348 Phil. 580

FIRST DIVISION

[G.R. No. 120969, January 22, 1998]

ALEJANDRO MARAGUINOT, JR. AND PAULINO ENERO, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION) COMPOSED OF PRESIDING COMMISSIONER RAUL T. AQUINO, COMMISSIONER ROGELIO I. RAYALA AND COMMISSIONER VICTORIANO R. CALAYCAY (PONENTE), VIC DEL ROSARIO AND VIVA FILMS, RESPONDENTS.

D E C I S I O N

DAVIDE, JR., J.:

By way of this special civil action for *certiorari* under Rule 65 of the Rules of Court, petitioners seek to annul the 10 February 1995 Decision[1] of the National Labor Relations Commission (hereafter NLRC), and its 6 April 1995 Resolution[2] denying the motion to reconsider the former in NLRC-NCR-CA No. 006195-94. The decision reversed that of the Labor Arbiter in NLRC-NCR-Case No. 00-07-03994-92.

The parties present conflicting sets of facts.

Petitioner Alejandro Maraguinot, Jr. maintains that he was employed by private respondents on 18 July 1989 as part of the filming crew with a salary of P375.00 per week. About four months later, he was designated Assistant Electrician with a weekly salary of P400.00, which was increased to P450.00 in May 1990. In June 1991, he was promoted to the rank of Electrician with a weekly salary of P475.00, which was increased to P593.00 in September 1991.

Petitioner Paulino Enero, on his part, claims that private respondents employed him in June 1990 as a member of the shooting crew with a weekly salary of P375.00, which was increased to P425.00 in May 1991, then to P475.00 on 21 December 1991.[3]

Petitioners' tasks consisted of loading, unloading and arranging movie equipment in the shooting area as instructed by the cameraman, returning the equipment to Viva Films' warehouse, assisting in the "fixing" of the lighting system, and performing other tasks that the cameraman and/or director may assign.[4]

Sometime in May 1992, petitioners sought the assistance of their supervisor, Mrs. Alejandria Cesario, to facilitate their request that private respondents adjust their salary in accordance with the minimum wage law. In June 1992, Mrs. Cesario informed petitioners that Mr. Vic del Rosario would agree to increase their salary only if they signed a blank employment contract. As petitioners refused to sign, private respondents forced Enero to go on leave in June 1992, then refused to take him back when he reported for work on 20 July 1992. Meanwhile, Maraguinot was dropped from the company payroll from 8 to 21 June 1992, but was returned on 22

June 1992. He was again asked to sign a blank employment contract, and when he still refused, private respondents terminated his services on 20 July 1992.[5] Petitioners thus sued for illegal dismissal[6] before the Labor Arbiter.

On the other hand, private respondents claim that Viva Films (hereafter VIVA) is the trade name of Viva Productions, Inc., and that it is primarily engaged in the distribution and exhibition of movies -- but not in the business of making movies; in the same vein, private respondent Vic del Rosario is merely an executive producer, i.e., the financier who invests a certain sum of money for the production of movies distributed and exhibited by VIVA.[7]

Private respondents assert that they contract persons called "producers" -- also referred to as "associate producers"[8] -- to "produce" or make movies for private respondents; and contend that petitioners are project employees of the associate producers who, in turn, act as independent contractors. As such, there is no employer-employee relationship between petitioners and private respondents.

Private respondents further contend that it was the associate producer of the film "*Mahirap Maging Pogi*," who hired petitioner Maraguinot. The movie shot from 2 July up to 22 July 1992, and it was only then that Maraguinot was released upon payment of his last salary, as his services were no longer needed. Anent petitioner Enero, he was hired for the movie entitled "Sigaw ng Puso," later re-titled "*Narito ang Puso.*" He went on vacation on 8 June 1992, and by the time he reported for work on 20 July 1992, shooting for the movie had already been completed.[9]

After considering both versions of the facts, the Labor Arbiter found as follows:

> On the first issue, this Office rules that complainants are the employees of the respondents. The producer cannot be considered as an independent contractor but should be considered only as a labor-only contractor and as such, acts as a mere agent of the real employer, the herein respondents. Respondents even failed to name and specify who are the producers. Also, it is an admitted fact that the complainants received their salaries from the respondents. The case cited by the respondents, Rosario Brothers, Inc. vs. Ople, 131 SCRA 72 does not apply in this case.
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> It is very clear also that complainants are doing activities which are necessary and essential to the business of the respondents, that of movie-making. Complainant Maraguinot worked as an electrician while complainant Enero worked as a crew [member].[10]

Hence, the Labor Arbiter, in his decision of 20 December 1993, decreed as follows:

> WHEREFORE, judgment is hereby rendered declaring that complainants were illegally dismissed.
>
> Respondents are hereby ordered to reinstate complainants to their former positions without loss [of] seniority rights and pay their backwages starting July 21, 1992 to December 31, 1993 temporarily computed in the amount of P38,000.00 for complainant Paulino Enero

and P46,000.00 for complainant Alejandro Maraguinot, Jr. and thereafter until actually reinstated.

Respondents are ordered to pay also attorney's fees equivalent to ten (10%) and/or P8,400.00 on top of the award.[11]

Private respondents appealed to the NLRC (docketed as NLRC NCR-CA No. 006195-94). In its decision[12] of 10 February 1995, the NLRC found the following circumstances of petitioners' work "clearly established:"

1. Complainants [petitioners herein] were hired for specific movie projects and their employment was *co-terminus* with each movie project the completion/termination of which are pre-determined, such fact being made known to complainants at the time of their engagement.

x x x

2. Each shooting unit works on one movie project at a time. And the work of the shooting units, which work independently from each other, are not continuous in nature but depends on the availability of movie projects.

3. As a consequence of the non-continuous work of the shooting units, the total working hours logged by complainants in a month show extreme variations... For instance, complainant Maraguinot worked for only 1.45 hours in June 1991 but logged a total of 183.25 hours in January 1992. Complainant Enero logged a total of only 31.57 hours in September 1991 but worked for 183.35 hours the next month, October 1991.

4. Further shown by respondents is the irregular work schedule of complainants on a daily basis. Complainant Maraguinot was supposed to report on 05 August 1991 but reported only on 30 August 1991, or a gap of 25 days. Complainant Enero worked on 10 September 1991 and his next scheduled working day was 28 September 1991, a gap of 18 days.

5. The extremely irregular working days and hours of complainants' work explain the lump sum payment for complainants' services for each movie project. Hence, complainants were paid a standard weekly salary regardless of the number of working days and hours they logged in. Otherwise, if the principle of "no work no pay" was strictly applied, complainants' earnings for certain weeks would be very negligible.

6. Respondents also alleged that complainants were not prohibited from working with such movie companies like Regal, Seiko and FPJ Productions whenever they are not working for the independent movie producers engaged by respondents... This allegation was never rebutted by complainants and should be deemed admitted.

The NLRC, in reversing the Labor Arbiter, then concluded that these circumstances, taken together, indicated that complainants (herein petitioners) were "project employees."

After their motion for reconsideration was denied by the NLRC in its Resolution[13]

of 6 April 1995, petitioners filed the instant petition, claiming that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in: (1) finding that petitioners were project employees; (2) ruling that petitioners were not illegally dismissed; and (3) reversing the decision of the Labor Arbiter.

To support their claim that they were regular (and not project) employees of private respondents, petitioners cited their performance of activities that were necessary or desirable in the usual trade or business of private respondents and added that their work was continuous, i.e., after one project was completed they were assigned to another project. Petitioners thus considered themselves part of a work pool from which private respondents drew workers for assignment to different projects. Petitioners lamented that there was no basis for the NLRC's conclusion that they were project employees, while the associate producers were independent contractors; and thus reasoned that as regular employees, their dismissal was illegal since the same was premised on a "false cause," namely, the completion of a project, which was not among the causes for dismissal allowed by the Labor Code.

Private respondents reiterate their version of the facts and stress that their evidence supports the view that petitioners are project employees; point to petitioners' irregular work load and work schedule; emphasize the NLRC's finding that petitioners never controverted the allegation that they were not prohibited from working with other movie companies; and ask that the facts be viewed in the context of the peculiar characteristics of the movie industry.

The Office of the Solicitor General (OSG) is convinced that this petition is improper since petitioners raise questions of fact, particularly, the NLRC's finding that petitioners were project employees, a finding supported by substantial evidence; and submits that petitioners' reliance on Article 280 of the Labor Code to support their contention that they should be deemed regular employees is misplaced, as said section "merely distinguishes between two types of employees, i.e., regular employees and casual employees, for purposes of determining the right of an employee to certain benefits."

The OSG likewise rejects petitioners' contention that since they were hired not for one project, but for a series of projects, they should be deemed regular employees. Citing *Mamansag v. NLRC,*[14] the OSG asserts that what matters is that there was a time-frame for each movie project made known to petitioners at the time of their hiring. In closing, the OSG disagrees with petitioners' claim that the NLRC's classification of the movie producers as independent contractors had no basis in fact and in law, since, on the contrary, the NLRC "took pains in explaining its basis" for its decision.

As regards the propriety of this action, which the Office of the Solicitor General takes issue with, we rule that a special civil action for certiorari under Rule 65 of the Rules of Court is the proper remedy for one who complains that the NLRC acted in total disregard of evidence material to or decisive of the controversy.[15] In the instant case, petitioners allege that the NLRC's conclusions have no basis in fact and in law, hence the petition may not be dismissed on procedural or jurisdictional grounds.

The judicious resolution of this case hinges upon, first, the determination of whether

an employer-employee relationship existed between petitioners and private respondents or any one of private respondents. If there was none, then this petition has no merit; conversely, if the relationship existed, then petitioners could have been unjustly dismissed.

A related question is whether private respondents are engaged in the business of making motion pictures. Del Rosario is necessarily engaged in such business as he finances the production of movies. VIVA, on the other hand, alleges that it does not "make" movies, but merely distributes and exhibits motion pictures. There being no further proof to this effect, we cannot rely on this self-serving denial. At any rate, and as will be discussed below, private respondents' evidence even supports the view that VIVA is engaged in the business of making movies.

We now turn to the critical issues. Private respondents insist that petitioners are project employees of associate producers who, in turn, act as independent contractors. It is settled that the contracting out of labor is allowed only in case of job contracting. Section 8, Rule VIII, Book III of the Omnibus Rules Implementing the Labor Code describes permissible job contracting in this wise:

> Sec. 8. Job contracting. -- There is job contracting permissible under the Code if the following conditions are met:
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> (1) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and
>
> (2) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.

Assuming that the associate producers are job contractors, they must then be engaged in the business of making motion pictures. As such, and to be a job contractor under the preceding description, associate producers must have tools, equipment, machinery, work premises, and other materials necessary to make motion pictures. However, the associate producers here have none of these. Private respondents' evidence reveals that the movie-making equipment are supplied to the producers and owned by VIVA. These include generators,[16] cables and wooden platforms,[17] cameras and "shooting equipment;"[18] in fact, VIVA likewise owns the trucks used to transport the equipment.[19] It is thus clear that the associate producer merely leases the equipment from VIVA.[20] Indeed, private respondents' Formal Offer of Documentary Evidence stated one of the purposes of Exhibit "148" as: