381 Phil. 460

FIRST DIVISION

[G.R. No. 126586, February 02, 2000]

ALEXANDER VINOYA, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION, REGENT FOOD CORPORATION AND/OR RICKY SEE (PRESIDENT), RESPONDENTS.

D E C I S I O N

KAPUNAN, J.:

This petition for *certiorari* under Rule 65 seeks to annul and set aside the decision, [1] promulgated on 21 June 1996, of the National Labor Relations Commission ("NLRC") which reversed the decision[2] of the Labor Arbiter, rendered on 15 June 1994, ordering Regent Food Corporation ("RFC") to reinstate Alexander Vinoya to his former position and pay him backwages.

Private respondent Regent Food Corporation is a domestic corporation principally engaged in the manufacture and sale of various food products. Private respondent Ricky See, on the other hand, is the president of RFC and is being sued in that capacity.

Petitioner Alexander Vinoya, the complainant, worked with RFC as sales representative until his services were terminated on 25 November 1991.

The parties presented conflicting versions of facts.

Petitioner Alexander Vinoya claims that he applied and was accepted by RFC as sales representative on 26 May 1990. On the same date, a company identification card[3] was issued to him by RFC. Petitioner alleges that he reported daily to the office of RFC, in Pasig City, to take the latter's van for the delivery of its products. According to petitioner, during his employ, he was assigned to various supermarkets and grocery stores where he booked sales orders and collected payments for RFC. For this task, he was required by RFC to put up a monthly bond of P200.00 as security deposit to guarantee the performance of his obligation as sales representative. Petitioner contends that he was under the direct control and supervision of Mr. Dante So and Mr. Sadi Lim, plant manager and senior salesman of RFC, respectively. He avers that on 1 July 1991, he was transferred by RFC to Peninsula Manpower Company, Inc. ("PMCI"), an agency which provides RFC with additional contractual workers pursuant to a contract for the supply of manpower services (hereinafter referred to as the "Contract of Service").[4] After his transfer to PMCI, petitioner was allegedly reassigned to RFC as sales representative. Subsequently, on 25 November 1991, he was informed by Ms. Susan Chua, personnel manager of RFC, that his services were terminated and he was asked to surrender his ID card. Petitioner was told that his dismissal was due to the expiration of the Contract of Service between RFC and PMCI. Petitioner claims that he was dismissed from employment despite the absence of any notice or investigation. Consequently, on 3 December 1991,

petitioner filed a case against RFC before the Labor Arbiter for illegal dismissal and non-payment of 13th month pay.[5]

Private respondent Regent Food Corporation, on the other hand, maintains that no employer-employee relationship existed between petitioner and itself. It insists that petitioner is actually an employee of PMCI, allegedly an independent contractor, which had a Contract of Service[6] with RFC. To prove this fact, RFC presents an Employment Contract[7] signed by petitioner on 1 July 1991, wherein PMCI appears as his employer. RFC denies that petitioner was ever employed by it prior to 1 July 1991. It avers that petitioner was issued an ID card so that its clients and customers would recognize him as a duly authorized representative of RFC. With regard to the ₱200.00 pesos monthly bond posted by petitioner, RFC asserts that it was required in order to guarantee the turnover of his collection since he handled funds of RFC. While RFC admits that it had control and supervision over petitioner, it argues that such was exercised in coordination with PMCI. Finally, RFC contends that the termination of its relationship with petitioner was brought about by the expiration of the Contract of Service between itself and PMCI and not because petitioner was dismissed from employment.

On 3 December 1991, when petitioner filed a complaint for illegal dismissal before the Labor Arbiter, PMCI was initially impleaded as one of the respondents. However, petitioner thereafter withdrew his charge against PMCI and pursued his claim solely against RFC. Subsequently, RFC filed a third party complaint against PMCI. After considering both versions of the parties, the Labor Arbiter rendered a decision,[8] dated 15 June 1994, in favor of petitioner. The Labor Arbiter concluded that RFC was the true employer of petitioner for the following reasons: (1) Petitioner was originally with RFC and was merely transferred to PMCI to be deployed as an agency worker and then subsequently reassigned to RFC as sales representative; (2) RFC had direct control and supervision over petitioner; (3) RFC actually paid for the wages of petitioner although coursed through PMCI; and, (4) Petitioner was terminated per instruction of RFC. Thus, the Labor Arbiter decreed as follows:

> ACCORDINGLY, premises considered respondent RFC is hereby declared guilty of illegal dismissal and ordered to immediately reinstate complainant to his former position without loss of seniority rights and other benefits and pay him backwages in the amount of ₱103,974.00.
>
> The claim for 13th month pay is hereby DENIED for lack of merit.
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> This case, insofar as respondent PMCI [is concerned] is DISMISSED, for lack of merit.
>
> SO ORDERED.[9]

RFC appealed the adverse decision of the Labor Arbiter to the NLRC. In a decision, [10] dated 21 June 1996, the NLRC reversed the findings of the Labor Arbiter. The NLRC opined that PMCI is an independent contractor because it has substantial capital and, as such, is the true employer of petitioner. The NLRC, thus, held PMCI liable for the dismissal of petitioner. The dispositive portion of the NLRC decision states:

WHEREFORE, premises considered, the appealed decision is modified as follows:

1. Peninsula Manpower Company Inc. is declared as employer of the complainant;

2. Peninsula is ordered to pay complainant his separation pay of ₱3,354.00 and his proportionate 13th month pay for 1991 in the amount of ₱2,795.00 or the total amount of ₱6,149.00.

SO ORDERED.[11]

Separate motions for reconsideration of the NLRC decision were filed by petitioner and PMCI. In a resolution,[12] dated 20 August 1996, the NLRC denied both motions. However, it was only petitioner who elevated the case before this Court.

In his petition for *certiorari*, petitioner submits that respondent NLRC committed grave abuse of discretion in reversing the decision of the Labor Arbiter, and asks for the reinstatement of the latter's decision.

Principally, this petition presents the following issues:

1. Whether petitioner was an employee of RFC or PMCI.

2. Whether petitioner was lawfully dismissed.

The resolution of the first issue initially boils down to a determination of the true status of PMCI, whether it is a labor-only contractor or an independent contractor.

In the case at bar, RFC alleges that PMCI is an independent contractor on the sole ground that the latter is a highly capitalized venture. To buttress this allegation, RFC presents a copy of the Articles of Incorporation and the Treasurer's Affidavit[13] submitted by PMCI to the Securities and Exchange Commission showing that it has an authorized capital stock of One Million Pesos (₱1,000,000.00), of which Three Hundred Thousand Pesos (₱300,000.00) is subscribed and Seventy-Five Thousand Pesos (₱75,000.00) is paid-in. According to RFC, PMCI is a duly organized corporation engaged in the business of creating and hiring a pool of temporary personnel and, thereafter, assigning them to its clients from time to time for such duration as said clients may require. RFC further contends that PMCI has a separate office, permit and license and its own organization.

Labor-only contracting, a prohibited act, is an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal.[14] In labor-only contracting, the following elements are present:

(a) The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility;

(b) The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal.[15]

On the other hand, permissible job contracting or subcontracting refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.[16] A person is considered engaged in legitimate job contracting or subcontracting if the following conditions concur:

> (a) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;
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> (b) The contractor or subcontractor has substantial capital or investment; and
>
> (c) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.[17]

Previously, in the case of *Neri vs. NLRC*,[18] we held that in order to be considered as a job contractor it is enough that a contractor has substantial capital. In other words, once substantial capital is established it is no longer necessary for the contractor to show evidence that it has investment in the form of tools, equipment, machineries, work premises, among others. The rational for this is that Article 106 of the Labor Code does not require that the contractor possess both substantial capital and investment in the form of tools, equipment, machineries, work premises, among others.[19] The decision of the Court in *Neri* thus states:

> Respondent BCC need not prove that it made investment in the form of tools, equipment, machineries, work premises, among others, because it has established that it has sufficient capitalization. The Labor Arbiter and the NLRC both determined that BCC had a capital stock of P1 million fully subscribed and paid for. BCC is therefore a highly capitalized venture and cannot be deemed engaged in "labor-only" contracting.[20]

However, in declaring that Building Care Corporation ("BCC") was an independent contractor, the Court considered not only the fact that it had substantial capitalization. The Court noted that BCC carried on an independent business and undertook the performance of its contract according to its own manner and method, free from the control and supervision of its principal in all matters except as to the results thereof.[21] The Court likewise mentioned that the employees of BCC were engaged to perform specific special services for its principal.[22] Thus, the Court ruled that BCC was an independent contractor.

The Court further clarified the import of the Neri decision in the subsequent case of *Philippine Fuji Xerox Corporation vs. NLRC.*[23] In the said case, petitioner Fuji Xerox

implored the Court to apply the Neri doctrine to its alleged job-contractor, Skillpower, Inc., and declare the same as an independent contractor. Fuji Xerox alleged that Skillpower, Inc. was a highly capitalized venture registered with the Securities and Exchange Commission, the Department of Labor and Employment, and the Social Security System with assets exceeding ₱5,000,000.00 possessing at least 29 typewriters, office equipment and service vehicles, and its own pool of employees with 25 clerks assigned to its clients on a temporary basis.[24] Despite the evidence presented by Fuji Xerox the Court refused to apply the *Neri* case and explained:

> Petitioners cite the case of *Neri v. NLRC*, in which it was held that the Building Care Corporation (BCC) was an independent contractor on the basis of finding that it had substantial capital, although there was no evidence that it had investments in the form of tools, equipment, machineries and work premises. But the Court in that case considered not only the capitalization of the BCC but also the fact that BCC was providing specific special services (radio/telex operator and janitor) to the employer; that in another case, the Court had already found that BCC was an independent contractor; that BCC retained control over the employees and the employer was actually just concerned with the end-result; that BCC had the power to reassign the employees and their deployment was not subject to the approval of the employer; and that BCC was paid in lump sum for the services it rendered. These features of that case make it distinguishable from the present one.[25]

Not having shown the above circumstances present in Neri, the Court declared Skillpower, Inc. to be engaged in labor-only contracting and was considered as a mere agent of the employer.

From the two aforementioned decisions, it may be inferred that it is not enough to show substantial capitalization or investment in the form of tools, equipment, machineries and work premises, among others, to be considered as an independent contractor. In fact, jurisprudential holdings are to the effect that in determining the existence of an independent contractor relationship, several factors might be considered such as, but not necessarily confined to, whether the contractor is carrying on an independent business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of specified pieces of work; the control and supervision of the workers; the power of the employer with respect to the hiring, firing and payment of the workers of the contractor; the control of the premises; the duty to supply premises, tools, appliances, materials and labor; and the mode, manner and terms of payment.[26]

Given the above standards and the factual milieu of the case, the Court has to agree with the conclusion of the Labor Arbiter that PMCI is engaged in labor-only contracting.

First of all, PMCI does not have substantial capitalization or investment in the form of tools, equipment, machineries, work premises, among others, to qualify as an independent contractor. While it has an authorized capital stock of ₱1,000,000.00, only ₱75,000.00 is actually paid-in, which, to our mind, cannot be considered as substantial capitalization. In the case of *Neri*, which was promulgated in 1993, BCC