343 Phil. 781

FIRST DIVISION

[G.R. No. 120691, August 21, 1997]

BIONIC HEAVY EQUIPMENTS, INC., AND/OR MR. SPENCER FORKNER, PETITIONER, VS. NATIONAL LABOR RELATIONS COMMISSION (FOURTH DIVISION, CEBU CITY) AND NAFLU/AMIE TOMENTOS, ET AL.

D E C I S I O N

KAPUNAN, J.:

The instant case is an off-shoot of the decision of this Court in National Federation of Labor Unions vs. Ladrido III, docketed as G.R. No. 94540-41.[1] he factual antecedents leading to the dispute now before us are laid down in the NAFLU case as, follows:

> On December 1, 1989, then labor arbiter Jose G. Gutierrez rendered a decision in favor of the complainants in consolidated cases filed by the National Federation of Labor Unions and others against private respondent Bionic Heavy Equipment, Inc. and Mr. Spencer Forkner, docketed as RAB-VII-015-86-D and RAB-VII-020-87-20 dated December 1, 1989, the dispositive part of which reads as follows:

WHEREFORE, premises considered, this Office gives due course to complainants' claim, ordering respondent to pay the complainants:

1) separation pay at the rate of one (1) month for every year of service

2) ECOLA

3) Service incentive leave

4) 13 month pay

5) overtime pay and night shift differentials

6) premium pay on holidays and rest days

7) 3 years backwages without deduction and qualifications.

All other claims are hereby denied for lack of merit.

The Corporate Auditing Examiner is hereby ordered to compute the foregoing monetary awards which form part of this decision.

> SO ORDERED.'

A copy of the decision was received by private respondent on January 23, 1990. On February 2, 1990, within the ten-day reglementary period, an appeal memorandum was filed by private respondents stating, among others, that the amount of the monetary award is still being computed by the corporate auditing examiner. Petitioners filed an opposition thereto alleging that the appeal has not been perfected for failure to file the necessary cash or surety bond and that the appeal is pro-forma. Replying thereto, private respondents reiterated that no bond was posted as there was no computation attached to the decision and that accordingly, the amount of the bond cannot be determined. In a supplemental appeal dated March 30, 1990 respondents stressed that the decision is not based on substantial evidence.

On June 21, 1990, petitioner filed a motion for immediate issuance of a writ of execution alleging therein that the computation of the award had been accomplished; that the private respondents failed to perfect their appeal; and that private respondents are in imminent danger of insolvency. The motion was granted by labor arbiter Geofrey P. Villahermosa in an order dated June 27, 1990. A hearing was thus scheduled on June 30, 1990. On June 30, 1990, after the hearing, the labor arbiter approved and adopted the computation of awards made by the corporate auditing examiner, SLEO Aurora R. Gorres, in the total amount of P 21, 415,486.00.

On July 2, 1990, private respondents filed their comment to the motion for issuance of a writ of execution alleging therein that the said motion is premature and that the allegation of insolvency is baseless.

On July 5, 1990, the labor arbiter issued a special order for the issuance of a writ of execution based on the following reasons –

'1. Execution pending appeal is allowed under Sec. 2, Rule 39 of the Revised Rules of Court of the Philippines;

2. Respondents herein have not as yet perfected their appeal for failure to post cash or surety bond;

3. Respondent were furnished in open session last June 30, 1990 an official copy of the computation of monetary awards due the complainants;

4. Respondents did not file an opposition to complainants' motion for immediate issuance of writ of execution;

5. Respondents' counsel in open session made an admission that respondents indeed have partially discontinued its (sic) operation;

6. This office is of the view that the appeal by respondents is being taken for purposes of delaying the execution of the judgment;

7. Complainants herein would be gravely prejudiced in that respondents have started removing, dismantling and disposing of their equipment and other accessories subject for execution;

8. The judgment rendered herein will be rendered nugatory and ineffectual if not defeated, if no writ of execution is immediately issued by this Office.'

On the same day said arbiter issued the writ of execution a copy of which was served on private respondents on July 6, 1990 by the sheriff. On July 12, 1990, private respondents filed a motion to lift the writ of execution and for recomputation of the award on the ground that the appeal has been perfected and private respondents were not given an opportunity to controvert the award. The provincial Sheriff was informed thereof and was advised to hold in abeyance the execution of the decision.

Nevertheless, on July 13, 1990 the sheriff posted a notice of public auction sale to be held on July 19, 1990 at 9:00 a.m. to 5:00 p.m. of the properties enumerated in Annexes A and B of the notice. Two other notices of sale of personal properties of private respondents listed were issued by the sheriff for July 25, 1990. A notice of levy on execution of certain personal properties of private respondents was effected by the sheriff on July 17, 1990.

On July 18, 1990, the labor arbiter denied private respondents' urgent motion to lift the writ of execution and for recomputation of awards on the ground that the decision had become final and executory and that assuming that private respondents' appeal has not been perfected pending service of the computation of the monetary awards, respondents should have posted the cash or surety bond after receiving a copy of said recomputation on June 30, 1990.

On July 18, 1990, private respondents learned that the public auction of their property scheduled on July 19, 1990 will proceed. Thus, on the same day, they filed with the public respondent National Labor Relations Commission (NLRC) a petition to stay the execution sale and for quashal of the writ of execution issued on July 5, 1990. On the same day the NLRC issued an order restraining the scheduled execution sale for July 19, 1990 but the levy on the properties will remain and private respondents were required to post a bond in the amount of P100,000.00 to answer for any damages complainants might suffer by virtue of the stay of execution sale, if the petition is found to be without legal or factual basis. Private respondents promptly posted the bond and the labor arbiter was required to immediately forward the records of the case to the NLRC.

The Provincial Sheriff, however, effected the sale of properties for P3,696,850.00 claiming he received the radio message after the auction sale was conducted. The two other auction sale scheduled for July 25, 1990 were canceled.

On July 22,1990, private respondents filed an urgent ex-parte motion to invalidate the auction sale conducted on July 19, 1990. The said motion was supported by affidavits, minutes and the report of the sheriff, all showing alleged irregularities in the conduct of the auction sale. On July 30, 1990, petitioners filed an opposition to the petition alleging therein

> that the NLRC has no jurisdiction over the injunction case, that there is no cause of action, that it is barred by prior final judgment and that it is frivolous.
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> On August 10, 1990 the NLRC issued an order quashing the writ of execution issued in this case, vacating and setting it aside, and ordering the return of the properties sold or taken from the premises of private respondents which, however, are to remain in custodia legis until the Commission can determine the amount of the bond to be posted by private respondents.[2]

NAFLU thus filed before this Court a petition for certiorari and prohibition assailing the August 10, 1990 Order, docketed as G.R. No. 94540-41, raising the following grounds:

A. NLRC ERRED IN ACQUIRING JURISDICTION OVER INJUNCTION CASES NO. V-0005-90 AND V-006-90 AND IN GIVING DUE COURSE TO INJUNCTION CASES BY ISSUING A RESTRAINING ORDER DATED July 19, 1990, (ANNEX "N") ENJOINING EXECUTION SALE SCHEDULED ON July 19, 1990.

B. NLRC ERRED IN PROMULGATING THE ORDER DATED August 10, 1990 (ANNEX "R") WITHOUT HEARING DECLARING RESPONDENTS' APPEAL WITHOUT BOND AS DULY PERFECTED; DECLARING WRIT OF EXECUTION DULY ISSUED BY LABOR ARBITER WHO HAD JURISDICTION TO ISSUE SUCH WRIT AS QUASHED, VACATED AND SET ASIDE; DECLARING VALID AND DUE LEVY OF EXECUTION AND REGULAR SUBSEQUENT SALE OF PROPERTY PURSUANT TO SAID WRIT AS SET ASIDE AND ANNULLED; ORDERING RETURN TO PREMISES OF PROPERTIES SOLD AND ALREADY IN THE HANDS OF THIRD PERSONS AND TAKEN THEREFROM UNDER CUSTODIA LEGIS UNTIL AFTER AMOUNT OF BOND REQUIRED TO BE POSTED CAN BE DETERMINED WHICH AMOUNT IS ALREADY DETERMINED BY LAW (Article 223, paragraph 2 of the Labor Code as amended), THAT IS, SUCH BOND EQUIVALENT TO MONETARY AWARD.[3]

On May 8, 1991, the Court rendered a Decision dismissing the petition. The Court ordered the NLRC to "pass upon the merits of the appeal of [Bionic] and the correctness of the award."[4]

In compliance with this Court's directive, the NLRC resolved Bionic's appeal, and in a Decision dated August 14, 1991, ruled:

> WHEREFORE, in view of all the foregoing, the decision appealed from is VACATED and SET ASIDE.
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> This case is REMANDED to the Labor Arbiter for further proceedings in accordance with our directive herein.
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> Parties and counsels are enjoined to assist the Labor Arbiter in the speedy disposition of their case.[5]