

## THIRD DIVISION

[ G.R. No. 122655, December 15, 1997 ]

**REYNALDO B. ALFANTE, PETITIONER, VS. NATIONAL LABOR  
RELATIONS COMMISSION-FIFTH DIVISION, AND PEPSI-COLA  
PRODUCTS PHILIPPINES, INC., RESPONDENTS.  
D E C I S I O N**

**ROMERO, J.:**

Petitioner Reynaldo B. Alfante (Alfante) seeks the annulment of the decision of the National Labor Relations Commission dated September 27, 1995, which set aside the March 1, 1995, Order of Labor Arbiter Rogelio P. Legaspi, allowing the issuance of a writ of execution against private respondent Pepsi-Cola Product Philippines ("PCPPI").

Alfante was initially employed as Maintenance Manager by Pepsi-Cola Distributors (PCD) on August 1, 1984. Unfortunately, on December 31, 1988, PCD terminated his employment on the ground of alleged loss of trust and confidence.

Aggrieved, Alfante filed before the Sub-Regional Arbitration Branch X of the NLRC in Butuan City a complaint docketed as SRAB-10-02-00022-89 for illegal dismissal, reinstatement with backwages and attorney's fees against PCD.

After considering the evidence and arguments of the parties, on May 15, 1989, Labor Arbiter Marissa Macaraig-Guillen rendered a decision<sup>[1]</sup> declaring as illegal the dismissal of Alfante and ordered PCD to reinstate him with full backwages from the time he was illegally dismissed up to the time of his actual reinstatement without loss of seniority rights and privileges, in addition to the award of damages and attorney's fees.

PCD elevated the Labor Arbiter's decision to the National Labor Relations Commission (Fifth Division), which on April 25, 1991, affirmed with modification the Labor Arbiter's findings. The dispositive portion of the decision reads as follows:

"WHEREFORE, the appealed decision is hereby modified ordering the respondents to pay backwages from the time complainant was terminated up to the promulgation of this judgment, subject to the three-year limitation plus separation pay in lieu of reinstatement equivalent to one (1) month for every year of service, a fraction of six (6) months or more considered as one (1) year.

The award of damages is hereby deleted; however the award of attorney's fees stands affirmed.

SO ORDERED."

Undaunted, PDC filed a petition for review on certiorari before this Court assailing the NLRC's decision. However, in a Resolution [2] dated August 12, 1991, we resolved to dismiss the petition for non-compliance with Revised Circular No. 1-88. A subsequent motion for reconsideration was also denied on April 8, 1992. Hence, the NLRC decision became final and executory.

Consequently, on May 13, 1992, the NLRC issued an Order [3] for the issuance of a writ of execution against PCD to enforce the aforesaid decision.

In the meantime, on October 8, 1993, Alfante filed a "Manifestation and Motion" praying that a writ of execution also be issued against herein private respondent PCPPI. However, on October 25, 1993, PCPPI filed a "Counter- Manifestation" contending that the change in ownership of PCD be taken into cognizance of by the Labor Arbiter, stating thus:

"1. The manifestation of complainant that PCPPI is a successor-in-interest of Pepsi-Cola Distributors Inc. (PCD) is a sweeping self-serving statement, which is devoid of any basis in truth and in fact.

2. Complainant's Special Counsel being a former employee of Pepsi-Cola Products should know that Pepsi-Cola Products Phils. Inc is a separate entity from that of the company sued;

3. Complainant's allegation that in other cases whether or not the satisfaction of the judgment by PCD was facilitated and actually paid by PCPPI and that the quitclaim(s) were signed in the presence of PCPPI employees is irrelevant, immaterial and in consequential to the issue on hand;

4. It would be serious error or mistake if a writ of execution is issued against PCPPI who in the first place is never a party to this case;

5. To include PCPPI now, is to deprive PCPPI its constitutional right to due process and to have the Honorable Arbiter commit an act that on the first place is beyond his ambit to do;

6. Even the Honorable Supreme Court has already recognized the separate juridical personality of the different Pepsi-Cola companies in the Philippines, as allegedly shown in the Entry of Judgment dated 29 December 1988 attached to its manifestation; and

7. Parenthetically, PCPPI is a separate and different juridical entity from PCD though the former has taken over the business of the latter."

Finding PCPPI's contention unmeritorious, Labor Arbiter Rogelio Legaspi issued an Order dated March 1, 1995 granting Alfante's motion that a writ of execution also be issued against PCPPI. The decretal portion of the Order reads as follows:

"WHEREFORE, premises considered, complainant's motion for the issuance of writ of execution against respondents Pepsi-Cola Distributors of the Philippines, Inc. (PCD) and Pepsi-Cola Products of the Philippines, Inc. (PCPPI) is hereby granted.

ACCORDINGLY, let a writ of execution issue against the aforementioned respondents for the satisfaction of the judgment award in this case.

SO ORDERED.”

On March 17, 1995, PCPPI filed a petition [4] with a prayer for the issuance of a temporary restraining order before the NLRC (Fifth Division) challenging the validity of the abovementioned Order. It argues that since it was not a party in the complaint filed by Alfante, the writ of execution including it together with PCD violated its property rights without due process. Finding merit in PCPPI’s contention, the NLRC issued on March 28, 1995, a temporary restraining order [5] enjoining the execution of the award.

Thereafter, a trial was conducted, wherein the NLRC, in a decision [6] dated September 27, 1995 acted favorably on PCPPI’s petition, to wit:

“WHEREFORE, for want of jurisdiction over petitioner PCPPI, the assailed order is hereby Set Aside as Null and Void.

SO ORDERED.”

Dismayed with the adverse decision, Alfante has filed this present petition.

In fine, petitioner alleges that the NLRC committed grave abuse of discretion in ruling that PCPPI has a separate and distinct personality from that of PCD, as a consequence of which the former is not bound by a judgment against the latter.

We sustain petitioner’s contention.

At the outset, it should be noted that Alfante failed to move for reconsideration of the NLRC’s decision. The filing of a motion for reconsideration of an NLRC’s decision is a prerequisite to the filing of a petition for certiorari before this Court. [7] In the absence of a motion for reconsideration, a petition for certiorari before this Court, being premature will not prosper. [8]

Notwithstanding the foregoing pronouncements, we have held that the requirement for a motion for reconsideration, as a condition for the filing of a petition for certiorari, does not apply where the decision sought to be annulled is a nullity. [9] Since the NLRC ignored our rulings in previous cases declaring PCPPI as the successor-in-interest of PCD, we have no reservations in declaring that this case is an exception to the general rule requiring that a previous motion for reconsideration be filed before a petition for certiorari be resorted to.

As to the merits of this case, we have previously settled the issue of PCPPI’s assumption of liability for PCD’s corporate acts.

In Pepsi-Cola Bottling v. NLRC, [10] we held:

“With respect to the third issue, PCPPI claims that the public respondent committed grave abuse of discretion in holding it liable for the reinstatement of the private respondent considering that PCPPI is an