

## THIRD DIVISION

[ G.R. No. 128192, April 14, 1999 ]

**ASSOCIATED LABOR UNIONS (ALU) AND PASAR EMPLOYEES ASSOCIATION (PEA-ALU), PETITIONERS, VS. SECRETARY LEONARDO A. QUISUMBING, NATIONAL FEDERATION OF LABOR UNION (NAFLU), AND PHILIPPINE ASSOCIATED SMELTING AND REFINING CORPORATION (PASAR), RESPONDENTS.**

### DECISION

**PURISIMA, J.:**

This is a petition for *certiorari* under Rule 65 of the Revised Rules of Court seeking to annul the Resolutions, dated August 20, 1996 and January 3, 1997, respectively, of the Secretary of Labor and Employment in OS-A-3-64-96.

The facts that matter are as follows:

The respondent corporation, Philippine Associated Smelting and Refining Corporation ("PASAR"), and the petitioner, PASAR Employees Association-ALU ("PEA-ALU"), inked a Collective Bargaining Agreement<sup>[1]</sup> ("CBA"), on November 21, 1990, with a term ending on November 21, 1995.

On November 7, 1995, the private respondent, National Federation of Labor Unions ("NAFLU"), filed a petition for certification election<sup>[2]</sup> with the Med-Arbitration Unit, Region 8, Department of Labor and Employment ("DOLE"), which petition was granted by Med-Arbiter Rodolfo S. Milado ("Med-Arbiter Milado") in the Order<sup>[3]</sup> of November 29, 1995, to wit:

"Upon agreement of the parties to hold the certification election provided the petitioner shall furnish the compulsory intervenor its Constitution and By-Laws and other supporting papers, upon issuance of a certificate of registration by the industrial Relations Division, this Office, let the certification election among the one thousand one hundred (1,100) regular rank and file employees/workers of the respondent/employer be GRANTED.

ACCORDINGLY, the following unions shall participate in the certification election:

1. National Federation of Labor Unions (NAFLU);
2. Pasar Employees Associations Associated Labor Unions - Trade Unions Congress of the Philippines (PEA-ALU-TUCP); and
3. No Union."

On December 7, 1995, PEA-ALU interposed a Motion to Dismiss<sup>[4]</sup> for failure of NAFLU to acquire for and in behalf of its local charter affiliate, (Concerned Organization of PASAR Progressive Employees for Reform, or "COPPER"), a legal personality as a legitimate labor organization, in connection with the aforesaid order of the Med-Arbiter.

On the same day, COPPER was issued by the DOLE a Certificate of Registration<sup>[5]</sup> as an independent registered labor organization under Registration Certificate No. R0800-95-12-UR-50. Private respondent NAFLU then furnished petitioner PEA-ALU with copies of the Constitution and By-Laws of COPPER-NAFLU through a Compliance with Manifestation<sup>[6]</sup> dated December 12, 1995.

In his Order<sup>[7]</sup> of January 26, 1996, Med-Arbiter Milado acted favorably on the Motion to Dismiss the petition for certification election, ruling thus:

"IN VIEW OF THE FOREGOING, this Office is hereby constrained to issue an Order considering the Order of this Office dated November 29, 1995 as vacated, cancelled and/or set aside, and dismissing the instant petition for the reason aforestated."

On February 2, 1996, NAFLU filed a memorandum of appeal with the Secretary of Labor, who, acting thereupon on August 26, 1996, resolved as follows:

"Most importantly, it is clear from the records that herein petitioner attained the status of a legitimate labor organization (local chapter) when it submitted the required documents on 1 December 1995 to the Regional Office and as an independently registered union when it was issued by the Department a registration certificate as independent union on 7 December 1995.

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WHEREFORE, the instant appeal is hereby GRANTED. The Med-Arbiter's Order dated 26 January 1996 is hereby SET ASIDE and his previous Order dated 29 November 1995 ordering the conduct of certification election STANDS."

On September 21, 1996, PEA-ALU mailed its Motion for Reconsideration<sup>[8]</sup> of the said Resolution of the respondent Secretary but the same was denied in the Resolution<sup>[9]</sup> issued on January 3, 1997.

Petitioner PEA-ALU's Second Motion for Reconsideration, met the same fate. It was also denied.

Undaunted, petitioners have come to this Court for the reversal of the two Resolutions of respondent Secretary of Labor, aforementioned, raising as issues:

I

WHETHER OR NOT PUBLIC RESPONDENT SECRETARY OF LABOR AND EMPLOYMENT ACTED IN EXCESS OF JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN

HOLDING THAT PRIVATE RESPONDENT NAFLU'S PETITION FOR CERTIFICATION ELECTION WAS DULY FILED.

## II

WHETHER OR NOT PUBLIC RESPONDENT SECRETARY OF LABOR AND EMPLOYMENT ACTED IN EXCESS OF JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION IN THE APPLICATION OF THE "DOCTRINE OF ESTOPPEL" AGAINST HEREIN PETITIONERS.

## III

WHETHER OR NOT PUBLIC RESPONDENT SECRETARY OF LABOR AND EMPLOYMENT ACTED IN EXCESS OF JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION WHEN IT INVOKED AND MISAPPLIED FOR THE "FIRST TIME" IN THE RESOLUTION OF THE MOTION FOR RECONSIDERATION "NUNC PRO TUNC" RULING (AS LAID DOWN IN FURTUCP VS. LAGUESMA, ET AL, G.R. NO. 109251, 26 MAY 1993) WHICH IS NOT EVEN APPLICABLE TO THE INSTANT CASE.

On March 7, 1997, the Court resolved to "ISSUE the TEMPORARY RESTRAINING ORDER prayed for, enjoining the public respondent or his authorized representative from proceeding with the certification election scheduled on March 10, 1997 in OS-A-3-64-96(ROVIII-11-10-97)x x x."

The issues posed are interrelated and will be discussed jointly. Pivotal to the issues raised are:

1. The legal existence of COPPER at the time of filing of NAFLU's petition for certification election.
2. The loss by PEA-ALU of its right to question the allowance of the petition for certification election on the grounds of estoppel and non-appeal.

Petitioners basically adhere to the view that the belated acquisition by NAFLU's affiliate, COPPER, of legal personality as a legitimate labor organization beyond the freedom period did not cure the factual and legal infirmities of NAFLU's petition for certification election. Stated differently, petitioners maintain that a petition for certification election may only be entertained during the freedom period<sup>[10]</sup> and must be filed by a duly existing labor organization.

To begin with, petitioner PEA-ALU is estopped from contesting the Order of Med-Arbiter Milado inasmuch as the holding of the certification election was "by agreement of the parties". It is worthy to note that the Order granting the petition for certification election, stated:

*"Upon agreement of the parties to hold the certification election provided the petitioner shall furnish the compulsory intervenor its Constitution and By-Laws and other supporting papers, upon issuance of a certificate of registration by the Industrial Relations Division, this Office, let the certification election among the one thousand one hundred (1,100)*