G.R. Nos. 117936-37, 20 May 1998.
[26] BJS Advertisement on the Occasion of its 29th Anniversary, Rollo, p. 220.

[27] Records, pp. 100-110.