SUPREME COURT
THIRD DIVISION

UNION OF NESTLE WORKERS CAGAYAN DE ORO FACTORY (UNWCF FOR BREVITY), REPRESENTED BY ITS PRESIDENT YURI P. BERTULFO AND OFFICERS, NAMELY, DEXTER E. AGUSTIN, DANTE S. SEÑAREZ, EDDIE P. OGNIR, JEFFREY C. RELLIQUETE, ENRIQUITO B. BUAGAS, EDWIN P. SALVAÑA, RAMIL B. MONSANTO, JERRY A. TABILIRAN, ARNOLD A. TADLAS, REYQUE A. FACTURA, NAPOLEON S. GALERINA, JR., TOLENTINO T. MICABALO and EDDIE O. MACASOCOL,

***Petitioners*,**

-versus-

G.R. No. 148303
October 17, 2002

NESTLE PHILIPPINES, INC., REPRESENTED BY ITS PRESIDENT JUAN B. SANTOS, RUDY P. TRILLANES, FACTORY MANAGER, CAGAYAN DE ORO BRANCH AND FRANCIS L. LACSON CITY HUMAN RESOURCES MANAGER,

***Respondents*.**

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D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

Before us is a Petition for Review on *Certiorari*[1] challenging the Decision of the Court of Appeals dated December 28, 2000 and its Resolution dated April 19, 2001 in CA GR-SP No. 56656, "Union of Nestle Workers Cagayan de Oro Factory, et al. vs. Nestle Philippines, Inc. et al."

On August 1, 1999, Nestle Philippines, Inc. (Nestle) adopted Policy No. HRM 1.8, otherwise known as the "Drug Abuse Policy." Pursuant to this policy, the management shall conduct simultaneous drug tests on all employees from different factories and plants. Thus, on August 17, 1999, drug testing commenced at the Lipa City factory, then followed by the other factories and plants.

However, there was resistance to the policy in the Nestle Cagayan de Oro factory. Out of 496 employees, only 141 or 28.43% submitted themselves to drug testing. On August 20, 1999, the Union of Nestle Workers Cagayan de Oro Factory and its officers, petitioners, wrote Nestle challenging the implementation of the policy and branding it as a mere subterfuge to defeat the employees' constitutional rights. Nestle claimed that the policy is in keeping with the government's thrust to eradicate the proliferation of drug abuse, explaining that the company has the right: (a) to ensure that its employees are of sound physical and mental health and (b) to terminate the services of an employee who refuses to undergo the drug test.

On August 23, 1999, petitioners filed with the Regional Trial Court (RTC), Branch 40, Cagayan de Oro City, a complaint for injunction with prayer for the issuance of a temporary restraining order against Nestle, Rudy P. Trillanes, Factory Manager of the Cagayan de Oro City Branch, and Francis L. Lacson, Cagayan de Oro City Human Resources Manager (respondents herein), docketed as Civil Case No. 99-471.

On August 24, 1999, the RTC issued a temporary restraining order enjoining respondents from proceeding with the drug test. Forthwith, they filed a motion to dismiss the complaint on the ground that the RTC has no jurisdiction over the case as it involves a labor dispute or enforcement of a company personnel policy cognizable by the Voluntary Arbitrator or Panel of Voluntary Arbitrators. Petitioners filed their opposition, contending that the RTC has jurisdiction since the complaint raises purely constitutional and legal issues.

On September 8, 1999, the RTC dismissed the complaint for lack of jurisdiction, thus:

> "This Court originally is of the honest belief that the issue involved in the instant case is more constitutional than labor. It was convinced that the dispute involves violation of employees' constitutional rights to self-incrimination, due process and security of tenure. Hence, the issuance of the Temporary Restraining Order.
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> "However, based on the pleadings and pronouncements of the parties, a close scrutiny of the issues would actually reveal that the main issue boils down to a labor dispute. The company implemented a new drug abuse policy whereby all its employees should undergo a drug test under pain of penalty for refusal. The employees who are the union members questioned the implementation alleging that: `can they be compelled to undergo the drug test even against their will, which violates their right against self-incrimination?' At this point, the issue seems constitutional. But if we go further and ask the reason for their refusal to undergo the drug test, the answer is - because the policy was formulated and implemented without proper consultation with the union members. So that, the issue here boils down to a labor dispute between an employer and employees.
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> x x x
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> "Clearly, in the case at bar, the constitutional issue is closely related or intertwined with the labor issue, so much so that this

> Court is inclined to believe that it has no jurisdiction but the NLRC."[2]

Petitioners filed a motion for reconsideration but was denied, prompting them to file with this Court a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended. They alleged that in dismissing their complaint for lack of jurisdiction, the RTC gravely abused its discretion.

On November 24, 1999, this Court referred the petition to the Court of Appeals for consideration and adjudication on the merits or any other action as it may deem appropriate.

On December 28, 2000, the Appellate Court rendered its Decision[3] dismissing the petition, thus:

> "Settled is the rule that the remedy against a final order is an appeal, and not a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. The party aggrieved does not have the option to substitute the special civil action of *certiorari* under Rule 65 for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availment of the special civil action of *certiorari*. And while the special civil action of *certiorari* may be resorted to even if the remedy of appeal is available, it must be shown that the appeal is inadequate, slow, insufficient and will not promptly relieve a party from the injurious effects of the order complained of, or where the appeal is ineffective.
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> "Inasmuch as only questions of law are raised by petitioners in assailing the Order of respondent Judge dismissing their complaint for injunction, the proper remedy, therefore, is appeal to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45 of the 1997 Rules of Civil Procedure. Other than the bare, stereotyped allegation in the petition that there is 'no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law available to the petitioner herein whose right has been violated,' petitioners have not justified their resort to Rule 65 of the 1997 Rules of Civil Procedure.

x x x

> "It is noteworthy that petitioners have not disputed the allegations in paragraph 28 of private respondents' Comment on the petition that drug testing of the entire workforce of Nestle Cagayan de Oro factory, including herein petitioners, submitted themselves to the drug test required by management and was confirmed free from illegal drug abuse. In view thereof, the instant petition, which prays for an injunction of the drug test of the Nestle Cagayan de Oro factory workers, had become moot and academic. The remedy of injunction could no longer be entertained because the act sought to be prevented had been consummated."

Petitioners sought reconsideration but to no avail. Hence this petition for review on *certiorari*.

Petitioners raise the following issues for our resolution:

I. Whether the Regional Trial Court has jurisdiction over petitioners' suit for injunction; and

II. Whether petitioners' resort to *certiorari* under Rule 65 is in order.

On the first issue, we hold that petitioners' insistence that the RTC has jurisdiction over their complaint since it raises constitutional and legal issues is sorely misplaced. The fact that the complaint was denominated as one for injunction does not necessarily mean that the RTC has jurisdiction. Well-settled is the rule that jurisdiction is determined by the allegations in the complaint.[4]

The pertinent allegations of petitioners' amended complaint read:

x x x

5. Plaintiffs are aggrieved employees of the Nestle Philippines, Inc. who are subjected to the new policy of the management for compulsory Drug Test, without their consent and approval;

x x x

8. That the said policy was implemented last August 1, 1999, and the Union was only informed last August 20, 1999, during a meeting held on that day, that all employees who are assigned at the CDO Factory will be compulsorily compelled to undergo drug test, whether they like it or not, without even informing the Union on this new policy adopted by the Management and no guidelines was set pertaining to this drug test policy.

9. That there was no consultation made by the management or even consultation from the employees of this particular policy, as the nature of the policy is punitive in character, as refusal to submit yourself to drug test would mean suspension from work for four (4) to seven (7) days, for the first refusal to undergo drug test and dismissal for second refusal to undergo drug test, hence, they were not afforded due process.;

x x x

12. That it is not the question of whether or not the person will undergo the drug test but it is the manner how the drug test policy is being implemented by the management which is arbitrary in character.

x x x

16. That the exercise of management prerogative to implement the said drug test, even against the will of the employees, is not absolute but subject to the limitation imposed by law.;[5]

It is indubitable from the foregoing allegations that petitioners are not per se questioning "whether or not the person will undergo the drug test" or the constitutionality or legality of the Drug Abuse Policy. They are assailing the manner by which respondents are implementing the policy. According to them, it is "arbitrary in

character" because: (1) the employees were not consulted prior to its implementation; (2) the policy is punitive inasmuch as an employee who refuses to abide with the policy may be dismissed from the service; and (3) such implementation is subject to limitations provided by law which were disregarded by the management.

Is the complaint, on the basis of its allegations, cognizable by the RTC?

Respondent Nestle's Drug Abuse Policy states that (i)llegal drugs and use of regulated drugs beyond the medically prescribed limits are prohibited in the workplace. Illegal drug use puts at risk the integrity of Nestle operations and the safety of our products. It is detrimental to the health, safety and work-performance of employees and is harmful to the welfare of families and the surrounding community."[6] This pronouncement is a guiding principle adopted by Nestle to safeguard its employees' welfare and ensure their efficiency and well-being. To our minds, this is a company personnel policy. In San Miguel Corp. vs. NLRC[7] this Court held:

> "Company personnel policies are guiding principles stated in broad, long-range terms that express the philosophy or beliefs of an organization's top authority regarding personnel matters. They deal with matter affecting efficiency and well-being of employees and include, among others, the procedure in the administration of wages, benefits, promotions, transfer and other personnel movements which are usually not spelled out in the collective agreement."

Considering that the Drug Abuse Policy is a company personnel policy, it is the Voluntary Arbitrators or Panel of Voluntary Arbitrators, not the RTC, which exercises jurisdiction over this case. Article 261 of the Labor Code, as amended, pertinently provides:

> Art. 261. Jurisdiction of Voluntary Arbitrators or Panel of Voluntary Arbitrators. — The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation

or enforcement of company personnel policies."(Emphasis supplied)

With respect to the second issue raised by petitioners, what they should have interposed is an appeal to the Court of Appeals, not a petition for *certiorari* which they initially filed with this Court, since the assailed RTC order is final.[8] *Certiorari* is not a substitute for an appeal.[9] For *certiorari* to prosper, it is not enough that the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction, as alleged by petitioners. The requirement that there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law must likewise be satisfied.[10] We must stress that the remedy of appeal was then available to petitioners, but they did not resort to it. And while this Court in exceptional instances allowed a party's availment of *certiorari* instead of appeal, we find that no such exception exists here.

WHEREFORE, the instant Petition for Review on *Certiorari* is **DENIED**. The Decision of the Court of Appeals dated December 28, 2000 and its Resolution dated April 19, 2001 in CA GR-SP No. 56656 are **AFFIRMED**.

SO ORDERED.

Puno, Panganiban, Corona, and Carpio-Morales, *JJ.*, concur.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure, as amended.
[2] Rollo, p. 86.
[3] In CA GR-SP No. 56656, penned by Associate Justice Marina L. Buzon, and concurred in by Associate Justices Eubolo G. Verzola and Edgardo P. Cruz.
[4] Herrera, et al. vs. Bollos, et al., G.R. No. 138258, January 18, 2002; Sta. Clara Homeowners' Association vs. Gaston, G.R. No. 141961, January 23, 2002; Ceroferr Realty Corp. vs. Court of Appeals, G.R. No. 135939, February 5, 2002.
[5] Comment, pp. 7-8; Rollo, pp. 119-120.
[6] Annex "1," Comment; Rollo, p. 151.
[7] 255 SCRA 133 (1996); Maneja vs. NLRC 290 SCRA 603(1998).

[8] GSIS vs. Olisa, 304 SCRA 421 (1999); Sps. Hontiveros vs. RTC, Branch 25, Quezon City, 309 SCRA 340 (1999); DBP vs. Court of Appeals, 357 SCRA 626 (2001).

[9] Almuete vs. Andres, G.R. No. 122276, November 20, 2001; San Miguel Corporation vs. Court of Appeals, G.R. No. 146775, January 30, 2002; Del Mar vs. Court of Appeals, G.R. No. 139008, March 13, 2002.

[10] Republic vs. Court of Appeals, 322 SCRA 81 (2000); Lagera vs. NLRC, 329 SCRA 436 (2000); Heirs of Pedro Atega vs. Garilao, 357 SCRA 203 (2001).