CHANROBLES PUBLISHING COMPANY

SUPREME COURT
THIRD DIVISION

NAGKAKAISANG MANGGAGAWA SA SONY (NAMASO) and ELVIRA O. ELPA,
***Petitioners*,**

-versus-

G.R. No. 121490
May 5, 1997

NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION), HON. COMMISSIONERS VICENTE VELOSO and ALBERTO QUIMPO, SOLID CORPORATION, ELENA LIM, JAMES UY, DELMA M. OLAM, ASIA CENTRAL EMPLOYMENT SERVICES INC. and JOSE P. BANEZ,
***Respondents*.**
x---x

D E C I S I O N

DAVIDE, JR., *J*.:

This is a Special Civil Action for Certiorari seeking the reversal of the Resolution[1] of public respondent National Labor Relations Commission (NLRC) in NLRC-NCR-Case No. 00-07-03567-92, which granted private respondents' motion for reconsideration by setting

aside its decision of 27 January 1995[2] and remanding the case for further proceedings.

Petitioner Elvira O. Elpa applied for employment at private respondent Asia Central Employment Services, Inc. (ACES), a manpower agency. She was hired on 24 January 1992 and assigned as assembler for a fixed period of five months to private respondent Solid Corporation (SOLID), a manufacturer and assembler of Sony electronic products.

Five months later, the petitioner was informed by SOLID that her work was until 24 June 1992. At the time of her separation, her salary was P118 a day. In the short duration of her employment, she became a member of the union, co-petitioner Nagkakaisang Manggagawa sa Sony (NAMASO).

As an assembler, the petitioner was initially assigned to the beta tape section. A week after, she was transferred to the mounting section where she stayed for three months. At the latter section, she was required to render overtime work for three hours, three times a week. Thereafter, she was reassigned to the beta tape section.

Petitioner's work assignments were determined by Cristina Federigan, SOLID's Supervisor, who exercised supervision over her and assessed her performance. On 22 June 1992, Carol Marzo, SOLID's assistant personnel, informed her that her last day of work was 24 June 1992.

The petitioner and NAMASO filed a complaint for illegal dismissal, underpayment, and damages[3] against ACES, SOLID and the latter's officer-in-charge for personnel and administration, Delma M. Olam.

In her position paper,[4] she alleged that her actual employer was SOLID since ACES was a mere supplier of labor, being unlawfully engaged in "labor-only" contracting.[5] She claimed that ACES could not be an independent contractor because it had no substantial capital. All the machineries and equipment she handled belonged to SOLID. It was SOLID which paid her salary and terminated her from the service. Moreover, the nature of her work was necessary and desirable in SOLID's usual business. Pursuant to the "control test"

laid down in LVN Pictures, Inc. vs. Philippine Musicians Guild,[6] she should have been deemed an employee of SOLID. She asserted that SOLID entered into a scheme with ACES to avoid its obligation of hiring workers on a regular or permanent basis.

According to her, she became a regular employee of SOLID by operation of law pursuant to Article 280 of the Labor Code.[7] Being a regular employee, she was entitled to security of tenure and could only be dismissed for cause and only after observing due process. She was deprived of due process because there was no notice of dismissal and no investigation was conducted.

ACES, on the other hand, argued that it had a separate and distinct personality from SOLID, one of its several clients which were provided temporary and limited manpower services. The petitioner applied for work with ACES and signed a Kasunduan[8] with it wherein she agreed to be assigned to SOLID as an assembler on a contractual basis with a salary of P88.50 a day[9] and for a definite duration, i.e., from 23 January to 23 June 1992. ACES also alleged that it explained to the petitioner that her assignment was temporary and upon the expiration of the period, she should immediately report to it for possible reassignment to other companies where she may qualify; and that while she was at SOLID, ACES would still exercise exclusive control over her actions and it was ACES, not SOLID, which would pay her salary. ACES further claimed that the petitioner refused to return to ACES after the expiration of her employment with SOLID.

Finally, ACES asserted that the issue involved is the expiration of petitioner's assignment. She could neither have been a regular employee, since she did not even serve six months of employment at either ACES or SOLID. As to her claim of underpayment, ACES claimed that the same was without basis, for she was paid P118 a day, in accordance with the minimum wage law. She was likewise paid for services rendered overtime.

In its position paper, SOLID sought the dismissal of the complaint. It alleged that as early as July 1991, it had an Agreement[10] with ACES to provide manpower on a contractual basis. In January 1992, it tapped ACES for additional workers. ACES immediately dispatched

some workers, among whom was the petitioner. SOLID paid ACES for the services of the workers. ACES, in turn, paid the workers, including the petitioner, their salary. It submitted proof of petitioner's pay slips[11] from ACES for the periods of 16-30 April and 1-15 May 1992. The pay slips bore petitioner's signature.

SOLID maintained that the petitioner was an employee of ACES. As such, she belonged to ACES' manpower pool where she may be assigned to different clients on contractual basis. It was ACES which had the discretion to determine the place and duration of assignment and effect her dismissal; and while assigned elsewhere, it was ACES which exercised control over her actions. As proof that ACES was petitioner's employer, SOLID cited the following circumstances: (1) the petitioner was hired by ACES; (2) petitioner's salary, as well as Social Security System and Medicare premiums, was paid by ACES;[12] and (3) ACES had the power to discipline the petitioner. SOLID emphasized that the Kasunduan[13] entered into between the petitioner and ACES remained valid and binding. It also presented petitioner's application for employment[14] with ACES, her dispatch slip[15] for interview with SOLID's assistant personnel, and the Kasunduan wherein she agreed to be assigned on a temporary basis to SOLID.

SOLID likewise questioned the inclusion of its officer-in-charge for personnel and administration, Delma M. Olam, as respondent, for not being a real party in interest. It also maintained that NAMASO has no cause of action as complainant, since the petitioner was not an employee of SOLID and could not, therefore, have been a union member.

On 28 February 1994, Labor Arbiter Oswald B. Lorenzo rendered a Decision[16] dismissing the complaint on the basis of the Kasunduan, which showed that ACES was the actual employer of the petitioner and her assignment at SOLID was by virtue of the said Kasunduan. He ruled that the expiration of the term of the contract was the real issue. Anent the claims of underpayment, he gave credence to the petitioner's signed pay slips, which indicated that she was duly paid P118 a day, less the legal deductions.

In representation of petitioner, Eduardo Cuaresma, NAMASO's president, appealed the decision to the NLRC.

In its Decision[17] of 27 January 1995, the NLRC set aside the decision of the Labor Arbiter. The dispositive portion of the NLRC decision reads as follows:

> WHEREFORE, the decision of the Labor Arbiter is hereby set aside and a new one entered declaring Aces Inc. to be a labor-only contractor and ordering respondent Solid Corporation to reinstate complainant to her former position without loss of seniority rights and privileges. Respondent Solid Corp. and Aces Inc. are ordered jointly and severally to pay complainant full backwages until reinstated.

The NLRC ruled that notwithstanding the fact that the petitioner signed an agreement with ACES for a temporary assignment at SOLID, she was, for all intents and purposes, an employee of SOLID. It concluded that SOLID was the one which exercised the power of control, the most determinative indicator of an employer-employee relationship. It considered the following factors: (1) the petitioner was immediately turned over to SOLID; (2) SOLID dictated petitioner's transfer from one department to another and required her to render overtime work; (4) the petitioner directly reported to SOLID's supervisor; (5) all tools, machineries, and equipment used by the petitioner belonged to SOLID; and (6) the one who informed the petitioner when her last day of work would be was SOLID's assistant personnel.

Citing Art. 280 of the Labor Code, the NLRC held that the petitioner is presumed to have been a regular employee, since she rendered service which was "usually necessary and desirable" in the usual business of SOLID.

The NLRC further declared that ACES was a "labor-only" contractor and not an independent contractor, since ACES failed to prove that it had substantial capital or investment in the form of tools, equipment, and machineries. By operation of law, SOLID is deemed to be the employer of the petitioner.

Both ACES and SOLID moved for the reconsideration of the NLRC's decision. ACES submitted its audited financial statement as of 31 December 1991, indicating its total assets amounting to P14,673,220.00 and its inventory of tools, equipment, and machineries. Said documents meant to dispute petitioner's allegation that it had no substantial capital to be considered an independent contractor. On the other hand, SOLID particularly questioned the propriety of the appeal filed by NAMASO on behalf of the petitioner, who never qualified as a union member.

In its Resolution[18] of 28 June 1995, the NLRC reconsidered its decision of 27 January 1995 and disposed as follows:

> WHEREFORE, in the light of the foregoing considerations, the Motions for Reconsideration filed by the respondents ACES INC. and SOLID CORPORATION are hereby granted and the decision of this Commission promulgated on January 27, 1995 is hereby set aside. LET THE ENTIRE RECORDS OF THIS CASE REMANDED [sic] TO THE ARBITRATION BRANCH OF ORIGIN FOR FURTHER PROCEEDINGS.

The remand of the case was ordered to settle the ambiguity of the documents annexed to the parties' respective pleadings and to determine whether the appeal filed by NAMASO was valid.

Hence, the instant petition, where the petitioner impleaded as additional respondents Jose P. Bañez, general manager of ACES; and Elena Lim and James Uy, president and manager of SOLID, respectively.

The petitioners argue that the NLRC erred and gravely abused its discretion in (1) remanding the case to the Labor Arbiter instead of resolving the case on the merits; and (2) setting aside its decision in contravention of the law and evidence. They reiterated the arguments raised in their position paper submitted before the Labor Arbiter and prayed for the reinstatement of the NLRC decision of 27 January 1995.

In its comment, ACES argues that it was an independent contractor and the Kasunduan which the petitioner signed is a valid contract. It

cited the case of Brent School, Inc. vs. Zamora,[19] which recognized an agreement with a fixed period of employment, when entered into knowingly and voluntarily by the employee, as valid and outside the scope of security of tenure.

For its part, SOLID claims that the issues raised in the petition are factual and not questions of law and that the remand of the case to the arbitration branch for reception of evidence was also within the powers of the NLRC, since the NLRC is primarily an appellate body and not a trier of facts and evidence. It maintained that petitioner's separation from SOLID was valid, citing the exception provided in Article 280 of the Labor Code, which removes from the scope of regular employment engagements for a specific project and for a fixed duration. It cited the case of Philippine Village Hotel vs. NLRC,[20] where we ruled that a contract of employment with a specific period is valid, even if the service rendered is usually necessary and desirable in the operation of the employer's business. Finally, SOLID questioned, for being improper, the inclusion of Elena Lim and James Uy as private respondents at this late stage.

On the other hand, the Solicitor General contends that the NLRC erred in remanding the case for further proceedings. Instead, it should have resolved the case on the merits, since it is not bound by the technical rules of evidence under Article 221 of the Labor Code. Accordingly, it has authority to rule on the additional evidence pursuant to Bristol Laboratories Employees' Association vs. NLRC.[21]

We resolved to give due course to the petition and required the parties to submit their respective memoranda, which they complied with.

Under the Labor Code, it is the Labor Arbiter who is clothed with the authority to conduct compulsory arbitration in cases involving labor disputes under Article 217 thereof. On appeal, the NLRC merely reviews the Labor Arbiter's decision;[22] for as an appellate body, it is not, generally, a trier of facts.

However, there had been instances where we refused to consider as grave abuse of discretion the admission by the NLRC of documentary evidence during the pendency of the appeal. As correctly pointed out

by the Solicitor General, the NLRC, in Bristol Laboratories Employees' Association vs. NLRC,[23] considered additional documentary evidence submitted by the respondent-employer on appeal to prove breach of trust and loss of confidence; however, we set aside its ruling that the case be "remanded to the Labor Arbiter for proper evaluation of the evidence adduced in line with the requirements of due process" since the NLRC could rule thereon as the pieces of evidence were before it. In Haverton Shipping Ltd. vs. NLRC,[24] we held that although the affidavits of the complainant's shipmates were submitted only when the case was on appeal to the NLRC, the latter was not precluded from taking them into account because there was plausible reason for the delay in their submission. We cited Article 221 of the Labor Code which provides that the rules on evidence prevailing in courts of law or equity shall not be controlling in any proceeding before the Commission and every and all reasonable means to ascertain the facts in each case shall be used without regard to technicalities. In Lopez vs. NLRC,[25] we also held that, in light of said Article 221 of the Labor Code, there was nothing wrong when the NLRC admitted certain documents proving the reemployment of the private respondent although they were presented only on appeal.

In the instant case, the NLRC itself allowed ACES to submit additional documents to prove that ACES had substantial capital to qualify as an independent contractor. It had, in fact carefully examined them, thus:

> We have carefully reviewed and examined the evidence on record, as well as the ruling of the Supreme Court on the matter as cited by both complainants and respondents and we are now convinced that there is a necessity of conducting further proceedings to determine once and for all the ambiguities of the evidence submitted by both parties which are based mainly on the pleadings and the attached documents. Consequently, by taking into consideration the averments of the respondent ACES INC. that it is not a labor-only contracting [sic] but an independent contractor duly licensed by law and with the permit issued by the Department of labor and Employment to operate, coupled with the averments that it has sufficient capital investments in the amount of P14,673,220.00 as shown by the

> xerox copies of the audited statement of account for the years 1990 and 1991, it is but fair and justiceable to both parties that the case be remanded to the Arbitration Branch of this Commission for further proceedings and formal hearing. With regard to respondents [sic] contention that the complainants' appeal is not valid for failure of counsel to sign the same and that NAMACO [sic] has no personality to represent the complainant Elpa for not having attained the status of a regular employee, let the same be either affirmed or corrected during the arbitration proceedings to be conducted by the Labor Arbiter.[26]

Clearly, the NLRC was in a position to resolve the factual issues on the basis of the original and additional documentary evidence before it. The remand of the case for further proceedings was unnecessary, if not dilatory.

WHEREFORE, the petition is **GRANTED**. That portion of the challenged resolution of the National Labor Relations Commission of 28 June 1995 in NLRC Case No. 00-07-03567-92 directing that "THE ENTIRE RECORDS OF THIS CASE [BE] REMANDED TO THE ARBITRATION BRANCH OF ORIGIN FOR FURTHER PROCEEDINGS" is **SET ASIDE**, and the respondent NLRC is hereby **DIRECTED** to decide within sixty days from notice of this decision the appeal on its merits, taking into account the additional documents submitted to it, as well as all the evidence submitted by the parties before the Labor Arbiter.

SO ORDERED.

Narvasa, *C.J.*, Melo, Francisco and Panganiban, *JJ.*, concur.

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[1] Annex "A-1" of Petition; Rollo, 22-31. Per Commissioner Alberto R. Quimpo, with Commissioner Vicente S.E. Veloso concurring.

[2] Annex "B-1" of Petition; Rollo, 33-43.

[3] Annex "1" of SOLID's Comment; Rollo, 155.

[4] Rollo, 44-54.

[5] Article 106 of the Labor Code provides in part as follows:
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.

[6] 1 SCRA 132 [1961].

[7] Article 280 partly provides:

The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

[8] Kasunduan sa Pamamasukan na may Takdang Panahon; OR, 27; Rollo, 109.

[9] Petitioner was actually paid P118.00 a day.

[10] Rollo, 169.

[11] Id., 171.

[12] Id.

[13] Supra, note 8.

[14] OR, 25; Rollo, 166.

[15] OR, 26; Rollo, 167.

[16] Rollo, 177-182.

[17] Id., 33-43.

[18] Rollo, 22-31.

[19] 181 SCRA 702 [1990].

[20] 230 SCRA 423 [1994].

[21] 187 SCRA 118 [1990].

[22] Philippine Airlines Inc. vs. NLRC, 180 SCRA 555 [1989].

[23] Supra, note 21.

[24] 135 SCRA 685, 691 [1985]. See also Columbia Development Corporation vs. Minister of Labor and Employment, 146 SCRA 421 [1986].

[25] 245 SCRA 644, 648 [1995].

[26] Rollo, 29-30.

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