538 Phil. 285

FIRST DIVISION

[G.R. NOS. 148500-01, November 29, 2006]

TIMES TRANSPORTATION CO. INC., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND TIMES EMPLOYEES UNION, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court, as amended, assailing the 17 November 2000 Decision[1] of the Court of Appeals in CA-G.R. SP No. 52352 and CA-G.R. SP No. 53202 its 7 June 2001 Resolution[2] denying the Motion for Reconsideration. The challenged decision disposed thus:

> WHEREFORE, in view of the foregoing, the instant petitions are hereby DENIED and the 21 May 1998 decision and 24 March 1999 resolution of the NLRC are sustained. No costs.[3]

The antecedent facts of the instant petition are as follows:

Petitioner is a domestic corporation engaged in the business of public transportation, duly organized and existing under Philippine laws. On the other hand, respondent union is a legitimate labor organization and was certified as the duly recognized representative of the rank and file employees of the petitioner.

On 28 January 1997, respondent union filed a Notice of Strike before the National Conciliation and Mediation Board (NCMB) on the ground of unfair labor practice allegedly committed by the petitioner. After the strike vote under the supervision of NCMB was obtained, respondent union staged a strike on 3 March 1997.

On 10 March 1997, the Secretary of Labor issued an Order[4] certifying the labor dispute to the National Labor Relations Commission (NLRC) for compulsory arbitration. Upon receipt of the Certification Order, respondent union ended their strike on 12 March 1997.

On 1 July 1997, the Med-Arbiter issued an Order[5] certifying the respondent union as the sole and exclusive bargaining representative of petitioner's rank and file employees.

Consequently, respondent union sent a letter-proposal, stating its desire to bargain collectively with the petitioner, together with the copy of its proposed Collective Bargaining Agreement (CBA). Petitioner, however, refused to enter into a CBA with the respondent union for it intended to appeal the Order certifying the latter as the sole and exclusive bargaining agent of its rank and file employees.[6]

On the ground that petitioner violated its duty to bargain collectively, respondent union filed another Notice of Strike on 8 August 1997.

Meanwhile, petitioner appealed to the Secretary of Labor the Med-Arbiter's Order certifying the respondent union as the sole bargaining agent of petitioner's rank and file employees. Pending resolution of the issue, petitioner implemented its retrenchment program by sending Notices of Termination to concerned employees on 16 September 1997 which shall take effect thirty (30) days thereafter.

Claiming that petitioner is guilty of discrimination in carrying out the said retrenchment program, respondent union decided to immediately hold a strike. After the necessary strike vote was taken, under the supervision of the NCMB, respondent union staged another strike on 17 October 1997.

On 17 November 1997, the Secretary of Labor issued another Order[7] reiterating the Order issued on 10 March 1997 certifying the labor dispute to the NLRC for compulsory arbitration. Respondent union, however, refused to heed the latest Certification Order on the ground that it was the petitioner who was the first to commit acts which exacerbated the situation when it implemented its retrenchment program in bad faith.

For allegedly participating in an illegal strike, petitioner terminated the employment of **123 employees** by virtue of two notices sent on 26 October 1997 and 24 November 1997.

In the interregnum, petitioner's Certificate of Public Convenience was acquired by Mencorp Transportation Systems (Mencorp), together with a number of its bus units, as evidenced by a Deed of Sale executed on 12 December 1997. Mencorp is owned and operated by Virginia Mendoza, daughter of Santiago Rondaris, the majority stockholder of the petitioner.

On 21 May 1998, the NLRC finally resolved the labor dispute between petitioner and respondent union by declaring the first strike legal, but the second strike illegal for it was conducted in defiance of the automatic injunction that came with the Certification Order issued by the Secretary of Labor. The dispositive portion of the decision reads:

> WHEREFORE, the respondents' first strike, conducted from March 3, 1997 to March 12, 1997, is hereby declared LEGAL; its second strike which commenced on October 17, 1997, is hereby declared ILLEGAL. Consequently, those x x x **23 persons** who participated in an illegal strike ... are deemed to have lost their employment status and were therefore validly dismissed from employment: x x x.
>
> The respondents' "Motion to Implead Mencorp Transport Systems, Inc. and/or Virginia Mendoza and/or Santiago Rondaris" is hereby denied for lack of merit.[8] [Emphasis supplied.]

Similarly ill-fated were the petitioner's and the respondent union's Motions for Reconsideration which were denied by the NLRC on 24 March 1999.

Aggrieved, both herein petitioner and herein respondent union elevated the matter to the Court of Appeals through a Petition for *Certiorari* under Rule 65 alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the aforesaid decision. Specifically, petitioner alleged that the NLRC erred in failing to validate the dismissal of all the 123 employees who participated in an illegal strike considering that substantial evidence were presented to support the contention.

For its part, private respondent claimed that both the first and the second strike were valid and thus the dismissal of 23 employees were unwarranted under the circumstances. Explaining, respondent union insisted that when the petitioner implemented its retrenchment program in bad faith, it exacerbated the situation in defiance of the Certification Order issued by the Secretary of Labor which enjoined any party from "committing acts which may exacerbate the situation".

On 17 November 2000, the Court of Appeals dismissed the petitions and affirmed the NLRC's findings both with respect to the illegality of the second strike and the dismissal of only 23 employees who were found to have participated in such illegal strike. The decretal part of its Decision reads:

> WHEREFORE, in view of the foregoing, the instant petitions are hereby denied and the 21 May 1998 decision and the 24 March 1999 resolution of the NLRC are sustained. No costs.[9]

The Motions for Reconsideration filed by both parties were denied through the Court of Appeal's Resolution promulgated on 7 July 2001.

The issue impleading Mencorp was separately appealed in G.R. No. 163786 and was resolved on 16 February 2005 in favor of the respondent union and thereby adjudged that sale of petitioner's assets to Mencorp was a scheme employed to evade any judgment that may be rendered in the unfair labor practice cases filed against it.

On the other hand, petitioner is now before this Court assailing the Decision, dated 17 November 2000 and Resolution, dated 7 July 2001 of the Court of Appeals on the following grounds:

I.

> THE COURT OF APPEALS COMMITTED MANIFEST ERROR IN THE INTERPRETATION OF THE APPLICABLE AND PERTINENT LAWS CITED BY PETITIONER WHICH RESULTED IN ITS REFUSAL TO APPRECIATE THE EVIDENCE VITAL TO PETITIONER'S CAUSE i.e. THE LIST CONTAINING THE NAMES OF PARTICIPATING STRIKERS/MEMBERS OF RESPONDENT TEU WHICH WERE ATTACHED TO THE NOTICES ON MERE TECHNICALITY — FOR NOT BEING UNDER OATH DESPITE THE FACT THAT THE PLEADINGS TO WHICH THESE WERE APPENDED WERE UNDER OATH.

II.

> THE HONORABLE COURT OF APPEALS VIOLATED OR TRANSGRESSED PETITIONER'S RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF