SUPREME COURT
FIRST DIVISION

NATIONAL FEDERATION OF LABOR UNIONS (NAFLU), representing its members at Bionic Heavy Equipment, Inc. and Forkner-Ramos, Inc., Silica Quartz, Mine and Silica Sand, Ayungon, Negros Oriental,

***Petitioner*,**

-versus-

G.R. Nos. 94540-41
May 8, 1991

HON. ERNESTO G. LADRIDO III, HON. IRENEA E. CENIZA, HON. BERNABE S. BATUHAN, as Commissioners of the NATIONAL LABOR RELATIONS COMMISSION (NLRC), Fourth Division, Cebu City, BIONIC HEAVY EQUIPMENT, INC./SPENCER FORKNER and FORKNER-RAMOS, INC.,

***Respondents*.**

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D E C I S I O N

GANCAYCO, *J.*:

The execution of a Decision of a labor arbiter awarding over P21 Million to 215 petitioners-claimants pending appeal is the center of this controversy.

On December 1, 1989, then labor arbiter Jose G. Gutierrez rendered a decision in favor of the complainants in consolidated cases filed by the National Federation of Labor Unions and others against private respondent Bionic Heavy Equipment, Inc. and Mr. Spencer Forkner, docketed as RAB-VII-015-86-D and RAB-VII-020-87-20 dated December 1, 1989, the dispositive part of which reads as follows:

> "WHEREFORE, premises considered, this Office gives due course to complainants' claim, ordering respondent to pay the complainants:
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> 1) separation pay at the rate of one (1) month for every year of service
>
> 2) ECOLA
>
> 3) service incentive leave
>
> 4) 13th month pay
>
> 5) overtime pay and night shift differentials
>
> 6) premium pay on holidays and rest days
>
> 7) 3 years backwages without deduction and qualifications.
>
> All other claims are hereby denied for lack of merit.
>
> The Corporate Auditing Examiner is hereby ordered to compute the foregoing monetary awards which form part of this decision.
>
> SO ORDERED."[1]

A copy of the decision was received by private respondent on January 23, 1990. On February 2, 1990, within the ten-day reglementary

period, an appeal memorandum was filed by private respondents stating, among others, that the amount of the monetary award is still being computed by the corporate auditing examiner. Petitioners filed an opposition thereto alleging that the appeal has not been perfected for failure to file the necessary cash or surety bond and that the appeal is pro-forma. Replying thereto, private respondents reiterated that no bond was posted as there was no computation attached to the decision and that accordingly, the amount of the bond cannot be determined. In a supplemental appeal dated March 30, 1990 respondents stressed that the decision is not based on substantial evidence.

On June 21, 1990, petitioner filed a motion for immediate issuance of a writ of execution alleging therein that the computation of the award had been accomplished; that the private respondents failed to perfect their appeal; and that private respondents are in imminent danger of insolvency. The motion was granted by labor arbiter Geofrey P. Villahermosa in an order dated June 27, 1990. A hearing was thus scheduled on June 30, 1990. On June 30, 1990, after the hearing, the labor arbiter approved and adopted the computation of awards made by the corporate auditing examiner, SLEO Aurora R. Gorres, in the total amount of P21,415,486.00.[2]

On July 2, 1990, private respondents filed their comment to the motion for issuance of a writ of execution alleging therein that the said motion is premature and that the allegation of insolvency is baseless.

On July 5, 1990, the labor arbiter issued a special order for the issuance of a writ of execution based on the following reasons —

> "1. Execution pending appeal is allowed under Sec. 2, Rule 39 of the Revised Rules of Court of the Philippines;
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> 2. Respondents herein have not as yet perfected their appeal for failure to post cash or surety bond;
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> 3. Respondent were furnished in open session last June 30, 1990 an official copy of the computation of monetary awards due the complainants;

4. Respondents did not file an opposition to complainants' motion for immediate issuance of writ of execution;

5. Respondents' counsel in open session made an admission that respondents indeed have partially discontinued its (sic) operation;

6. This office is of the new that the appeal by respondents is being taken for purposes of delaying the execution of the judgment;

7. Complainants herein would be gravely prejudiced in that respondents have started removing, dismantling and disposing of their equipment and other accessories subject for execution; and

8. The judgment rendered herein will be rendered nugatory and ineffectual if not defeated, is no writ of execution is immediately issued by this Office."[3]

On the same day said arbiter issued the writ of execution[4] a copy of which was served on private respondents on July 6, 1990 by the sheriff. On July 12, 1990, private respondents filed a motion to lift the writ of execution and for recomputation of the award on the ground that the appeal has been perfected and private respondents were not given an opportunity to controvert the award. The Provincial Sheriff was informed thereof and was advised to hold in abeyance the execution of the decision.

Nevertheless, on July 13, 1990 the sheriff posted a notice of public auction sale to be held on July 19, 1990 at 9:00 a.m. to 5:00 p.m. of the properties enumerated in Annexes A and B of the notice.[5] Two other notices of sale of personal properties of private respondents listed were issued by the sheriff for July 25, 1990.[6] A notice of levy on execution of certain personal properties of private respondents was effected by the sheriff on July 17, 1990.[7]

On July 18, 1990, the labor arbiter denied private respondents' urgent motion to lift the writ of execution and for recomputation of awards

on the ground that the decision had become final and executory and that assuming that private respondents' appeal has not been perfected pending service of the computation of the monetary awards, respondents should have posted the cash or surety bond after receiving a copy of said recomputation on June 30, 1990.[8]

On July 18, 1990, private respondents learned that the public auction of their property scheduled on July 19, 1990 will proceed. Thus, on same day, they filed with the public respondent National Labor Relations Commission (NLRC) a petition to stay the execution sale and for quashal of the writ of execution issued on July 5, 1990.[9] On the same day the NLRC issued an order restraining the scheduled execution sale for July 19, 1990 but the levy on the properties will remain and private respondents were required to post a bond in the amount of P100,000.00 to answer for any damages complainants might suffer by virtue of the stay of the execution sale, if the petition is found to be without legal or factual basis.[10] Private respondents promptly posted the bond and the labor arbiter was required to immediately forward the records of the case to the NLRC.

The Provincial Sheriff, however, effected the sale of properties for P3,696,850.00 claiming he received the radio message after the auction sale was conducted. The two other auction sale scheduled for July 25, 1990 were cancelled.

On July 22, 1990, private respondents filed an urgent ex-parte motion to invalidate the auction sale conducted on July 19, 1990. The said motion was supported by affidavits, minutes and the report of the sheriff, all showing alleged irregularities in the conduct of the auction sale. On July 30, 1990, petitioners filed an opposition to the petition alleging therein that the NLRC has no jurisdiction over the injunction case, that there is no cause of action, that it is barred by prior final judgment and that it is frivolous.[11]

On August 10, 1990 the NLRC issued an order quashing the writ of execution issued in this case, vacating and setting it aside, and ordering the return of the properties sold or taken from the premises of private respondents which, however, are to remain in *custodia legis* until the Commission can determine the amount of the bond to be posted by private respondents.[12]

Hence, this petition for certiorari and prohibition with a prayer for the issuance of a writ of preliminary injunction alleging that public respondent NLRC lacks or has no jurisdiction or acted in grave abuse of discretion in committing the following errors:

> "A. NLRC ERRED IN ACQUIRING JURISDICTION OVER INJUNCTION CASES NO. V-0005-90 and V-006-90 AND IN GIVING DUE COURSE TO INJUNCTION CASES BY ISSUING A RESTRAINING ORDER DATED July 19, 1990 (ANNEX 'N') ENJOINING EXECUTION SALE SCHEDULED ON July 19, 1990.
>
> B. NLRC ERRED IN PROMULGATING THE ORDER DATED August 10, 1990 (ANNEX "R") WITHOUT HEARING DECLARING RESPONDENTS' APPEAL WITHOUT BOND AS DULY PERFECTED; DECLARING WRIT OF EXECUTION DULY ISSUED BY LABOR ARBITER WHO HAD JURISDICTION TO ISSUE SUCH WRIT AS QUASHED, VACATED AND SET ASIDE; DECLARING VALID AND DUE LEVY OF EXECUTION AND REGULAR SUBSEQUENT SALE OF PROPERTY PURSUANT TO SAID WRIT AS SET ASIDE AND ANNULED: ORDERING RETURN TO PREMISES OF PROPERTIES SOLD AND ALREADY IN THE HANDS OF THIRD PERSONS AND TAKEN THEREFROM UNDER CUSTODIA LEGIS UNTIL AFTER AMOUNT OF BOND REQUIRED TO BE POSTED CAN BE DETERMINED WHICH AMOUNT IS ALREADY DETERMINED BY LAW (Article 223, paragraph 2 of the Labor Code as amended), THAT IS, SUCH BOND EQUIVALENT TO MONETARY AWARD."[13]

The petition is devoid of merit.

The labor arbiter clearly erred in issuing a writ of execution on July 5, 1990. In said order, the arbiter observed that private respondents "have not as yet perfected their appeal for failure to post cash bond or surety bond," implying that the decision appealed from has already become final, thus entitling petitioner to the issuance of the writ of execution. But precisely, as contended by private respondents, "the

computation of the corporate auditing examiner was not attached to the decision." Private respondents cannot be expected to post such appeal bond equivalent to the amount of the monetary award when the amount thereof was not included in the decision of the labor arbiter. Article 223 of the Labor Code, as amended, which provides —

> "In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the commission in the amount equivalent to the monetary award in the judgment appealed from."

presupposes that the amount of the monetary award is stated in the judgment or at least attached to the judgment.

Indeed the labor arbiter acknowledged that the appeal was "never perfected because the final computation of the monetary award due the complainants herein has not been accomplished yet." Nevertheless, in the same order, the labor arbiter stated that "execution pending appeal is allowed under Section 2, Rule 39 of the Revised Rules of Court of the Philippines." The same is thus an admission that the appeal has been perfected contradicting his earlier finding that it has not been perfected. What the Court can see here is the undue haste in effecting the immediate execution of the judgment.

Petitioner also argues that private respondents could have already posted the required bond when they received a copy of the computation dated June 29, 1990 prepared by the examiner and approved by the labor arbiter.

The contention is untenable.

In the order of public respondent NLRC dated August 10, 1990, it is stated that "(t)he policy of the Commission in situations like this (and the labor arbiter should have been aware of this) is for the labor arbiter to forward the records to the Commission [and that] thereafter, the Commission will cause the computation of the awards and issue an order directing the appellant to file the required bond." This appears to be a practice of the NLRC to allow a belated filing of

the required appeal bond, in the instance when the decision of the labor arbiter involves a monetary award that has not yet been computed, considering that the computation will still have to be made by that office. It is understood of course that appellant has filed the appeal on time as in this case.

In this case, as early as June 21, 1990, petitioner filed a motion for immediate issuance of a writ of execution alleging that the computation of the award had already been accomplished, among others. The motion was granted by the labor arbiter on June 27, 1990 when strangely the computation was dated June 29, 1990 and the hearing for its approval was set only for the following day, June 30, 1990. This is another clear pattern to railroad the execution of an enormous award of over P21 million.

Nevertheless although said award appears to have been approved on June 30, 1990, it is obvious that private respondents were not given the opportunity to submit their objections to the said computation which is an elementary ingredient of due process. On July 2, 1990, private respondents filed a comment alleging therein that the issuance of the writ of execution is premature and irregular. Nonetheless, on July 5, 1990, the labor arbiter issued a special order for the immediate issuance of the writ of execution above discussed. On July 12, 1990, private respondent filed a motion to lift the writ of execution and for a recomputation of the award alleging —

> "7. That the computation of the awards submitted by Aurora R. Gorres, SLEO amounting to a total of P21,415,486.00 to the 225 alleged complaints in this case is simply arbitrary, without basis in fact or law and is more a product of a job done in haste in full and total lack of consideration of basic business and trade practices as will be cited later in the following paragraphs;
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> 8. That the award was arrived at without giving the respondents the opportunity to present any evidence in support of its allegation as to actual time worked either regularly or in overtime which can only be determined by asking the employer of the complainants to produce the

necessary employment records such as vouchers, time records, payrolls, etc.;

9. That out of the 215 complainants who were awarded their monetary claims, only 105 have records of employment either with respondents or with its job contractors which employment period range(s) from a high of 169 days in the case of Policarpio Labao and a low of one (1) working day each having been rendered by complainants Jolito Dupio, Judy Dupio and Joseph Roman. The rest of the complainants numbering 110 all in all have no time record whatsoever and yet Aurora Gorres would like us to believe that each of these complainants is entitled to P96,071.75. The fact that the award for 215 complainants was computed P95,071.75 each presupposes that each of these 215 workers rendered the same number of hours both regularly and in overtime, are entitled to the same overtime pay and have worked for the same number of days without incurring any absence whatsoever. Thus kind of computation is at its best incredulous and at its worst, one that totally defies common sense;

10. An examination of the business operations of the respondents from 1984 to 1987 are shown by the Certified Financial Statements would show (sic) that the total gross business generated by respondents' firms amounted to P11,026,241.00 representing its total gross sales for the four (4) years covered. Normal business practices would indicate that direct labor costs would normally constitute between 30% to 40% of the gross sales. Stated simply, a businessman is expected to pay between P.30 to P.40 as labor cost per P1.00 worth of item sold. If the labor costs is (sic) higher than this then you can expect to lose in that particular business endeavor. But basing on the computation of Aurora Gorres it would seem that for every P1.00 worth of silica sold by the respondent, it will be incurring P2.26 as labor cost per her computation. Now, who is the stupid businessman who will go into that kind of business?

An examination of the same Financial Statements hereto attached (will show) that the total sales and direct labor costs for the four (4) years afore-mentioned are as follows:

	Total Sales	Total Direct Labor Cost
1984	P3,221,881	P698,983
1985	2,262,694	860,584
1986	3,124,420	1,002,575
1987	2,417,246	977,069
Totals	P11,026,241	P3,539,211

A cursory analysis of the above figures would show that direct labor costs (by way of salaries and wages, ECOLA, SSS premiums, 13th month pay and meal allowances) constitutes 32% of sales. Is this not the more representative figure?

11. That in the interest of justice and equity, it is best that earning be conducted to determine the amounts ought to be awarded to the complainants individually based on existing records either coming from the respondents or from the complainants themselves. This matter cannot just be simply resolved by unfounded presumptions and generous assumptions. To do so will not only mean killing the hen that lays the golden eggs but would also result to economic slow-down thus paralyzing the economic growth of the province in particular and of the country in general."[14]

Petitioner then contends that respondent NLRC erred in issuing the restraining order dated July 19, 1990 because under Article 218(e) of the Labor Code, as amended, the NLRC may only "enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts."

There should be no question that a writ of execution issued before a judgment has become final and executory, is invalid, hence, its execution can be restrained. Such a situation obtains this case. More

go when as in this case the monetary award which was subsequently computed was approved by the labor arbiter without giving the private respondents the opportunity to be heard and to submit their objections thereto; and considering further that the final determination of the correct award had yet to be made by the public respondent NLRC after hearing the side of the private respondents, in accordance with its policy; certainly the precipitate execution of a judgment based on the gargantuan award aforesaid is such prohibited and illegal act which under the law public respondent NLRC may and should restrain.

Petitioner avers that the restraining order is illegal, because it was issued without a hearing and without a bond filed by private respondents.

The comment of private respondents on the petition provides the answer.

> "On July 19, 1990, therefore, the private respondents filed with the public respondents an urgent petition to stay execution sale and for quashal of the writ of execution dated July 5, 1990. Finding said motion to be meritorious, the public respondents immediately conducted a hearing at the NLRC office in Cebu City knowing that any delay would make any resolution that they would render moot and academic as the scheduled auction sale will be conducted at 2:00 o'clock in the afternoon of July 19, 1990. At about 11:30 o'clock in the morning of July 19, 1990, the public respondents issued an order directing the Labor Arbiter to hold in abeyance the execution sale scheduled on even date, without however lifting the levy of respondent's properties and ordered the filing of a cash or surety bond in the amount of P100,000.00."[15]

As shown above, public respondent NLRC in fact conducted a hearing on private respondents' "Urgent Petition to Stop Execution, etc." What petitioner perhaps means is that it had no notice of the hearing. The law allows the issuance of a restraining order ex-parte when the urgency of the situation so demands. Thus, Article 218(e) of the Labor Code, as amended, states —

> "That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the Commission in issuing a temporary injunction upon hearing after notice."

It must be remembered that the labor arbiter denied private respondents' "motion to lift writ of execution" on July 18, 1990. July 19, 1990 was the date of the execution so private respondents filed on the same day the "Urgent Petition to Stop Execution, etc." Due to the obvious merit of the petition showing the unlawful issuance of the writ of execution by the labor arbiter, the NLRC correctly issued the restraining order pursuant to the aforequoted provision of the Labor Code.

The private respondent was required to post P100,000.00 cash as surety bond and they have complied with the requirement.

Lastly, petitioner alleges that the NLRC order dated August 10, 1990 was issued in violation of its right to due process of law because it was issued without notice and hearing and it was based only on private respondents' allegations and evidence.

On the contrary, on July 30, 1990 petitioner filed what it called a Vehement Opposition with Urgent Motion to Dismiss the injunction cases."[16] Petitioner had the opportunity to be heard.

Moreover, by the restraining order dated July 19, 1990 public respondent NLRC directed the labor arbiter "to immediately forward the records of the subject cases so that the same can be resolved by the Commission with dispatch."[17] Consequently, in the order dated August 10, 1990, the public respondent NLRC preceded its conclusion with the statement "(t)he material facts and circumstances necessary for us to resolve the issues are clearly established by (the) records."

No doubt petitioner was afforded due process before public respondent NLRC issued its order dated August 10, 1990.[18]

One last word — the plight of labor must always be considered in any case. However, such a case must be handled with an even hand. More so when the amount of the monetary award runs to millions that will substantially paralyze the employer if not drive it to penury. The immediate execution of the judgment should be undertaken only when the monetary award had been carefully and accurately determined by the NLRC and only after the employer is given the opportunity to be heard and to raise objections to the computation. Any undue haste in the execution of a judgment without considering these essential elements of due process would only give rise to a suspicion that the unusual interest of the public officers concerned in the enforcement of the judgment even before it became final and executory is motivated by questionable objectives other than the interest of the laborers or employees concerned.

Let the respondent NLRC pass upon the merits of the appeal and the correctness of the award. Thereafter, execution may follow, if warranted.

WHEREFORE, the petition is **DISMISSED**, without pronouncement as to costs in this instance.

SO ORDERED.

Narvasa, Cruz, Griño-Aquino and Medialdea, *JJ.*, concur.

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[1] Pages 27-28, Rollo.
[2] Annex E to Petition.
[3] Annex F to Petition; Pages 78-79, Rollo.
[4] Annex 6 to Petition; Pages 80-81, Rollo.
[5] Annex A to Petition; Pages 82 to 85, Rollo.
[6] Annexes I and J to Petition.
[7] Page 96, Rollo.
[8] Annex L to Petition.
[9] Annex M to Petition.
[10] Annex N to Petition.
[11] Annex Q to Petition.
[12] Annex R to Petition.
[13] Page 13, Rollo.
[14] Pages 100 to 102.

[15] Pages 165 to 166, Rollo.
[16] Annex Q to the Petition.
[17] Annex N to the petition.
[18] Annex R to the petition.