503 Phil. 288

SECOND DIVISION

[G.R. No. 154295, July 29, 2005]

METROMEDIA TIMES CORPORATION AND/OR ROBINA GOKONGWIE-PE, PETITIONER, VS. JOHNNY PASTORIN, RESPONDENT.

D E C I S I O N

TINGA, J.:

At issue in this *Petition for Review*[1] on certiorari under Rule 45 is whether or not lack of jurisdiction over the subject matter of the case, heard and decided by the labor arbiter, may be raised for the first time before the National Labor Relations Commission (NLRC) by a litigant who had actively participated in the proceedings, which it belatedly questioned.

The facts, culled from the records, are as follows:

Johnny Pastorin (Respondent) was employed by Metromedia Times Corporation (Petitioner) on 10 December 1990 as a Field Representative/Collector. His task entailed the periodic collection of receivables from dealers of petitioner's newspapers. Prior to the subject incident, respondent claimed to have received a termination letter dated 7 May 1998 from management terminating his services for tardiness effective 16 June 1988. Respondent, member of Metro Media Times Employees Union, was not dismissed due to the intervention of the labor union, the collective bargaining agent in the company.

In May 1998, he obtained a loan from one of the dealers whom he dealt with, Gloria A. de Manuel (De Manuel), amounting to Nine Thousand Pesos (P9,000.00). After paying One Thousand One Hundred Twenty-five Pesos (P1,125.00), respondent reneged on the balance of his loan. De Manuel wrote a letter dated 6 July 1998 to petitioner, and seeking assistance for collection on the remainder of the loan. She claimed that when respondent became remissed on his personal obligation, he stopped collecting periodically the outstanding dues of De Manuel[2]

On 9 July 1998, petitioner sent a letter addressed to respondent, requiring an explanation for the transaction with De Manuel, as well as for his failure to pay back the loan according to the conditions agreed upon. In his reply letter[3] dated 13 July 1998, respondent admitted having incurred the loan, but offered no definitive explanation for his failure to repay the same.

Petitioner, through a Memorandum[4] dated 24 August 1998, imposed the penalty of suspension on respondent for 4 days, from 27 August to 1 September 1998, for violating Company Policy No. 2.17[5] and ordered his transfer to the Administration Department.

On 2 September 1998, respondent wrote a letter[6] to petitioner, stating that he wanted to sign a transfer memo before assuming his new position.

On September 7, 1998, he was handed the Payroll Change Advice[7] (PCA), indicating his new assignment to the Traffic and Order Department of Metromedia. Nonetheless, respondent stopped reporting for work. On 16 September 1998, he sent a letter[8] to petitioner communicating his refusal to accept the transfer.

Respondent duly filed a complaint for constructive dismissal, non-payment of backwages and other money claims with the labor arbiter, a copy of which petitioner received on 28 September 1998. The complaint was resolved in favor of respondent. In a Decision[9] dated 28 May 1999, Labor Arbiter Manuel P. Asuncion concluded that respondent did not commit insubordination or disobedience so as to warrant his transfer, and that petitioner was not aggrieved by respondent's failure to settle his obligation with De Manuel. The dispositive portion read:

> **WHEREFORE,** the respondents are hereby ordered to reinstate the complainant to his former position, with full backwages from the time his salary was withheld until he is actually reinstated. As of this date, the complainant's backwages has reached the sum of P97,324.17. The respondents are further directed to pay the complainant his 13th month pay for 1998 in the sum of P3,611.89. The claims for allowance and unpaid commission are dismissed for lack of sufficient basis to make an award.
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> **SO ORDERED**.[10]

Petitioner lodged an appeal with the NLRC, raising as a ground the lack of jurisdiction of the labor arbiter over respondent's complaint. Significally, this issue was not raised by petitioner in the proceedings before the Labor Arbiter. In its *Decision*[11] dated 16 March 2001, the NLRC reversed the Labor Arbiter on the ground that thee latter had no jurisdiction over the case, it being a grievance issue properly cognizable by the voluntary arbitrator. The decretal portion of the NLRC *Decision* reads:

> WHEREFORE, the decision under review is REVERSED and SET ASIDE, and a new one entered, DISMISSING the complaint for lack of jurisdiction.
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> SO ORDERED.[12]

The motion for reconsideration having been denied on 18 May 2001, respondent elevated the case before the Court of Appeals (CA) through a petition for *certiorari*[13] under Rule 65.

The CA Fifteenth Division reversed the *Decision* of NLRC, and reinstated the earlier ruling of the Labor Arbiter. Adopting the doctrines by this Court in the cases of *Alfredo Marquez v. Sec. of Labor*[14] and *ABS-CBN Supervisors Employees Union Members v. ABS-CBN Broadcasting Corporation*,[15] the CA ruled that the active participation of the party against whom the action was brought, coupled with his

failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction. The appellate court then disposed the case in this wise:

> **WHEREFORE,** foregoing premises considered, the petition having merit, in fact and in law, is **hereby GIVEN DUE COURSE**. Accordingly, the challenged resolution/decision and orders of public respondent NLRC are **hereby REVERSED and SET ASIDE and the decision of the Labor Arbiter dated May 28, 1999 REINSTATED with a slight modification, that the 13th month pay be in the amount of P7,430.50. No costs.**
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> **SO ORDERED.**[16]

Petitioner sought reconsideration[17] of the above *Decision*[18] but the CA denied the motion in the assailed *Resolution*[19] dated 27 June 2002. Hence, its recourse to this Court, elevating the following issues:

> I.
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> WHETHER OR NOT METROMEDIA IS ESTOPPED FROM QUESTIONING THE JURISDICTION OF THE LABOR ARBITER OVER THE SUBJECT MATTER OF THE CASE FOR THE FIRST TIME ONLY IN THEIR APPEAL BEFORE THE NLRC.
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> II.
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> WHETHER OR NOT THE AWARD OF 13TH MONTH PAY BY THE LABOR ARBITER MAY BE MODIFIED, NOTWITHSTANDING THAT THE SAME WAS NEVER ASSIGNED AS AN ERROR.

Anent the first assignment of error, there are divergent jurisprudential doctrines touching on this issue. On the one hand are the cases of *Martinez v. Merced*,[20] *Marquez v. Secretary of Labor*,[21] *Ducat v. Court of Appeals*,[22] *Bayoca v. Nogales*,[23] *Jimenez v. Patricia*,[24] *Centeno v. Centeno*,[25] and *ABS-CBN Supervisors Employee Union Members v. ABS-CBN Broadcasting Corporation*,[26] all adhering to the doctrine that a party's active participation in the actual proceedings before a court without jurisdiction will estop him from assailing such lack of jurisdiction. Respondent heavily relies on this doctrinal jurisprudence.

On the other hand, the cases of *Dy v. NLRC*,[27] *La Naval Drug v. CA*,[28] *De Rossi vs. CA*[29] and *Union Motors Corporation v. NLRC*[30] buttress the position of petitioner that jurisdiction is conferred by law and lack of jurisdiction may be questioned at any time even on appeal.

The Court of Appeals adopted the principles in the cases of *Martinez, Marquez* and *ABS-CBN* in resolving the jurisdictional issue presented for its resolution, to wit:

> Indeed, we agree with petitioner that private respondent was estopped from raising the question of jurisdiction before public respondent NLRC and the latter gravely abused its discretion in addressing said question in private respondents' favor. As early as *Martinez vs. De la Merced*, 174 SCRA 182, the Supreme Court has clearly ruled thus: "*For it has been consistently held by this Court that while lack of jurisdiction may be assailed at any stage, a party's active participation in the proceedings before a court without jurisdiction will estop such party from assailing such lack of jurisdiction*."
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> . . . .
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> The same principle was adopted by the Highest Tribunal in the case of *Alfredo Marquez vs. Sec. of Labor,* 171 SCRA 337 and quoted in the latter case of *ABS-CBN Supervisors Employees Union Members vs. ABS-CBN Broadcasting Corporation*, 304 SCRA 497, where it was ruled that: "*The active participation of the party against whom the action was brought, coupled with his failure to object to the jurisdiction of the court or quasi-judicial body where the action is pending, is tantamount to an invocation of that jurisdiction and a willingness to abide by the resolution of the case and will bar said party from later on impugning the court or body's jurisdiction.*"[31]

We rule differently. A cursory glance at these cases will lead one to the conclusion that a party who does not raise the jurisdictional question at the outset will be estopped to raise it on appeal. However, a more circumspect analysis would reveal that the cases cited by respondent do not fall squarely within the issue and factual circumstances of the instant case. We proceed to demonstrate.

The notion that the defense of lack of jurisdiction may be waived by estoppel on the party invoking the same most prominently emerged in *Tijam v. Sibonghanoy*.[32] Indeed, the *Marquez* case relied upon by the CA is in turn grounded on *Tijam,* where We held that:

> . . . a party can not invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (Dean vs. Dean, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated—obviously for reasons of public policy.
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> Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court . . . And in *Littleton vs. Burges*, 16 Wyo, 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.[33]

However, *Tijam* represented an exceptional case wherein the party invoking lack of jurisdiction did so only after fifteen (15) years, and at a stage when the proceedings had already been elevated to the Court of Appeals. Even *Marquez* recognizes that *Tijam* stands as an exception, rather than a general rule.[34] The CA perhaps though felt comfortable citing *Marquez* owing to the pronouncement therein that the Court would not hesitate to apply *Tijam* even absent the extraordinary circumstances therein:

> ". . . where the entertainment of the jurisdictional issue at a belated stage of the proceedings will result in a failure of justice and render nugatory the constitutional imperative of protection to labor."[35]

In this case, jurisdiction of the labor arbiter was questioned as early as during appeal before the NLRC, whereas in *Marquez*, the question of jurisdiction was raised for the first time only before this Court. The viability of *Marquez* as controlling doctrine in this case is diminished owing to the radically different circumstances in these two cases. A similar observation can be made as to the *Bayoca* and *Jimenez* cases.[36]

Neither do the other like-minded cases squarely settle the issue in favor of the respondent. In the case of *Martinez*, the issue is not jurisdiction by estoppel but waiver of preliminary conference. In that case, we said:

> As pointed out by petitioners, private respondents had at least three opportunities to raise the question of lack of preliminary conference first, when private respondents filed a motion for extension of time to file their position paper; second, at the time when they actually filed their position paper in which they sought affirmative relief from the Metropolitan Trial Court; and third; when they filed a motion for reconsideration of the order of the Metropolitan Trial Court expunging from the records the position paper of private respondents, in which motion private respondents even urged the court to sustain their position paper. And yet, in none of these instances was the issue of lack of preliminary conference raised or even hinted at by private respondents. In fine, these are acts amounting to a waiver of the irregularity of the proceedings. For it has been consistently held by this Court that while lack of jurisdiction may be assailed at any stage, a party's active participation in the proceedings before a court without jurisdiction will estop such party from assailing such lack of jurisdiction.[37]

The case of *Ducat* was categorical in saying that if the parties acquiesced in submitting an issue for determination by the trial court, they are estopped from questioning the jurisdiction of the same court to pass upon the issue. But this should be taken in the context of the "agreement" of the parties. We quote from said case:

> Petitioner's filing of a Manifestion and Urgent Motion to Set Parameters of Computation is indicative of its conformity with the questioned order of the trial court referring the matter of computation of the excess to SGV and simultaneously thereafter, the issuance of a writ of possession. If petitioner thought that subject order was wrong, it could have taken recourse to the Court of Appeals but petitioner did not. Instead he