

## SECOND DIVISION

[ G.R. NO. 151818, October 14, 2005 ]

**ORIENTAL PETROLEUM AND MINERALS CORPORATION,  
PETITIONER, VS. MARCIANO V. FUENTES, ROGER B. BELO,  
REYNOLD P. GACULA, ALBERTO P. RODRIGUEZ, NESTOR L.  
MESINA, MA. LOURDES P. BUENAVISTA, AND LUZVIMINDA M. DE  
CASTRO, RESPONDENTS.**

### D E C I S I O N

**TINGA, J.:**

This *Petition for Review on Certiorari*<sup>[1]</sup> dated February 22, 2002 seeks a review of the *Decision*<sup>[2]</sup> of the Court of Appeals dated July 31, 2001 which annulled and set aside the decision of the National Labor Relations Commission (NLRC) and reinstated the decision of the labor arbiter, finding that the dismissal of respondents on account of retrenchment was illegal and awarding the latter full backwages, separation pay, and attorney's fees.

A brief factual background follows.

In separate letters<sup>[3]</sup> dated June 2, 1994, petitioner petitioner Oriental Petroleum and Minerals Corporation, through its Senior Vice President for Operations and Administration, Apollo P. Madrid, informed respondents Marciano V. Fuentes, Roger B. Belo, Reynold P. Gacula, Alberto P. Rodriguez, Nestor L. Ledesma, Ma. Lourdes P. Buenavista and Luzviminda M. de Castro of its retrenchment program as a consequence of which respondents would be terminated from employment. Petitioner advised respondents that they would be getting separation pay equivalent to one-half (1/2) month salary for every year of service in accordance with the company's retirement plan. However, if respondents qualify for retirement or resignation benefits under the retirement plan, they would receive the greater amount as separation benefits.

The Department of Labor and Employment (DOLE) was served a copy of the report of termination on June 6, 1994.<sup>[4]</sup>

In a letter<sup>[5]</sup> dated June 7, 1994, respondents sought clarification on the retrenchment package being offered them. Petitioner replied, in a letter<sup>[6]</sup> dated June 13, 1994, that respondents Mesina, Rodriguez, De Castro and Buenavista would be entitled to one (1) month gross salary for every year of service, while respondents Fuentes, Gacula and Belo would receive one-half (1/2) month gross salary for every year of service.

Finding this unacceptable, respondents requested that the following benefits be extended to them: (a) two (2) months' separation pay (gross salary) on top of one

(1) month retirement fund for every year of service; (b) profit sharing; (c) one (1) month balance of the 1993 Christmas bonus; (d) two (2) months' 1994 mid-year bonus; (e) loyalty bonus for those who have rendered fifteen (15) years of service amounting to about P10,000.00; (f) conversion to cash of accrued vacation and sick leaves; (g) thirteenth (13th) month pay; and (h) I-care coverage to continue up to the end of coverage in December 1994 since premiums have been paid for in full and no refunds are given for early cancellation.<sup>[7]</sup>

Acting on the request, petitioner countered that respondents would be given the following benefits: (1) loyalty bonus for those who have rendered at least 15 years of continuous service amounting to P10,000.00; (2) conversion to cash of the accrued 1994 vacation and sick leave credits; and (3) pro-rated 13th month pay.

Dissatisfied with petitioner's counter-offer, respondents filed on July 4, 1994 separate complaints<sup>[8]</sup> for illegal retrenchment with prayer for the payment of backwages, actual damages, moral and exemplary damages, and attorney's fees.

After due proceedings, the labor arbiter rendered a decision<sup>[9]</sup> dated June 29, 1995, finding the retrenchment invalid as there was allegedly no sufficient basis therefor. The dispositive portion of the decision states:

WHEREFORE, viewed from the foregoing considerations, judgment is hereby rendered finding the retrenchment of all the herein complainants not legal and just, thus their termination inevitably becomes illegal.

Accordingly, respondent Oriental Petroleum & Minerals Corporation (OPMC) is hereby ordered to pay all the complainants their full backwages and all appurtenant benefits from the time of their dismissal on July 4, 1994 including loyalty bonus and the cash equivalent of their accrued vacation and sick leave credits. In lieu of reinstatement however, respondent OPMC is hereby ordered to pay each complainant their separation pay equivalent to one (1) month gross salary per year of service, a fraction of at least six (6) months equivalent to one (1) whole year, the total award computed as follows:

...

exclusive of the award of loyalty bonus prevailing at the time of complainants separation and the updated balances of complainants["] accrued vacation and sick leave, also reckoned as of July 4, 1995.

Attorney's fees equivalent to ten percent (10%) of the total monetary award is likewise awarded to the complainants.

The claim for damages is hereby dismissed for lack of merit.

All individual respondents are hereby absolved of personal liability for they acted only in their official capacity.

SO ORDERED.<sup>[10]</sup>

Petitioner instituted a partial appeal of the decision of the labor arbiter insofar as the latter ruled that the retrenchment of respondents was invalid, as well as with respect to the award of backwages.

Resolving the partial appeal, the NLRC held that petitioner's serious financial difficulties necessitated the retrenchment of respondents. Petitioner's audited financial statements allegedly showed that it had suffered a net loss in the amount of P107,812,816.00 in 1993; and that its assets went down from P312.902 million in 1992 to P212.072 million in 1993, while its liabilities soared from P376.01 million in 1992 to P519.143 million in 1993. Further, in order to raise money to meet its maturing financial obligations, petitioner sold several of its shareholdings in Magellan Capital Holdings Corporation and several assets consisting of cars, a townhouse, an office condominium unit and some equipment. The land, building and other assets of its wholly-owned subsidiary, Oriental Mahogany and Woodworks, Inc., were also sold for the same purpose. A substantial number of its unissued shares of stock were likewise disposed of.<sup>[11]</sup>

The NLRC, therefore, reversed the decision of the labor arbiter and instead ordered petitioner to pay respondents the severance compensation enumerated in its June 13 and June 30, 1994 letters. Respondents' motion for reconsideration was denied for lack of merit.<sup>[12]</sup>

Respondents filed a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure (Rules of Court) with this Court. We required petitioner and the Office of the Solicitor General (OSG) to file their respective comments but later referred the case to the Court of Appeals in view of our ruling in *St. Martin Funeral Homes v. NLRC*.<sup>[13]</sup>

In its assailed *Decision*<sup>[14]</sup> dated July 31, 2001, the Court of Appeals reversed the decision of the NLRC and reinstated that of the labor arbiter. The appellate court proceeded to review the factual findings of the NLRC and ruled that petitioner failed to prove the existence of substantial losses that would justify the retrenchment of respondents. Quoting the findings of the labor arbiter, the Court of Appeals stated that petitioner enjoyed an increase in its operations revenue from 1992 to 1993. The appellate court made short shrift of petitioner's claim that it had to sell the bulk of its assets in order to meet its financial obligations.

Moreover, petitioner allegedly failed to prove that it resorted to less drastic and less permanent cost-cutting measures before the decision to retrench respondents was implemented. Petitioner also failed to rebut respondents' allegation that petitioner hired new personnel, especially specialists and consultants with exorbitant salaries and generous fringe benefits, prior to and even during the alleged retrenchment program; regularized temporary employees; and issued and sold more than six (6) billion shares of its common stock for additional capitalization, indicating a decision to actively invest even as the company was claiming bankruptcy.

Petitioner also allegedly failed to present evidence as to the criteria it used in effecting the retrenchment, such as less preferred status, efficiency, and seniority.

In its *Resolution*<sup>[15]</sup> dated January 14, 2002, the Court of Appeals denied petitioner's motion for reconsideration.

Petitioner is now before this Court arguing that it undertook a valid retrenchment as it was already *actually suffering* serious financial losses at the time the retrenchment was undertaken. It cites the same data and figures presented and adopted by the NLRC.

Moreover, the finding that petitioner hired new personnel and regularized temporary employees prior to and during the retrenchment is allegedly without any factual and evidentiary support. Respondents, on whom the burden of proving this affirmative allegation fell, did not even bother to name who the alleged new employees were.

Petitioner also notes that the OSG itself, in its comment, stated that petitioner undertook the retrenchment scheme as a last ditch effort to prevent further losses and that it complied with the required notices both to the employees concerned and to the DOLE, leaving no doubt that the retrenchment was done in good faith.

Further, petitioner maintains that the NLRC decision was supported by substantial evidence; thus, the Court of Appeals should not have entertained the petition for certiorari, much less made its own independent findings of fact.

Respondents filed a *Comment*<sup>[16]</sup> dated September 11, 2002, arguing mainly that the instant petition should not be entertained as it raises questions of fact. They further argue that the Court of Appeals was correct in reversing the decision of the NLRC because petitioner failed to prove that it incurred substantial losses; show that retrenchment was a last resort and that other less permanent cost-cutting measures had been availed of but had failed; and prove that it followed the criteria in dismissing employees based on retrenchment; and because petitioner's Corporate Secretary, Atty. Perry Pe, admitted that the decision to retrench was made ahead of the decision to cut costs.

Petitioner filed a *Reply*<sup>[17]</sup> dated December 17, 2002, reiterating its arguments.

In the *Resolution*<sup>[18]</sup> dated January 22, 2003, the parties were required to submit their respective memoranda. Accordingly, petitioner filed its *Memorandum*<sup>[19]</sup> on April 21, 2003, while respondents filed theirs on May 13, 2003.<sup>[20]</sup>

We first resolve the question of whether, in a petition for certiorari assailing the decision of the NLRC, the Court of Appeals may make an independent evaluation of facts.

Ordinarily in certiorari proceedings, judicial review does not go as far as to examine and assess the evidence of the parties and to weigh the probative value thereof. However, in *St. Martin Funeral Homes v. NLRC, supra*, it was held that the special civil action of certiorari is the mode of judicial review of the decisions of the NLRC either by this Court or the Court of Appeals, although the latter court is the appropriate forum for seeking the relief desired in strict observance of the doctrine on the hierarchy of courts and that, in the exercise of its power, the Court of Appeals can review the factual findings or the legal conclusions of the NLRC.<sup>[21]</sup>

The Court of Appeals in this case, therefore, cannot be faulted for making a full review of the factual findings of the NLRC. Whether it correctly disregarded these