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SECOND DIVISION

[G.R. NO. 140150, August 22, 2005]

ASSOCIATION OF INTEGRATED SECURITY FORCE OF BISLIG (AISFB) -ALU, PETITIONER, VS. HON. COURT OF APPEALS AND PAPER INDUSTRIES CORPORATION OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a petition for *certiorari* under Rule 65 of the Rules of Court seeking to annul the 20 July 1999 Decision[1] of the Court of Appeals in CA-G.R. SP No. 50798, affirming the 10 July 1992 Decision[2] of the National Labor Relations Commission (NLRC) and its Resolution[3] dated 06 June 1994 in NLRC OC No. M-00002 (RBXI NS-4025-91).

Petitioner Association of Integrated Security Force of Bislig-ALU (AISFB-ALU) is a legitimate labor organization duly registered with the Department of Labor and Employment (DOLE). Its members are the regular company hired security guards composing the Company Guard Force maintained and operated by private respondent Paper Industries Corporation of the Philippines (PICOP). The Company Guard Force provided security services to PICOP's facilties at its mill site.

Private respondent PICOP is a corporation engaged in the manufacture of paper and timber products, with principal place of operations at Tabon, Bislig, Surigao del Sur.

The circumstances which led to the dismissal of the security guard members of herein petitioner AISFB-ALU, as narrated by the NLRC and adopted *in toto* by the Court of Appeals and which are supported by evidence, are quoted hereunder:

> The complainants are regular company hired security guards who composed the so-called Company Guard Force, a security force maintained and operated by respondent Paper Industries Corporation of the Philippines (PICOP).
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> In 1990, the said security guards formed a labor union called the Association of Integrated Security Force of Bislig-ALU, which was duly registered with the Department of Labor and Employment (DOLE). On May 4, 1990, a petition for certification election was conducted where ALU-TUCP was proclaimed the exclusive bargaining agent of the company security guards. On April 1, 1991, The Philippine Constabulary (PC) Civil Security Force Command, District II, based in Davao City, through Lt. Col. Jose B. Maneja, Jr., District Director, advised respondent PICOP "to desist from utilizing your Company Guard Force in conducting security activities" for its failure to renew its license to operate. Because of this,

respondent PICOP, through R.D. Azucena, Assistant Vice-President, Administration Group, relayed the said information to all security guards and security officers of its security department in a memo dated April 4, 1991. In the same memo, respondent PICOP directed the security guards and security officers "to continue with your assigned postings until further notice."

On the same day, the PC Civil Security Force Command, District II, enforced the directive. Respondent PICOP's firearms were confiscated and its armory was padlocked. Respondent PICOP was constrained to close its security force.

On April 6, 1991, complainants were sent notices of termination to take effect May 7, 1991. Respondent PICOP explained that the phase-out and closure of its security force was due to the non-approval of its application for the renewal of its license by the PC Civil Security Force Command.

Respondent PICOP's license expired on March 31, 1991. It applied for renewal of its license as early as January 1991. However, difficulties were allegedly encountered in complying with the requirements, particularly the firearms clearance, since some firearms issued to the security guards were missing and could not be accounted for. Likewise, respondent PICOP believed that another factor contributed to the non-approval of its security license was the strong suspicion that some of its security field personnel were sympathizers of the rebels (NPA) which were confirmed by repeated intelligence information fed by the intelligence community in Bislig to the PC Civil Security Force Command.

On April 8, 1991, complainants filed a notice of strike with the National Conciliation and Mediation Board (NCMB) Region XI. The required strike vote was obtained only on April 13, 1991.

However, complainants failed to stage a strike allegedly because of fear that the NPA's might take advantage of such volatile situation and its adverse effects charged against them.

Respondent, on the other hand, believed that complainants did not push through with their plan to stage a strike because more than one half of their members (103 to be exact out of the original 204) already accepted the closure of the security force and in fact were already paid their separation benefits in full. Respondent then claimed that even complainant Guimary and his group have collected more than 50% of their separation benefits. Besides, most of the complainants applied for absorption or transfer to other departments of respondent PICOP. Eighty-eight (88) were re-employed and absorbed in the other operating departments of respondent company.

However, the remaining complainants still strongly assert that their termination of employment was the result of their having formed a union, a clear case of union busting. Respondent PICOP allegedly deliberately refused to comply with the requirements for the renewal of its security license. And, because complainants were illegally terminated from

> employment, they are entitled to reinstatement, backwages, damages, attorney's fees and other monetary benefits.
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> The said labor dispute was certified to the National Labor Relations Commission (NLRC) for compulsory arbitration by the then Secretary of Labor and Employment, the Hon. Ruben D. Torres, in an Order[4] dated 31 January 1992.

On 10 July 1992, the NLRC[5] rendered its questioned decision dismissing the complaint for illegal dismissal, backwages, etc. The dispositive portion of the NLRC's decision reads as follows:

> WHEREFORE, the Commission finds respondent PICOP's closure of its Company Security Force and the consequent termination of employment of the security guards VALID and LEGAL. Accordingly, the complainants' complaint for illegal dismissal, backwages, etc., is hereby DISMISSED for lack of merit.
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> However, in accordance with the provision of Article 283 of the Labor Code, as amended, respondent PICOP is hereby ordered to grant the affected complainants, separation pay equivalent to the amount given to each of the absorbed members of the security force prior to their re-hiring or re-employment, if any, or one-half (1/2) month for every year of service, a fraction of at least six (6) months to be considered as one (1) whole year, whichever is higher, on the basis of the rate of salary or wage they received at the time of their termination from service. For this purpose, upon finality of the herein Resolution, the Corporate Auditing Examiner of the Arbitration Branch of origin is directed to compute the amount of separation pay each individual complainant is entitle to receive, observing in the course thereof the procedural requirements of due process, said computation to form an integral part of the herein Resolution.

Herein petitioner thereafter filed its motion for reconsideration as well as a motion to have NLRC Commissioners Leon G. Gonzaga, Jr., and Musib M. Buat inhibit themselves from hearing the motion for reconsideration. Said motion to recuse was granted and NLRC Commissioners Ireneo B. Bernardo and Lourdes C. Javier temporarily replaced Commissioners Gonzaga and Buat as members of the 5th Division of the NLRC.

On 06 June 1994, the temporary members of the 5th Division of the NLRC issued a resolution denying the motion of herein petitioner. It held that:

> WHEREFORE, the union's Motion for Reconsideration is hereby DENIED and the Decision dated July 10, 1992 affirmed.
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> However, the Company is hereby enjoined to accord priority preference to the displaced employees including Union members in case of hiring.

Aggrieved, herein petitioner commenced, on 14 November 1994, a Petition for *Certiorari* before the Supreme Court.[6] The subject petition, however, was referred to the Court of Appeals for appropriate action and disposition per resolution[7] of

this Court dated 07 December 1998, in accordance with the ruling in *St. Martin Funeral Home v. NLRC*.[8]

On 20 July 1999, the Court of Appeals rendered a Decision affirming the findings of the NLRC, to wit:

> WHEREFORE, premises considered, instant petition is hereby DENIED DUE COURSE and DISMISSED for lack of merit and the decision dated *July 10, 1992*, as well as the resolution dated *June 6, 1994* of the National Labor Relations Commission are hereby AFFIRMED *in toto*.

Still undaunted, the members of petitioner AISFB-ALU, represented by the latter, filed the present petition for *certiorari* under Rule 65 of the Rules of Court challenging the above Decision of the court *a quo* predicated on the following grounds:

> I.
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> THAT THE FINDINGS OF FACTS OF PUBLIC RESPONDENT IS NOT SUBSTANTIATED BY ANY EVIDENCE;
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> II.
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> THAT SERIOUS ERRORS OF FACTS AND LAW WERE COMMITTED BY PUBLIC RESPONDENT WHICH WOULD CAUSE GRAVE AND/OR IRREPARABLE DAMAGE OR INJURY TO THE UNION'S SECURITY GUARDS;
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> III.
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> THAT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WAS COMMITTED BY PUBLIC RESPONDENT WHICH IF NOT PROPERLY CORRECTED WOULD LIKEWISE CAUSE GRAVE AND/OR IRREPARABLE DAMAGE OR INJURY TO THE PETITIONER;
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> IV.
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> THAT THIS PETITION IS PURELY ON QUESTIONS OF LAW.

Petitioner's efforts are unavailing. We dismiss the petition for its procedural and substantive flaws.

The general rule is that the remedy to obtain reversal or modification of judgment on the merits is appeal.[9] This is true even if the error, or one of the errors, ascribed to the court rendering the judgment is its lack of jurisdiction over the subject matter, or the exercise of power in excess thereof, or grave abuse of discretion in the findings of facts or of law set out in the decision.[10] Records, however, disclose that petitioner received the Decision of the Court of Appeals on 27 July 1999, consequently, it had 15 days from said date of receipt of assailed judgment, or until 11 August 1999, within which to file a petition for review on *certiorari*, the reglementary period prescribed by Rule 45 of the Rules of Court to avail of said action. On 24 September 1999, close to two months after said receipt, petitioner filed its petition for *certiorari*. Evidently, petitioner has lost its remedy of

appeal. At this point, we re-echo the oft repeated injunction that the particular special civil action of *certiorari* will not lie as a remedy for lost appeal.[11]

Even assuming for the sake of argument that the present petition is the appropriate remedy under the Rules of Court, the records of the instant case will bear out the fact that petitioner failed to file a motion for reconsideration of the decision of the appellate court, thus, depriving the respondent court *a quo* of the opportunity to correct on reconsideration such errors as it may have committed. For the special civil action of *certiorari* to commence under Rule 65 of the Rules of Court, the Rules require that the petitioner be left with "no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law." To wit:

> SECTION 1. *Petition for Certiorari*. - When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and *there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file....*[Emphasis supplied.][12]

A motion for reconsideration of an assailed decision is deemed a plain and adequate remedy provided by law.[13] Thus, for petitioner's utter failure to file a motion for reconsideration of the decision of the court *a quo* before recourse to this special civil action was made, as a general rule, the instant petition must be dismissed for failure to comply with a condition precedent in order for said recourse to lie. While in certain instances, the extraordinary remedy of *certiorari* may be resorted to despite the availability of an appeal,[14] such[15] are sadly nonexistent in this case.

In any event, in the interest of justice and in order to write finis to the instant case which has already dragged on for so long,[16] we regard this present petition *pro hac vice*[17] as a petition for review on *certiorari* under Rule 45 of the Rules of Court where the indispensability of a motion for reconsideration is negated.[18]

The petition would still be dismissed as it is substantially infirm for the utter failure of petitioner to show grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the court *a quo*. Nowhere in the recycled[19] petition is there a showing that the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction reversible by a petition for *certiorari*. The arguments raised are the exact duplicate of the issues raised in the petition dated 14 November 1994, before the Court assailing the decision of the NLRC.

It is petitioner's theory that the termination of its members was "effected as a consequence of their having formed and organized a union, and ultimately won in the workers electoral process for purposes of collective bargaining agreement. ... Evidence show that PICOP never pursued the renewal of its permit to operate after it received a notice from PCSUCIA."[20] Furthermore, petitioner contends that PICOP's failure to renew its license was due to the latter's failure to submit clearance and documents; thus, the NLRC's findings:

> It could not, however, comply with the requirements specifically the firearms clearance because some of the firearms issued to the security force were missing and could not be accounted for. Efforts were exerted