SUPREME COURT
FIRST DIVISION

SANDOVAL SHIPYARDS, INC. and VICENTE SANDOVAL,
***Petitioners*,**

-versus-

G.R. No. 143428
June 25, 2001

PRISCO PEPITO, FREDELINO SOCO, ALBERTO MONIVA, FLAVIANO CANETE, JOSE JUDILLA, ARNULFO TRADIO, PRIMO AUMAN, ALEJANDRO TAPDASAN, GERRY CALVO, MARLON ABELLAR, MANOLO VILLEGAS, BONIFACIO CANO, RODELIO MONDEJAR, RICARDO IBALE, PAULINO LABRA, ANTONIO ALINSUG, PIO CAPAROSO, MAXIMO PANUGAN, SILVESTRE IGOT, DANILO CASAS, ROLIE BENOLA, RUDINO MOLATO, LEONARDO QUIMOD, ELPIDIO LINAO, AURELIO GOC-ONG, NESTOR BASAKA, RODRIGO AUMAN, ILUMINADO ABUCAY, ANASTACIO TRADIO, JR., EDUARDO SUGAROL, JUAN FORMINTIRA, ROSENDO SOCO, JIMMY MONDIEGO, CELSO JUDAYA, MARCIAL GONZAGA, APOLONIO

ARCENAL, SIMEON ANTOLIJAO, MARCELO SUGAROL, ERNESTO SENO, MARIO BASAKA, GORGONIO CUYOS, ROGELIO EDAR, JAIME IBALE, PATRICIOCANO, FELIX SARME, WILFREDO CANTERO, LORETO JUDAYA, CARIS MUSOR, RICKY ERMAC, LUIS MONLEON, CIRILO AGUIPO, PEDRO QUINAPONDON, CHRISTOPHER JUDAYA, GERRY AUMAN, ALFIN IGOT, NELSON ALIVIO, LIMUEL LIBERIAGA, DANILO MAQUILAN, DANIEL RIVERA, ROMEO BASAKA, PAULINO FLORES, JUAN CODENERA, SEVERINO GOMEZ, EDUARDO IBALE, RONITO CAPAROSO, GALO IBALE, ALEJANDRE MULIG, EUSTAQUIO DIOLA, EUDILO LAURON, ALEXANDER AGUIPO, GILBERTO DESUCATAN, CRISPULO ENTERINA, FLORINTINO CODINERO, SAMUEL AUMAN, MARGARITO LABISTE, SERGIO SOCO, SILVERIO IBALE, JOSELITO SUGAROL, GARY IBALE, NONITO GARBO, LORETO PEPITO, ANRITO MONARES, NICANOR CUYOS, OSCAR ALIMPO-OS, REYNALDO PEPITO, PEDRO VILLEGAS, JR., REY HENDERSON, JOSE ALEX MAGLASANG, and the HONORABLE COURT OF APPEALS,

***Respondents*.**

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D E C I S I O N

KAPUNAN, *J.*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure. Petitioners assail the Decision of the Court of Appeals, Former Fifteenth Division, dated December 20, 1999 in CA-G.R. SP No. 51729,[1] and its Resolution, dated May 15, 2000 denying petitioners' motion for reconsideration.

The facts of the case are as follows:

Sometime in 1992, the National Federation of Labor (NFL) filed with the Department of Labor and Employment (DOLE) a petition for certification election, alleging that its members, which included private respondents Prisco Pepito, et al., were regular employees of petitioner Sandoval Shipyards, Inc. (SSI). Finding that the NFL members were rank-and-file employees of SSI, the Med-Arbiter issued an order directing that a certification election be held.

However, in a Resolution dated 25 November 1992, then Undersecretary Bienvenido Laguesma reversed the Med-Arbiter's Order and ruled that there was a valid subcontracting agreement between SSI and its subcontractors, and that no employer-employee relationship existed between SSI and private respondents, since the latter were the employees of the subcontractors.[2]

In 1993, several cases for illegal dismissal were filed by private respondents against SSI and its President, petitioner Vicente Sandoval. Private respondents alleged that they were employees of SSI and that sometime in 1985, some sections of the company were temporarily closed while others remained open. Later, some of them were told to secure a Mayor's Permit then were made parties to contracts with SSI stipulating that they were labor-only contractors.

They averred further that after they organized a workers' union in 1992 to protect themselves against SSI's persistent violation of labor standards, the company did not allow them to report for work. Consequently, SSI's employees, including private respondent, went on strike on March 26, 1992. On April 6, 1992, SSI accepted its

employees back to work, except those who were identified as officers and members of the union. The company claimed that these persons were not its employees but those of the contractors. In their complaint, private respondents prayed for reinstatement with backwages, damages and attorney's fees.

On December 27, 1996, the Labor Arbiter rendered its Decision in the illegal dismissal cases. He found that while private respondents were illegally dismissed, they were not entitled to reinstatement with backwages, damages and attorney's fees. The Labor Arbiter ruled that there was no employer-employee relationship between SSI and private respondents, reasoning that said issue has been laid to rest in the November 25, 1992 resolution of Undersecretary Laguesma in the certification election case.[3]

Private respondents then appealed the decision of the Labor Arbiter to the National Labor Relations Commission (NLRC), which affirmed the Labor Arbiter's decision.[4]

Not satisfied with the decision of the NLRC, private respondents appealed the same to the Court of Appeals. The appellate court reversed the decision of the NLRC and held that SSI is the direct employer of private respondents.[5] Petitioners filed a motion for reconsideration but the same was denied for lack of merit.[6]

Hence, the present appeal. Petitioners contend that the Court of Appeals erred in applying this Court's pronouncement in Manila Golf & Country Club vs. Intermediate Appellate Court[7] that a decision in a certification election case regarding the existence of an employer-employee relationship does not foreclose all further dispute between the parties as to the existence or non-existence of such relationship. They contend that such pronouncement is obiter dictum since the issue involved therein was whether or not the persons rendering caddying services for the golf club's members and their guests in the club's courses or premises are employees of Manila Golf and Country Club and therefore within the compulsory coverage of the Social Security System, not the correctness of the Med-Arbiter's finding in the certification election case that no employer-employee relationship existed between the golf club and the caddies.[8]

The Court does not agree with petitioner.

Our pronouncement in the Manila Golf case that the decision in a certification election case, by the very nature of such proceeding, does not foreclose further dispute regarding the existence or non-existence of an employer-employee relationship, was not obiter dictum as petitioners suggest, but rather was part of the resolution of the main issue in said case.

Manila Golf involved three separate proceedings initiated by a group of caddies against Manila Golf and Country Club, Inc.: (1) a petition for certification election, (2) a petition for compulsory arbitration, and (3) a petition for compulsory social security coverage. In the certification election proceeding, the Med-Arbiter found that an employer-employee relationship existed between the golf club and the caddies. On the other hand, the petition for compulsory arbitration was dismissed by the Labor Arbiter upon finding that no employer-employee relationship existed between Manila Golf and the caddies, which dismissal was later affirmed by the NLRC. The Social Security Commission also dismissed the caddies' petition for compulsory social security coverage, stating that the caddies were not employees of the golf club, but this ruling was later reversed by the Intermediate Appellate Court.[9]

One of the questions in said case which this Court had to address in order to resolve the main issue was which of the three proceedings should be recognized as being decisive of the issue regarding the existence of an employer-employee relationship. It was in this context that the questioned pronouncement in said case was made.

Clearly, such pronouncement was not obiter dictum since the determination as to whether the finding of the Med-Arbiter in the certification election case operates as res adjudicata, or bar by prior judgment, was necessary in resolving the main issue therein.

The Court of Appeals correctly applied the ruling in Manila Golf & Country Club vs. IAC that "however final it may become, the decision in a certification election case, by the very nature of such proceeding, is not such as to foreclose all further dispute as to the existence, or

non-existence of an employer-employee relationship"[10] between SSI and private respondents herein.

It is established doctrine that for res adjudicata to apply, the following requisites must concur: (1) the former judgment or order must be final; (2) the court which rendered said judgment or order must have jurisdiction over the subject matter and the parties; (3) said judgment or order must be on the merits; and (4) there must be between the first and second actions identity of parties, subject matter and cause of action.[11]

This Court further explained in the Manila Golf case:

> Clearly, implicit in these requisites is that the action or proceedings in which is issued the "prior Judgment" that would operate in bar of a subsequent action between the same parties for the same cause, be adversarial, or contentious, "one having opposing parties; (is) contested, as distinguished from an ex parte hearing or proceeding of which the party seeking relief has given legal notice to the other party and afforded the latter an opportunity to contest it," and a certification case is not such a proceeding, as this Court has already ruled:
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> > "A certification proceeding is not a 'litigation' in the sense in which this term is commonly understood, but a mere investigation of a non-adversary, fact-finding character, in which the investigating agency plays the part of a disinterested investigator seeking merely to ascertain the desires of the employees as to the matter of their representation. The court enjoys a wide discretion in determining the procedure necessary to insure the fair and free choice of bargaining representatives by the employees." (Citations omitted.)[12]

Considering the foregoing, both the Labor Arbiter and the NLRC therefore erred in relying on the pronouncement of then Undersecretary Laguesma in the certification proceeding that there was no employer employee relationship between SSI and private respondents.

Moreover, the appellate court found that: (1) the so-called subcontractors do not have a license to engage in subcontracting; (2) the salaries of private respondents are actually paid by SSI and are given to the subcontractors who in turn give the salaries to the private respondents; (3) it was SSI which hired the private respondents and placed them under their respective subcontractors; and (4) private respondents use SSI's tools and equipment in their work.[13]

Based on these findings, the Court of Appeals was correct in declaring that the alleged subcontractors are in effect "labor-only" contractors and are thus mere agents of petitioner SSI. The last paragraph of Article 106 of the Labor Code is clear on this point:

> There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

The appellate court properly noted that the issue as to whether private respondents were illegally dismissed, which was resolved in the affirmative by the Labor Arbiter, was not appealed by petitioners. Such ruling has therefore attained finality. Thus, SSI, as the direct employer of private respondents, is liable to either reinstate them and pay them backwages or to pay them separation pay. However, because there is not enough evidence on this matter, there is a need to remand the case to the Labor Arbiter for further proceedings to determine whether or not there are jobs still available for private respondents in SSI.

WHEREFORE, the petition is hereby **DISMISSED** and the decision of respondent Court of Appeals is hereby **AFFIRMED**.

SO ORDERED.

Puno, Pardo and Ynares-Santiago, *JJ.*, concur.
Davide, Jr., *C.J.*, took no part; a party was a former client when I was still in the private practice of law.

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[1] Frisco Pepito, et al., Petitioners, vs. National Labor Relations Commission (4th Division) and Sandoval Shipyard, Inc. et al., Respondents.
[2] See Resolution of Undersecretary Bienvenido Laguesma dated November 25, 1992, Rollo, pp. 55-67.
[3] Decision of Labor Arbiter Dominador A. Almirante dated December 27, 1996, Id., at 73.
[4] Decision of the National Labor Relations Commission dated December 10, 1997, Id., at 81-91.
[5] Decision of the Court of Appeals dated December 20, 1999, Id., at 33-36.
[6] Resolution of the Court of Appeals dated May 15, 2000, Id., at 39.
[7] 237 SCRA 207 (1994).
[8] Petition, Rollo, pp. 15-16.
[9] Manila Golf and Country Club, Inc. vs. IAC, supra, at 211-214.
[10] Id., at 214.
[11] Saura vs. Saura, Jr., 313 SCRA 465, 476 (1999).
[12] Manila Golf and Country Club, Inc. vs. IAC, supra, at 215; see also National Labor Union vs. Go Soc & Sons, 23 SCRA 431, 436 (1968); George Peter Lines, Inc. vs. Court of Appeals, 134 SCRA 82, 85 (1985); Arguellez vs. Young, 153 SCRA 690, 699 (1987); Associated Labor Union vs. Calleja, 179 SCRA 127, 130-131 (1989); Port Workers Union of the Philippines vs. Undersecretary of Labor and Employment, 207 SCRA 329, 335 (1992).
[13] See Decision of the Court of Appeals, Rollo, pp. 34 36; TSN of the proceedings before the Labor Arbiter, November 9, 1995, Id., at 163-170.
