739 PHIL. 351

FIRST DIVISION

[G.R. No. 172132, July 23, 2014]

THE HERITAGE HOTEL MANILA, ACTING THROUGH ITS OWNER, GRAND PLAZA HOTEL CORPORATION, PETITIONER, VS. SECRETARY OF LABOR AND EMPLOYMENT; MED-ARBITER TOMAS F. FALCONITIN; AND NATIONAL UNION OF WORKERS IN THE HOTEL, RESTAURANT AND ALLIED INDUSTRIES–HERITAGE HOTEL MANILA SUPERVISORS CHAPTER (NUWHRAIN-HHMSC), RESPONDENTS.

D E C I S I O N

BERSAMIN, J.:

Although case law has repeatedly held that the employer was but a bystander in respect of the conduct of the certification election to decide the labor organization to represent the employees in the bargaining unit, and that the pendency of the cancellation of union registration brought against the labor organization applying for the certification election should not prevent the conduct of the certification election, this review has to look again at the seemingly never-ending quest of the petitioner employer to stop the conduct of the certification election on the ground of the pendency of proceedings to cancel the labor organization's registration it had initiated on the ground that the membership of the labor organization was a mixture of managerial and supervisory employees with the rank-and-file employees.

Under review at the instance of the employer is the decision promulgated on December 13, 2005,[1] whereby the Court of Appeals (CA) dismissed its petition for *certiorari* to assail the resolutions of respondent Secretary of Labor and Employment sanctioning the conduct of the certification election initiated by respondent labor organization.[2]

Antecedents

On October 11, 1995, respondent National Union of Workers in Hotel Restaurant and Allied Industries-Heritage Hotel Manila Supervisors Chapter (NUWHRAIN-HHMSC) filed a petition for certification election,[3] seeking to represent all the supervisory employees of Heritage Hotel Manila. The petitioner filed its opposition, but the opposition was deemed denied on February 14, 1996 when Med-Arbiter Napoleon V. Fernando issued his order for the conduct of the certification election.

The petitioner appealed the order of Med-Arbiter Fernando, but the appeal was also denied. A pre-election conference was then scheduled. On February 20, 1998, however, the pre-election conference was suspended until further notice because of the repeated non-appearance of NUWHRAIN-HHMSC.[4]

On January 29, 2000, NUWHRAIN-HHMSC moved for the conduct of the pre-election

conference. The petitioner primarily filed its comment on the list of employees submitted by NUWHRAIN-HHMSC, and simultaneously sought the exclusion of some from the list of employees for occupying either confidential or managerial positions.[5] The petitioner filed a motion to dismiss on April 17, 2000,[6] raising the prolonged lack of interest of NUWHRAIN-HHMSC to pursue its petition for certification election.

On May 12, 2000, the petitioner filed a petition for the cancellation of NUWHRAIN-HHMSC's registration as a labor union for failing to submit its annual financial reports and an updated list of members as required by Article 238 and Article 239 of the *Labor Code*, docketed as Case No. NCR-OD-0005-004-IRD entitled *The Heritage Hotel Manila, acting through its owner, Grand Plaza Hotel Corporation v. National Union of Workers in the Hotel, Restaurant and Allied Industries-Heritage Hotel Manila Supervisors Chapter (NUWHRAIN-HHSMC)*.[7] It filed another motion on June 1, 2000 to seek either the dismissal or the suspension of the proceedings on the basis of its pending petition for the cancellation of union registration.[8]

The following day, however, the Department of Labor and Employment (DOLE) issued a notice scheduling the certification elections on June 23, 2000.[9]

Dissatisfied, the petitioner commenced in the CA on June 14, 2000 a special civil action for *certiorari*,[10] alleging that the DOLE gravely abused its discretion in not suspending the certification election proceedings. On June 23, 2000, the CA dismissed the petition for *certiorari* for non-exhaustion of administrative remedies.[11]

The certification election proceeded as scheduled, and NUWHRAIN-HHMSC obtained the majority vote of the bargaining unit.[12] The petitioner filed a protest (with motion to defer the certification of the election results and the winner),[13] insisting on the illegitimacy of NUWHRAIN-HHMSC.

Ruling of the Med-Arbiter

On January 26, 2001, Med-Arbiter Tomas F. Falconitin issued an order,[14] ruling that the petition for the cancellation of union registration was not a bar to the holding of the certification election, and disposing thusly:

> WHEREFORE, premises considered, respondent employer/protestant's protest with motion to defer certification of results and winner is hereby dismissed for lack of merit.
>
> Accordingly, this Office hereby certify pursuant to the rules that petitioner/protestee, National Union of Workers in Hotels, Restaurants and Allied Industries-Heritage Hotel Manila Supervisory Chapter (NUWHRAIN-HHSMC) is the sole and exclusive bargaining agent of all supervisory employees of the Heritage Hotel Manila acting through its owner, Grand Plaza Hotel Corporation for purposes of collective bargaining with respect to wages, and hours of work and other terms and conditions of employment.

SO ORDERED.

The petitioner timely appealed to the DOLE Secretary claiming that: (a) the membership of NUWHRAIN-HHMSC consisted of managerial, confidential, and rank-and-file employees; (b) NUWHRAIN-HHMSC failed to comply with the reportorial requirements; and (c) Med-Arbiter Falconitin simply brushed aside serious questions on the illegitimacy of NUWHRAIN-HHMSC.[15] It contended that a labor union of mixed membership of supervisory and rank-and-file employees had no legal right to petition for the certification election pursuant to the pronouncements in *Toyota Motor Philippines Corporation v. Toyota Motor Philippines Corporation Labor Union*[16] *(Toyota Motor)* and *Dunlop Slazenger (Phils.) v. Secretary of Labor and Employment*[17]*(Dunlop Slazenger)*.

Ruling of the DOLE Secretary

On August 21, 2002, then DOLE Secretary Patricia A. Sto. Tomas issued a resolution denying the appeal,[18] and affirming the order of Med-Arbiter Falconitin, *viz*:

> WHEREFORE, the appeal is DENIED. The order of the Med-Arbiter dated 26 January 2001 is hereby AFFIRMED.
>
> SO RESOLVED.

DOLE Secretary Sto. Tomas observed that the petitioner's reliance on *Toyota Motor and Dunlop Slazenger* was misplaced because both rulings were already overturned by *SPI Technologies, Inc. v. Department of Labor and Employment*,[19] to the effect that once a union acquired a legitimate status as a labor organization, it continued as such until its certificate of registration was cancelled or revoked in an independent action for cancellation.

The petitioner moved for reconsideration.

In denying the motion on October 21, 2002, the DOLE Secretary declared that the mixture or co-mingling of employees in a union was not a ground for dismissing a petition for the certification election under Section 11, par. II, Rule XI of Department Order No. 9; that the appropriate remedy was to exclude the ineligible employees from the bargaining unit during the inclusion-exclusion proceedings;[20] that the dismissal of the petition for the certification election based on the legitimacy of the petitioning union would be inappropriate because it would effectively allow a collateral attack against the union's legal personality; and that a collateral attack against the personality of the labor organization was prohibited under Section 5, Rule V of Department Order No. 9, Series of 1997.[21]

Upon denial of its motion for reconsideration, the petitioner elevated the matter to the CA by petition for *certiorari.*[22]

Ruling of the CA

On December 13, 2005,[23] the CA dismissed the petition for *certiorari*, giving its following disquisition:

> The petition for certiorari filed by the petitioner is, in essence, a continuation of the debate on the relevance of the *Toyota Motor, Dunlop Slazenger* and *Progressive Development* cases to the issues raised.
>
> *Toyota Motor* and *Dunlop Slazenger* are anchored on the provisions of Article 245 of the Labor Code which prohibit managerial employees from joining any labor union and permit supervisory employees to form a separate union of their own. The language naturally suggests that a labor organization cannot carry a mixture of supervisory and rank-and-file employees. Thus, courts have held that a union cannot become a legitimate labor union if it shelters under its wing both types of employees. But there are elements of an elliptical reasoning in the holding of these two cases that a petition for certification election may not prosper until the composition of the union is settled therein. *Toyota Motor*, in particular, makes the blanket statement that a supervisory union has no right to file a certification election for as long as it counts rank-and-file employees among its ranks. More than four years after *Dunlop Slazenger*, the Court clarified in *Tagaytay Highlands International Golf Club Inc vs Tagaytay Highlands Employees Union-PTGWO* that while Article 245 prohibits supervisory employees from joining a rank-and-file union, it does not provide what the effect is if a rank-and-file union takes in supervisory employees as members, or vice versa. *Toyota Motor* and *Dunlop Slazenger* jump into an unnecessary conclusion when they foster the notion that Article 245 carries with it the authorization to inquire collaterally into the issue wherever it rears its ugly head.
>
> *Tagaytay Highlands* proclaims, in the light of Department Order 9, that after a certificate of registration is issued to a union, its legal personality cannot be subject to a collateral attack. It may be questioned only in an independent petition for cancellation. In fine, *Toyota* and *Dunlop Slazenger* are a spent force. Since *Tagaytay Highlands* was handed down after these two cases, it constitutes the latest expression of the will of the Supreme Court and supersedes or overturns previous rulings inconsistent with it. From this perspective, it is needless to discuss whether *SPI Technologies* as a mere resolution of the Court may prevail over a full-blown decision that *Toyota Motor* or *Dunlop Slazenger* was. The ruling in *SPI Technologies* has been echoed in *Tagaytay Highlands,* for which reason it is with *Tagaytay Highlands*, not *SPI Technologies*, that the petitioner must joust.
>
> The fact that the cancellation proceeding has not yet been resolved makes it obvious that the legal personality of the respondent union is still very much in force. The DOLE has thus every reason to proceed with the certification election and commits no grave abuse of discretion in allowing it to prosper because the right to be certified as collective bargaining agent is one of the legitimate privileges of a registered union. It is for the petitioner to expedite the cancellation case if it wants to put an end

to the certification case, but it cannot place the issue of the union's legitimacy in the certification case, for that would be tantamount to making the collateral attack the DOLE has staunchly argued to be impermissible.

The reference made by the petitioner to another *Progressive Development* case that it would be more prudent for the DOLE to suspend the certification case until the issue of the legality of the registration is resolved, has also been satisfactorily answered. Section 11, Rule XI of Department Order 9 provides for the grounds for the dismissal of a petition for certification election, and the pendency of a petition for cancellation of union registration is not one of them. Like *Toyota Motor* and *Dunlop Slazenger,* the second *Progressive* case came before Department Order 9.

IN VIEW OF THE FOREGOING, the disputed resolutions of the Secretary of Labor and Employment are AFFIRMED, and the petition is DISMISSED.

SO ORDERED.

The petitioner sought reconsideration,[24] but its motion was denied.

Issues

Hence, this appeal, with the petitioner insisting that:

I

THE COURT OF APPEALS ERRED IN RULING THAT *TAGAYTAY HIGHLANDS* APPLIES TO THE CASE AT BAR

II

[THE HONORABLE COURT OF APPEALS] SERIOUSLY ERRED WHEN IT DISREGARDED *PROGRESSIVE DEVELOPMENT CORPORATION – PIZZA HUT V. LAGUESMA* WHICH HELD THAT IT WOULD BE MORE PRUDENT TO SUSPEND THE CERTIFICATION CASE UNTIL THE ISSUE OF THE LEGALITY OF THE REGISTRATION OF THE UNION IS FINALLY RESOLVED

III

BECAUSE OF THE PASSAGE OF TIME, RESPONDENT UNION NO LONGER POSSESSES THE MAJORITY STATUS SUCH THAT A NEW CERTIFICATION ELECTION IS IN ORDER[25]

The petitioner maintains that the ruling in *Tagaytay Highlands International Golf Club Inc v. Tagaytay Highlands Employees Union-PTGWO*[26] (*Tagaytay Highlands*) was inapplicable because it involved the co-mingling of supervisory and rank-and-file employees in one labor organization, while the issue here related to the mixture