819 Phil. 326

SECOND DIVISION

[G.R. No. 200499, October 04, 2017]

SAN FERNANDO COCA-COLA RANK-AND-FILE UNION (SACORU), REPRESENTED BY ITS PRESIDENT, ALFREDO R. MARAÑON, PETITIONER, VS. COCA-COLA BOTTLERS PHILIPPINES, INC. (CCBPI), RESPONDENT.

DECISION

CAGUIOA, J:

Petitioner San Fernando Coca-Cola Rank and File Union (SACORU) filed a petition for review[1] on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[2] dated July 21, 2011 and Resolution[3] dated February 2, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 115985. The CA affirmed the Resolution[4] dated March 16, 2010 of the National Labor Relations Commission. (NLRC), Second Division, which dismissed SACORU's complaint against respondent Coca-Cola Bottlers Philippines, Inc. (CCBPI) for unfair labor practice and declared the dismissal of 27 members of SACORU for redundancy as valid.

Facts

The facts, as found by the CA, are:

> On May 29, 2009, the private respondent company, Coca-Cola Bottlers Philippines., Inc. ("***CCBPI***") issued notices of termination to twenty seven (27) rank-and-file, regular employees and members of the San Fernando Rank-and-File Union ("***SACORU***"), collectively referred to as "***union members***", on the ground of redundancy due to the ceding out of two selling and distribution systems, the *Conventional Route System* ("***CRS***") and *Mini Bodega System* ("***MB***") to the *Market Execution Partners* ("***MEPS***"), better known as "*Dealership System*". The termination of employment was made effective on June 30, 2009, but the union members were no longer required to report for work as they were put on leave of absence with pay until the effectivity date of their termination. The union members were also granted individual separation packages, which twenty-two (22) of them accepted, but under protest.
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> To SACORU, the new, reorganized selling and distribution systems adopted and implemented by CCBPI would result in the diminution of the union membership amounting to union busting and to a violation of the Collective Bargaining Agreement (CBA) provision against contracting out of services or outsourcing of regular positions; hence, they filed a Notice of Strike with the National Conciliation and Mediation Board (NCMB) on June 3, 2009 on the ground of unfair labor practice, among others. On June 11, 2009, SACORU conducted a strike vote where a majority

decided on conducting a strike.

On June 23, 2009, the then Secretary of the Department of Labor and Employment (DOLE), Marianito D. Roque, assumed jurisdiction over the labor dispute by certifying for compulsory arbitration the issues raised in the notice of strike. He ordered,

> "WHEREFORE, premises considered, and pursuant to Article 263 (g) of the Labor Code of the Philippines, as amended, this Office hereby CERTIFIES the labor dispute at COCA-COLA BOTTLERS PHILIPPINES, INC. to the National Labor Relations Commission for compulsory arbitration.
>
> Accordingly, any intended strike or lockout or any concerted action is automatically enjoined. If one has already taken place, all striking and locked out employees shall, within twenty-four (24) hours from receipt of this Order, immediately return to work and the employer shall immediately resume operations and re-admit all workers under the same terms and conditions prevailing before the strike. The parties are likewise enjoined from committing any act that may further exacerbate the situation."

Meanwhile, pending hearing of the certified case, SACORU filed a motion for execution of the dispositive portion of the certification order praying that the dismissal of the union members not be pushed through because it would violate the order of the DOLE Secretary not to commit any act that would exacerbate the situation.

On August 26, 2009, however, the resolution of the motion for execution was ordered deferred and suspended; instead, the issue was treated as an item to be resolved jointly with the main labor dispute.

CCBPI, for its part, argued that the new business scheme is basically a management prerogative designed to improve the system of selling and distributing products in order to reach more consumers at a lesser cost with fewer manpower complement, but resulting in greater returns to investment. CCBPI also contended that there was a need to improve its distribution system if it wanted to remain viable and competitive in the business; that after a careful review and study of the existing system of selling and distributing its products, it decided that the existing CRS and MB systems be ceded out to the MEPs or better known as "*Dealership System*" because the enhanced MEPs is a cost-effective and simplified scheme of distribution and selling company products; that CCBPI, through the simplied system, would derive benefits such as: (a) lower cost to serve; (b) fewer assets to manage; (c) zero capital infusion.

SACORU maintained that the termination of the 27 union members is a circumvention of the CBA against the contracting out of regular job positions, and that the theory of redundancy as a ground for termination is belied by the fact that the job positions are contracted out to a "*third party provider*"; that the termination will seriously affect the union

membership because out of 250 members, only 120 members will be left upon plan implementation; that there is no redundancy because the sales department still exists except that job positions will be contracted out to a sales contractor using company equipment for the purpose of minimizing labor costs because contractual employees do not enjoy CBA benefits; that the contractualization program of the company is illegal because it will render the union inutile in protecting the rights of its members as there will be more contractual employees than regular employees; and that the redundancy program will result in the displacement of regular employees which is a clear case of union busting.

Further, CCBPI argued that in the new scheme of selling and distributing products through MEPs or "*Dealership [System]*", which is a contract of sale arrangement, the ownership of the products is transferred to the MEPs upon consummation of the sale and payment of the products; thus, the jobs of the terminated union members will become redundant and they will have to be terminated as a consequence; that the termination on the ground of redundancy was made in good faith, and fair and reasonable criteria were determined to ascertain what positions were to be phased out being an inherent management prerogative; that the terminated union members were in fact paid their separation pay benefits when they were terminated; that they executed quitclaims and release; and that the quitclaims and release being voluntarily signed by the terminated union members should be declared valid and binding against them.[5]

The NLRC dismissed the complaint for unfair labor practice and declared as valid the dismissal of the employees due to redundancy. The dispositive portion of the NLRC Resolution states:

WHEREFORE, in view of the foregoing, a Decision is hereby rendered ordering the dismissal of the labor dispute between the Union and Coca-Cola Bottlers Company, Inc.

Accordingly, the charge of Unfair Labor Practice against the company is DISMISSED for lack of merit and the dismissal of the twenty seven (27) complainants due to redundancy is hereby declared valid. Likewise, the Union's Motion for Writ of Execution is Denied for lack of merit.

SO ORDERED.[6]

With the NLRC's denial of its motion for reconsideration, SACORU filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA. The CA, however, dismissed the petition and found that the NLRC did not commit grave abuse of discretion. The dispositive portion of the CA Decision states:

WHEREFORE, the instant petition is **DISMISSED**.

IT IS SO ORDERED.[7]

SACORU moved for reconsideration of the CA Decision but this was denied. Hence, this petition.

Issues

a. Whether CCBPI validly implemented its redundancy program;

b. Whether CCBPI's implementation of the redundancy program was an unfair labor practice; and

c. Whether CCBPI should have enjoined the effectivity of the termination of the employment of the 27 affected union members when the DOLE Secretary assumed jurisdiction over their labor dispute.

The Court's Ruling

The petition is partly granted.

Although SACORU claims that its petition raises only questions of law, a careful examination of the issues on the validity of the redundancy program and whether it constituted an unfair labor practice shows that in resolving the issue, the Court would have to reexamine the NLRC and CA's evaluation of the evidence that the parties presented, thus raising questions of fact.[8] This cannot be done following *Montoya v. Transmed Manila Corp.*[9] that only questions of law may be raised against the CA decision and that the CA decision will be examined only using the prism of whether it correctly determined the existence of grave abuse of discretion, thus:

> Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct**. x x x[10]

"[G]rave abuse of discretion may arise when a lower court or tribunal violates or contravenes the Constitution, the law or existing jurisprudence."[11] The Court further held in *Banal III v. Panganiban* that:

> By grave abuse of discretion is meant, such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[12]

The reason for this limited review is anchored on the fact that the petition before the CA was a *certiorari* petition under Rule 65; thus, even the CA did not have to assess and weigh the sufficiency of evidence on which the NLRC based its decision. The CA only had to determine the existence of grave abuse of discretion. As the Court held in *Soriano, Jr. v. National Labor Relations Commission*:[13]

> As a general rule, in *certiorari* proceedings under Rule 65 of the Rules of Court, the appellate court does not assess and weigh the sufficiency of evidence upon which the Labor Arbiter and the NLRC based their conclusion. The query in this proceeding is limited to the determination of whether or not the NLRC acted without or in excess of its jurisdiction or with grave abuse of discretion in rendering its decision. However, as an exception, the appellate court may examine and measure the factual findings of the NLRC if the same are not supported by substantial evidence.[14]

Here, the Court finds that the CA was correct in its determination that the NLRC did not commit grave abuse of discretion.

CCBPI's redundancy program is valid.

For there to be a valid implementation of a redundancy program, the following should be present:

> (1) written notice served on both the employees and the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.[15]

The NLRC found the presence of all the foregoing when it ruled that the termination was due to a scheme that CCBPI adopted and implemented which was an exercise of management prerogative,[16] and that there was no proof that it was exercised in a malicious or arbitrary manner.[17] Thus:

> It appears that the termination was due to the scheme adopted and implemented by respondent company in distributing and selling its products, to reach consumers at greater length with greater profits, through MEPs or dealership system is basically an exercise of management prerogative. The adoption of the scheme is basically a management prerogative and even if it cause the termination of some twenty seven regular employees, it was not in violation of their right to self-organization much more in violation of their right to security of tenure because the essential freedom to manage business remains with management. x x x
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> Prior to the termination of the herein individual complainants, respondent company has made a careful study of how to be more cost effective in operations and competitive in the business recognizing in the process that its multi-layered distribution system has to be simplified. Thus, it was determined that compared to other distribution schemes, the company incurs the lowest cost-to-serve through Market Execution Partners (ME[P]s) or Dealership system. The CRS and Mini-Bodega systems posted the highest in terms of cost-to-serve. Thus, the phasing out of the CRS and MB is necessary which, however, resulted in the termination of the complainants as their positions have become