

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**FEU-DR. NICANOR REYES MEDICAL
FOUNDATION, INC.,**

Petitioner,

-versus-

**G.R. No. 76273
July 31, 1987**

**HON. CRESENCIANO TRAJANO and
RICARDO C. CASTRO, FAR EASTERN
UNIVERSITY-DR. NICANOR REYES
MEDICAL FOUNDATION, INC.
ALLIANCE OF FILIPINO WORKERS
(AFW),**

Respondents.

X-----X

DECISION

PARAS, J.:

This is a Petition for *Certiorari* seeking to annul and set aside the decision of the respondent Director which affirmed the Order of the Med-Arbiter in the petition for certification election (NCR-LRD-N-2-

050-86) filed by private respondent, thus ordering the holding of a certification election among the rank and file employees of the herein petitioner.

The facts of the case are as follows:

The petitioner, Far Eastern University-Dr. Nicanor Reyes Memorial Foundation, Inc., has a work force of about 350 rank and file employees, majority of whom are members of private respondent Alliance of Filipino Workers.

On February 13, 1986, private respondent filed a Petition for Consent and/or Certification Election with The Ministry of Labor and Employment. The petitioner opposed the petition on the ground that a similar petition involving the same issues and the same parties is pending resolution before the Supreme Court, docketed as G.R. No. L-49771.

In its position paper, private respondent admitted: that as early as May 10, 1976, private respondent filed a similar petition for certification election with the Ministry of Labor and Employment but the petition was denied by the MED Arbiter and the Secretary of Labor on appeal, on the ground that the petitioner was a non-stock, non-profit medical institution, therefore, its employees may not form, join, or organize a union pursuant to Article 244 of the Labor Code; that private respondent filed a petition for certiorari with the Supreme Court (docketed as G.R. No. L-49771) assailing the constitutionality of Article 244 of the Labor Code; that pending resolution of the aforesaid petition, or on May 1, 1980, Batas Pambansa Bilang 70 was enacted amending Article 244 of the Labor Code, thus granting even employees of non-stock, non-profit institutions the right to form, join and organize labor unions of their choice; and that in the exercise of such right, private respondent filed another petition for certification election with the Ministry of Labor and Employment (NCR-LRD-N-2-050-86).

On April 17, 1986, the Med Arbiter issued an Order granting the petition, declaring that a certification election be conducted to determine the exclusive bargaining representative of all the rank and file employees of the petitioner (p. 4, Rollo)

Respondent Director affirmed said Order on appeal. In dismissing the appeal, however, respondent Director said that:

“Respondent’s (petitioner herein, reliance on the petition with the Supreme Court involving as it does the provisions of Article 244 of the Labor Code *vis-a-vis* the character of the hospital, which has been alleged as a non-profit medical foundation, has been rendered moot and academic by virtue of the amendatory BP # 70, which allows employees of non-profit medical institutions to unionize.

Whatever doubt there may be on the right of the workers in a medical institution has been laid to rest by BP # 70.

WHEREFORE, premises considered, the present appeal is hereby dismissed for lack of merit and the Order of the Med-Arbiter dated 17 April 1986 affirmed.” (p. 19, Rollo)

Hence, this petition, raising the issue of whether or not respondent Director gravely abused his discretion in granting the petition for certification election, despite the pendency of a similar petition before the Supreme Court (G.R. No. 49771) which involves the same parties for the same cause.

The Petition is devoid of merit.

At the time private respondent filed its petition for certification election on February 13, 1986, Article 244 of the Labor Code was already amended by Batas Pambansa Bilang 70, to wit:

“ARTICLE 244. Coverage and employees’ right to self-organization. — All persons employed in commercial, industrial and charitable, medical, or educational institutions whether operating for profit or not, shall have the right to self-organizations of their own choosing for purposes of collective bargaining. Ambulant intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form labor organizations for the purpose of

enhancing and defending their interests and for their mutual aid and protection.” (Emphasis supplied).

Under the aforequoted provision, there is no doubt that rank and file employees of non-profit medical institutions (as herein petitioner) are now permitted to form, organize or join labor unions of their choice for purposes of collective bargaining. Since private respondent had complied with the requisites provided by law for calling a certification election (p. 15, Rollo), it was incumbent upon respondent Director to conduct such certification election to ascertain the bargaining representative of petitioner’s employees (Samahang Manggagawa Ng Pacific Mills, Inc. vs. Noriel, 134 SCRA 152).

As held in *Quimpo vs. Dela Victoria*, 46 SCRA 139, in order that the pendency of another action between the same parties for the same cause may be availed of as a ground to dismiss a case, there must be, between the action under consideration and the other action: (1) identity of parties, or at least such as representing the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) the identity on the two preceding particulars should be such that any judgment which may be rendered on the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

In the instant case, any judgment which may be rendered in the petition for certiorari pending before the Supreme Court (G.R. No. L-49771) will not constitute *res judicata* in the petition for certification election under consideration, for while in the former, private respondent questioned the constitutionality of Article 244 of the Labor Code before its amendment, in the latter, private respondent invokes the same article as already amended.

Petitioner, however, has pointed out that respondent Director should not have arrogated upon himself the power to declare the aforesaid petition for certiorari (G.R. No. L-49771) moot and academic, as the same is sub-judice and only the Supreme Court can decide the matter. The Director cannot be faulted for he had to make a decision.

WHEREFORE, this petition is **DISMISSED**, and the decision appealed from is hereby **AFFIRMED**.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz and Gancayco, JJ., concur.

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