597 Phil. 452

SECOND DIVISION

[G.R. No. 174621, January 30, 2009]

LA UNION CEMENT WORKERS UNION & ARNULFO ALMOITE, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND BACNOTAN CEMENT CORPORATION (NOW HOLCIM PHILIPPINES, INC.), RESPONDENTS.

D E C I S I O N

TINGA, J.:

Before the Court is a petition for review on certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure assailing the decision[2] and resolution[3] of the Court of Appeals in CA-G.R. SP No. 90597. The challenged decision affirmed the judgment of the National Labor

Relations Commission (NLRC), which declared as valid the termination of petitioner Arnulfo Almoite on the ground of redundancy while the resolution denied petitioners' motion for reconsideration.

As culled from the records of the case, the following antecedent facts appear:

Private respondent Bacnotan Cement Corporation (respondent company), now known as Holcim Philippines, Inc., is engaged in the manufacture of cement. Prior to 1994, respondent company had been utilizing the "wet process technology" in its operations. Sometime in 1992, respondent company introduced the "dry process technology" as part of its modernization program. In 1995, the new "dry process technology" became fully operational. After a comparative study of the two production lines, respondent company discovered that the "dry process technology" or the dry line proved to be more efficient as the cost was minimized by P15.00 per cement bag while the "wet process technology" or the wet line consumed more fuel and had to undergo frequent repairs and shutdowns due to its obsolescence.[4]

Amid this backdrop of cost inefficiencies was the increasing competition in the cement industry due to the trade liberalization, the expansion of other plants and the entry of new industry players. Thus, after studying the situation, respondent company concluded that it would be uncompetitive and impractical to operate the wet line and decided to close it down.[5]

To implement the closure of the wet line, respondent company and petitioner La Union Cement Workers Union (petitioner Union) entered into a Memorandum of Agreement on 19 July 1997, whereby respondent company committed to grant separation pay equivalent to 150% of the monthly basic pay for every year of service plus the additional fixed amount of P27,000.00 to employees who would be terminated as a result of the closure of the wet line. In an open letter dated 11

August 1997,[6] Magdaleno B. Albarracin, Jr., the respondent company's Senior Executive Vice President, notified the employees of the its decision to mothball the wet line and the termination of those whose employment would become unnecessary as a result of the closure.[7]

On 15 August 1997, respondent company sent a letter to the office of Ricardo S. Martinez, Regional Director of the Department of Labor and Employment (DOLE), informing him about respondent company's decision to shut down the wet line and furnishing him the list of affected employees.[8] On 16 August 1997, respondent company sent notices of termination to more or less 200 employees including petitioner Almoite. Upon the receipt of the separation pay, a number of the affected employees signed individual Release Waiver and Quitclaim.[9]

Sometime in November 1997, petitioner Union and some 80 of its members including petitioner Almoite filed complaints for unfair labor practice, illegal lay-off and illegal dismissal against respondent company before the NLRC Regional Arbitration Branch 1 in San Fernando, La Union. The petitioners alleged that while the closure affected only the wet line, among the employees terminated were operating the dry line or performing support services for both wet and dry lines. They further alleged that after the closure of the wet line, respondent company contracted out the services performed by the employees who were terminated.

Only 31 of the 80 employees pursued the complaints before the Labor Arbiter. After submission of the parties' position papers and pleadings, Labor Arbiter Irenarco R. Rimando rendered a Decision[10] on 19 March 1999 dismissing the complaints. Labor Arbiter Rimando found that respondent company complied with the requisite notice and severance pay mandated under Article 283 of the Labor Code. As regards the claim that the services performed by the complainants were eventually assumed by employees who were retained or were contracted out, Labor Arbiter Rimando ruled that the employer had the prerogative to utilize its remaining workforce to the maximum.

Petitioners appealed to the NLRC, arguing that respondent company failed to prove with substantial evidence that the retrenchment was absolutely necessary and unavoidable mainly because the affected employees were also performing support services in the wet line.

Public respondent NLRC affirmed *in toto* the decision of Labor Arbiter Rimando. It held that the appeal was brought by petitioner Union and not by its members who were the real parties-in-interest and, thus, must be dismissed outright. The NLRC held that the retrenchment on the ground of redundancy was valid in any case. It concluded that the scaling down of activities requiring support services was a consequence of the closure of the wet line; hence, the termination of the excess employees performing such support services followed as a matter of course.[11]

Only petitioner Union and petitioner Almoite elevated the matter to the Court of Appeals via a petition for certiorari. The appellate court found no grave abuse of discretion committed by public respondent NLRC in affirming the decision of Labor Arbiter Rimando. In a Resolution dated 06 September 2006, the Court of Appeals denied petitioners' motion for reconsideration for lack of merit.

Hence, the instant petition, raising the following issues:

> THE HONORABLE COURT OF APPEALS RULED CONTRARY TO LAW IN FINDING THAT PETITIONER UNION IS NOT A REAL PARTY-IN-INTEREST AND MAY NOT REPRESENT ITS MEMBERS IN A CASE QUESTIONING THEIR DISMISSAL.
>
> THE HONORABLE COURT OF APPEALS RULED CONTRARY TO LAW AND THE EVIDENCE IN UPHOLDING PUBLIC RESPONDENT'S FINDING THAT PETITIONER ALMOITE'S TERMINATION WAS VALID.[12]

In a Resolution dated 13 December 2006, the Court dismissed the petition with respect to petitioner Union for insufficiency or defective verification and certification of non-forum shopping, as only the president of petitioner Union signed the same in violation of Sections 4 and 5, Rule 7 of the Rules of Court.[13] The judgment of dismissal has become final and executory with respect to petitioner Union on 08 February 2007.[14]

As regards the claim of petitioner Almoite, the Court resolved to require respondent company to comment thereon. In its comment, respondent company prays that the petition raises factual issues and should be dismissed for lack of merit.

The instant petition raises two issues: namely, whether petitioner Union is the real party-in-interest in this case and whether petitioner Almoite's termination was valid. The question of petitioner Union's capacity to sue on behalf of its members has become moot and academic in view of the judgment of dismissal of the instant petition which has already become final and executory with respect to petitioner Union.

Thus, the remaining issue to be resolved in this petition pertains to petitioner Almoite's claim that petitioner Union has failed to prove that his work as an oiler for both the wet and dry lines has become redundant with the closure of the wet line.

Petitioner Almoite's claim is clearly a factual question which is beyond the province of a Rule 45 petition. As an overture, clear and unmistakable is the rule that the Supreme Court is not a trier of facts. Just as well entrenched is the doctrine that pure issues of fact may not be the proper subject of appeal by certiorari under Rule 45 of the Revised Rules of Court as this mode of appeal is generally confined to questions of law. We therefore take this opportunity again to reiterate that only questions of law, not questions of fact, may be raised before the Supreme Court in a petition for review under Rule 45 of the Rules of Court. This Court cannot be tasked to go over the proofs presented by the petitioners in the lower courts and analyze, assess and weigh them to ascertain if the court *a quo* and the appellate court were correct in their appreciation of the evidence.[15]

In any event, the Court finds no cogent reason to disturb the judgment of the Court of Appeals affirming the Labor Arbiter and NLRC rulings that the termination of petitioner Almoite and the other employees of respondent company. As explained by the NLRC, the termination of petitioner Almoite was a necessary consequence of the partial closure of operations of respondent company. Petitioner Almoite's work as an oiler for both the wet line and dry line has become redundant or superfluous