412 Phil. 614

THIRD DIVISION

[G.R. No. 142314, June 28, 2001]

MC ENGINEERING, INC., AND HANIL DEVELOPMENT CORP., LTD., PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND ARISTOTLE BALDAMECA, RESPONDENTS.

D E C I S I O N

GONZAGA-REYES, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Resolution[1] of the Court of Appeals dated December 27, 1999 in CA-G.R. SP No. 56298 and its subsequent Resolution[2] dated March 3, 2000 denying petitioners' motion for reconsideration thereto. The December 27, 1999 Resolution of the Court of Appeals dismissed petitioners' Petition for Certiorari[3] dated December 17, 1999 for failure to comply with the requirements regarding the certification of non-forum shopping and explanation of service by registered mail.

The facts of the case are as follows:

Petitioner Hanil Development Co., Ltd. (hereinafter "Hanil") is the overseas employer of all contract workers deployed by petitioner MC Engineering, Inc. (hereinafter "MCEI") under a Service Contract Agreement between the two petitioners. Contract workers deployed by MCEI for Hanil for overseas work enter into an employment contract with MCEI in accordance with the terms and conditions set forth by Philippine Overseas Employment Administration (hereinafter "POEA") Regulations and the Service Contract Agreement between MCEI and Hanil[4].

On 18 September 1992, private respondent Aristotle Baldameca entered into an Employment Agreement[5] with MCEI for deployment as a plumber in Tabuk, Saudi Arabia. He commenced working for petitioner Hanil in Saudi Arabia on September 21, 1992. The contract was for a term of twelve (12) months.

For some reason, private respondent was not able to finish the full term of his contract and he was repatriated back to Manila on January 19, 1993. On October 19, 1993, private respondent filed a complaint with the POEA against petitioners for illegal dismissal. In his complaint, private respondent prayed for the payment of his salaries for the unexpired portion of his employment agreement and the reimbursement of his airfare[6].

In March of 1996, the case was referred to the National Labor Relations Commission (hereinafter "NLRC") Arbitration Division as by then it was this agency which had jurisdiction over private respondent's complaint by virtue of Republic Act 8042, the Migrant Workers and Overseas Filipinos Act of 1995. After the submission of position of papers, the labor arbiter assigned to the case rendered a decision[7]

dated April 27, 1998 in favor of private respondent. In this decision, the labor arbiter held petitioners MCEI and Hanil jointly and severally liable to private respondent in the amount of US$2,500.00 and 10% of the cash award as and by way of attorney's fees.

The decision of the labor arbiter was appealed to the NLRC by petitioners on June 15, 1998. However, this appeal was dismissed by the NLRC in a Resolution[8] dated February 26, 1999. The motion for reconsideration filed by petitioners was likewise denied by the NLRC in its Order[9] dated September 28, 1999.

On December 17, 1999, petitioners filed a petition for certiorari with the Court of Appeals questioning the above Resolution and Order of the NLRC. However, the Court of Appeals dismissed the petition filed by petitioners in a Resolution[10] dated December 27, 1999. The full text of the resolution is as follows:

> "The instant Petition for Certiorari is fatally defective for two (2) reasons: (1) there is no certification against forum shopping by co-petitioner Hamil Development Co., Ltd.; and (2) there is no written explanation why the service of the pleading was not done personally (Section 3, Rule 46 and Section 11, Rule 13, 1997 Rules of Civil Procedure).
>
> WHEREFORE, the instant Petition for Certiorari, having failed to comply with the requirement of the Rules, as aforesaid, is DISMISSED outright.
>
> SO ORDERED."

Petitioners filed a Motion for Reconsideration from this December 27, 1999 Resolution but this was denied by the Court of Appeals in a Resolution[11] dated March 3, 2000.

Hence, the recourse by petitioners to this Court where they raise, among other issues, the propriety of the dismissal of their petition for certiorari by the Court of Appeals on the grounds of non-compliance with the requirements of non-forum shopping and lack of explanation of service by registered mail.

With respect to the first ground for the dismissal of the petition by the appellate court, the requirement regarding the need for a certification of non-forum shopping in original cases filed before the Court of Appeals and the corresponding sanction for non-compliance thereto is found in Section 3, Rule 46 of the 1997 Rules of Civil Procedure. Said section, in pertinent part, provides as follows:

> "Rule 46, Sec. 3. *Contents and filing of petition; effect of non-compliance with requirements.* -
>
> X X X
>
> The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other involving the same issues in the Supreme Court, the Court of Appeals or different

> divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.
>
> X X X
>
> The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition."

In the case at bar, the petition for certiorari filed by petitioners before the Court of Appeals contains a certification against forum shopping[12]. However, the said certification was signed only by the corporate secretary of petitioner MCEI. No representative of petitioner Hanil signed the said certification. As such, the issue to be resolved is whether or not a certification signed by one but not all of the parties in a petition constitutes substantial compliance with the requirements regarding the certification of non-forum shopping.

The rule quoted above requires that in all cases filed in the Court of Appeals, as with all initiatory pleadings before any tribunal, a certification of non-forum shopping signed by the petitioner must be filed together with the petition. The failure of a petitioner to comply with this requirement constitutes sufficient ground for the dismissal of his petition. Thus, the Court has previously held that a certification not attached to the complaint or petition or one belatedly filed[13] or one signed by counsel and not the party himself[14] constitutes a violation of the requirement which can result in the dismissal of the complaint or petition.

However, with respect to the contents of the certification, the rule of substantial compliance may be availed of. This is because the requirement of strict compliance with the provisions regarding the certification of non-forum shopping merely underscores its mandatory nature in that the certification cannot be altogether dispensed with or its requirements completely disregarded.[15] It does not thereby interdict substantial compliance with its provisions under justifiable circumstances. [16]

In the case at bar, the Court of Appeals should have taken into consideration the fact that petitioner Hanil is being sued by private respondent in its capacity as the foreign principal of petitioner MCEI. It was petitioner MCEI, as the local private employment agency, who entered into contracts with potential overseas workers on behalf of petitioner Hanil.

It must be borne in mind that local private employment agencies, before they can commence recruiting workers for their foreign principal, must submit with the POEA a formal appointment or agency contract executed by the foreign based employer empowering the local agent to sue and be sued jointly and solidarily with the principal or foreign-based employer for any of the violations of the recruitment agreement and contract of employment.[17] Considering that the local private employment agency may sue on behalf of its foreign principal on the basis of its