598 Phil. 909

THIRD DIVISION

[G.R. No. 179546, February 13, 2009]

COCA-COLA BOTTLERS PHILS., INC., PETITIONER, VS. ALAN M. AGITO, REGOLO S. OCA III, ERNESTO G. ALARIAO, JR., ALFONSO PAA, JR., DEMPSTER P. ONG, URRIQUIA T. ARVIN, GIL H. FRANCISCO, AND EDWIN M. GOLEZ,RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari*, under Rule 45 of the Rules of Court, assailing the Decision[1] dated 19 February 2007, promulgated by the Court of Appeals in CA-G.R. SP No. 85320, reversing the Resolution[2] rendered on 30 October 2003 by the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 036494-03. The Court of Appeals, in its assailed Decision, declared that respondents Alan M. Agito, Regolo S. Oca III, Ernesto G. Alariao, Jr., Alfonso Paa, Jr., Dempster P. Ong, Urriquia T. Arvin, Gil H. Francisco, and Edwin M. Golez were regular employees of petitioner Coca-Cola Bottlers Phils., Inc; and that Interserve Management & Manpower Resources, Inc. (Interserve) was a labor-only contractor, whose presence was intended merely to preclude respondents from acquiring tenurial security.

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) and engaged in manufacturing, bottling and distributing soft drink beverages and other allied products.

On 15 April 2002, respondents filed before the NLRC two complaints against petitioner, Interserve, Peerless Integrated Services, Inc., Better Builders, Inc., and Excellent Partners, Inc. for reinstatement with backwages, regularization, nonpayment of 13th month pay, and damages. The two cases, docketed as NLRC NCR Case No. 04-02345-2002 and NLRC NCR Case No. 05-03137-02, were consolidated.

Respondents alleged in their Position Paper that they were salesmen assigned at the Lagro Sales Office of petitioner. They had been in the employ of petitioner for years, but were not regularized. Their employment was terminated on 8 April 2002 without just cause and due process. However, they failed to state the reason/s for filing a complaint against Interserve; Peerless Integrated Services, Inc.; Better Builders, Inc.; and Excellent Partners, Inc.[3]

Petitioner filed its Position Paper (with Motion to Dismiss),[4] where it averred that respondents were employees of Interserve who were tasked to perform contracted services in accordance with the provisions of the Contract of Services[5] executed between petitioner and Interserve on 23 March 2002. Said Contract between

petitioner and Interserve, covering the period of 1 April 2002 to 30 September 2002, constituted legitimate job contracting, given that the latter was a *bona fide* independent contractor with substantial capital or investment in the form of tools, equipment, and machinery necessary in the conduct of its business.

To prove the status of Interserve as an independent contractor, petitioner presented the following pieces of evidence: (1) the Articles of Incorporation of Interserve;[6] (2) the Certificate of Registration of Interserve with the Bureau of Internal Revenue;[7] (3) the Income Tax Return, with Audited Financial Statements, of Interserve for 2001;[8] and (4) the Certificate of Registration of Interserve as an independent job contractor, issued by the Department of Labor and Employment (DOLE).[9]

As a result, petitioner asserted that respondents were employees of Interserve, since it was the latter which hired them, paid their wages, and supervised their work, as proven by: (1) respondents' Personal Data Files in the records of Interserve;[10] (2) respondents' Contract of Temporary Employment with Interserve;[11] and (3) the payroll records of Interserve.[12]

Petitioner, thus, sought the dismissal of respondents' complaint against it on the ground that the Labor Arbiter did not acquire jurisdiction over the same in the absence of an employer-employee relationship between petitioner and the respondents.[13]

In a Decision dated 28 May 2003, the Labor Arbiter found that respondents were employees of Interserve and not of petitioner. She reasoned that the standard put forth in Article 280 of the Labor Code for determining regular employment (*i.e.*, that the employee is performing activities that are necessary and desirable in the usual business of the employer) was not determinative of the issue of whether an employer-employee relationship existed between petitioner and respondents. While respondents performed activities that were necessary and desirable in the usual business or trade of petitioner, the Labor Arbiter underscored that respondents' functions were not indispensable to the principal business of petitioner, which was manufacturing and bottling soft drink beverages and similar products.

The Labor Arbiter placed considerable weight on the fact that Interserve was registered with the DOLE as an independent job contractor, with total assets amounting to P1,439,785.00 as of 31 December 2001. It was Interserve that kept and maintained respondents' employee records, including their Personal Data Sheets; Contracts of Employment; and remittances to the Social Securities System (SSS), Medicare and Pag-ibig Fund, thus, further supporting the Labor Arbiter's finding that respondents were employees of Interserve. She ruled that the circulars, rules and regulations which petitioner issued from time to time to respondents were not indicative of control as to make the latter its employees.

Nevertheless, the Labor Arbiter directed Interserve to pay respondents their pro-rated 13th month benefits for the period of January 2002 until April 2002.[14]

In the end, the Labor Arbiter decreed:

> WHEREFORE, judgment is hereby rendered finding that [herein respondents] are employees of [herein petitioner] INTERSERVE MANAGEMENT & MANPOWER RESOURCES, INC. Concomitantly, respondent Interserve is further ordered to pay [respondents] their pro-rated 13th month pay.
>
> The complaints against COCA-COLA BOTTLERS PHILS., INC. is DISMISMMED for lack of merit.
>
> In like manner the complaints against PEERLESS INTEGRATED SERVICES, INC., BETTER BUILDING INC. and EXCELLENT PARTNERS COOPERATIVE are DISMISSED for failure of complainants to pursue against them.
>
> Other claims are dismissed for lack of merit.
>
> The computation of the Computation and Examination Unit, this Commission if (sic) made part of this Decision. [15]

Unsatisfied with the foregoing Decision of the Labor Arbiter, respondents filed an appeal with the NLRC, docketed as NLRC NCR CA No. 036494-03.

In their Memorandum of Appeal,[16] respondents maintained that contrary to the finding of the Labor Arbiter, their work was indispensable to the principal business of petitioner. Respondents supported their claim with copies of the Delivery Agreement[17] between petitioner and TRMD Incorporated, stating that petitioner was "engaged in the manufacture, distribution and sale of soft drinks and other related products with various plants and sales offices and warehouses located all over the Philippines." Moreover, petitioner supplied the tools and equipment used by respondents in their jobs such as forklifts, pallet, *etc*. Respondents were also required to work in the warehouses, sales offices, and plants of petitioner. Respondents pointed out that, in contrast, Interserve did not own trucks, pallets *cartillas*, or any other equipment necessary in the sale of Coca-Cola products.

Respondents further averred in their Memorandum of Appeal that petitioner exercised control over workers supplied by various contractors. Respondents cited as an example the case of Raul Arenajo (Arenajo), who, just like them, worked for petitioner, but was made to appear as an employee of the contractor Peerless Integrated Services, Inc. As proof of control by petitioner, respondents submitted copies of: (1) a Memorandum[18] dated 11 August 1998 issued by Vicente Dy (Dy), a supervisor of petitioner, addressed to Arenajo, suspending the latter from work until he explained his disrespectful acts toward the supervisor who caught him sleeping during work hours; (2) a Memorandum[19] dated 12 August 1998 again issued by Dy to Arenajo, informing the latter that the company had taken a more lenient and tolerant position regarding his offense despite having found cause for his dismissal; (3) Memorandum[20] issued by Dy to the personnel of Peerless Integrated Services, Inc., requiring the latter to present their timely request for leave or medical certificates for their absences; (4) Personnel Workers Schedules, [21] prepared by RB Chua, another supervisor of petitioner; (5) Daily Sales Monitoring Report prepared by petitioner;[22] and (6) the Conventional Route System Proposed Set-up of petitioner. [23]

The NLRC, in a Resolution dated 30 October 2003, affirmed the Labor Arbiter's Decision dated 28 May 2003 and pronounced that no employer-employee relationship existed between petitioner and respondents. It reiterated the findings of the Labor Arbiter that Interserve was an independent contractor as evidenced by its substantial assets and registration with the DOLE. In addition, it was Interserve which hired and paid respondents' wages, as well as paid and remitted their SSS, Medicare, and Pag-ibig contributions. Respondents likewise failed to convince the NLRC that the instructions issued and trainings conducted by petitioner proved that petitioner exercised control over respondents as their employer.[24] The dispositive part of the NLRC Resolution states:[25]

> WHEREFORE, the instant appeal is hereby DISMISSED for lack of merit. However, respondent Interserve Management & Manpower Resources, Inc., is hereby ordered to pay the [herein respondents] their pro-rated 13th month pay.

Aggrieved once more, respondents sought recourse with the Court of Appeals by filing a Petition for *Certiorari* under Rule 65, docketed as CA-G.R. SP No. 85320.

The Court of Appeals promulgated its Decision on 9 February 2007, reversing the NLRC Resolution dated 30 October 2003. The appellate court ruled that Interserve was a labor-only contractor, with insufficient capital and investments for the services which it was contracted to perform. With only P510,000.00 invested in its service vehicles and P200,000.00 in its machineries and equipment, Interserve would be hard-pressed to meet the demands of daily soft drink deliveries of petitioner in the Lagro area. The Court Appeals concluded that the respondents used the equipment, tools, and facilities of petitioner in the day-to-day sales operations.

Additionally, the Court of Appeals determined that petitioner had effective control over the means and method of respondents' work as evidenced by the Daily Sales Monitoring Report, the Conventional Route System Proposed Set-up, and the memoranda issued by the supervisor of petitioner addressed to workers, who, like respondents, were supposedly supplied by contractors. The appellate court deemed that the respondents, who were tasked to deliver, distribute, and sell Coca-Cola products, carried out functions directly related and necessary to the main business of petitioner. The appellate court finally noted that certain provisions of the Contract of Service between petitioner and Interserve suggested that the latter's undertaking did not involve a specific job, but rather the supply of manpower.

The decretal portion of the Decision of the Court of Appeals reads:[26]

> **WHEREFORE**, the petition is **GRANTED**. The assailed Resolutions of public respondent NLRC are **REVERSED** and **SET ASIDE**. The case is remanded to the NLRC for further proceedings.

Petitioner filed a Motion for Reconsideration, which the Court of Appeals denied in a Resolution, dated 31 August 2007.[27]

Hence, the present Petition, in which the following issues are raised[28]:

WHETHER OR NOT THE COURT OF APPEALS ACTED IN ACCORDANCE WITH EVIDENCE ON RECORD, APPLICABLE LAWS AND ESTABLISHED JURISPRUDENCE WHEN IT RULED THAT INTERSERVE IS A LABOR-ONLY CONTRACTOR;

II

WHETHER OR NOT THE COURT OF APPEALS ACTED IN ACCORDANCE WITH APPLICABLE LAWS AND ESTABLISHED JURISPRUDENCE WHEN IT CONCLUDED THAT RESPONDENTS PERFORMED WORK NECESSARY AND DESIRABLE TO THE BUSINESS OF [PETITIONER];

III

WHETHER OR NOT THE COURT OF APPEALS COMMITTED SERIOUS ERROR WHEN IT DECLARED THAT RESPONDENTS WERE EMPLOYEES OF [PETITIONER], EVEN ABSENT THE FOUR ELEMENTS INDICATIVE OF AN EMPLOYMENT RELATIONSHIP; AND

IV

WHETHER OR NOT THE COURT OF APPEALS SERIOUSLY ERRED WHEN IT CONCLUDED THAT INTERSERVE WAS ENGAGED BY [PETITIONER] TO SUPPLY MANPOWER ONLY.

The Court ascertains that the fundamental issue in this case is whether Interserve is a legitimate job contractor. Only by resolving such issue will the Court be able to determine whether an employer-employee relationship exists between petitioner and the respondents. To settle the same issue, however, the Court must necessarily review the factual findings of the Court of Appeals and look into the evidence presented by the parties on record.

As a general rule, factual findings of the Court of Appeals are binding upon the Supreme Court. One exception to this rule is when the factual findings of the former are contrary to those of the trial court, or the lower administrative body, as the case may be. This Court is obliged to resolve an issue of fact herein due to the incongruent findings of the Labor Arbiter and the NLRC and those of the Court of Appeals. [29]

The relations which may arise in a situation, where there is an employer, a contractor, and employees of the contractor, are identified and distinguished under Article 106 of the Labor Code:

> Article 106. Contractor or subcontractor. - Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.
>
> In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such