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FIRST DIVISION

[G.R. No. 80887. September 30, 1994]

BLISS DEVELOPMENT CORPORATION EMPLOYEES UNION (BDCEU)-FDTU SENTRO NG DEMOKRATIKONG MANGGAGAWA (SDM), *petitioner, vs.* **HON. PURA FERRER CALLEJA and BLISS DEVELOPMENT CORPORATION,** *respondents*.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; CIVIL SERVICE COMMISSION; E.O. NO. 180; LIMITS ITS APPLICATION TO GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS WITH ORIGINAL CHARTERS. — Section 1 of Executive Order No. 180 expressly limits its application to only government-owned or controlled corporations *with original charters*. Hence, public respondent's order dated August 7, 1987 requiring petitioner to register in accordance with Section 7 of Executive Order No. 180 is without legal basis.

2. MERCANTILE LAW; CORPORATIONS; JURIDICAL PERSONALITY. — A corporation is created by operation of law. It acquires a juridical personality either by special law or a general law. The general law under which a private corporation may be formed or organized is the Corporation Code, the requirements of which must be complied with by those wishing to incorporate. Only upon such compliance will the corporation come into being and acquire a juridical personality, thus giving rise to its right to exist and act as a legal entity. On the other hand, a government corporation is normally created by special law, referred to often as a charter.

3. ID.; ID.; ID.; GOVERNMENT-OWNED CORPORATION CREATED UNDER THE CORPORATION LAW NOT COVERED BY E.O. NO. 180. — BDC is a government-owned corporation created under the Corporation Law. It is without a charter, governed by the Labor Code and not by the Civil Service Law hence, Executive Order No. 180 does not apply to it.

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APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Capulong Magpantay Ladrido Canilao and Malabanan for private respondent.

D E C I S I O N

KAPUNAN, *J.*:

The focal issue in the case at bench is whether or not Bliss Development Corporation (BDC) is a government-owned or controlled corporation subject to Civil Service laws, rules and regulations. Corollary to this issue is the question of whether or not petitioner is covered by Executive Order No. 180 and must register under Section 7 thereof as a pre-condition for filing a petition for certification election.

The antecedents of the case are:

On October 10, 1986, petitioner, a duly registered labor union, filed with the Department of Labor, National Capital Region, a petition for certification election of private respondent Bliss Development Corporation (BDC).

Based on the position papers submitted by the parties, Med-Arbiter Napoleon V. Fernando, in an order dated January 26, 1987, dismissed the petition for lack of jurisdiction stating that the majority of BDC's stocks is owned by the Human Settlement Development Corporation (HSDC), a wholly-owned government corporation. Therefore, BDC is subject to Civil Service law, rules and regulations. The pertinent portion of said Order reads:

> It may not be amised (sic) to further state that the Supreme Court in its Decision in the case of National Housing Corporation versus Benjamin Juco and the National Labor Relations Commission G-R 63313 promulgated on January 17, 1985 has pronounced that:
>
> > There should no longer be any question at this time that employees of government owned or controlled corporations are governed by the Civil Service Rules and Regulations.'

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Corollary to the issue of whether or not employees of BDC may form or join labor organizations therefore is the issue of whether or not BDC is a government owned corporation.

The pertinent law on the matter is P.D. No. 2029 which provides that:

> Section 2 — Definition — A government-owned or controlled corporation is a stock or non-stock corporation whether performing government or proprietary functions, which is directly chartered by special law or if organized under the general corporation law is owned or controlled by the government or subsidiary corporation, to the extent of at least a majority of its outstanding capital stock or of its outstanding voting stock.

In the case at bar, it is not disputed that majority of the stocks of BDC are owned by Human Settlement Development Corporation, a wholly government owned corporation, hence, this Office cannot, but otherwise conclude, that Bliss Development Corporation is a government owned corporation whose employees are governed not by the Labor Code but by the Civil Service law, rules and regulations. Its employees therefore, are prohibited to join or form labor organization. Further, this Office is without authority to entertain the present petition for obvious lack of jurisdiction.

Indeed, Opinion No. 94, series of 1985, the Minister of Justice has declared:

> In determining whether a corporation created under the Corporation Code is government owned or controlled or not, this ministry has consistently applied the *ownership test* whereby a corporation will be deemed owned by the government if the majority of its voting stocks are owned by the government.

It appearing that Human Settlement Development Corporation (HSDC), which is a wholly-owned government corporation, owns a majority of the stocks of Bliss Development Corporation (BDC), our conclusion is that BDC is a government-owned corporation subject to the coverage of the Civil Service law, rules and regulations as pronounced by the Supreme Court in the case of NHA versus Juco.[1]

Petitioner then filed an appeal with the Bureau of Labor Relations.

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[1] *Rollo,* pp. 58-59.

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In the meantime, or on June 1, 1987 Executive Order No. 180 was issued by the then President Corazon C. Aquino extending to government employees the right to organize and bargain collectively. Sections 1 and 7 of said Order provide:

Section 1. This Executive Order applies to all employees of all branches, subdivisions, instrumentalities, and agencies of the government, including government-owned or controlled corporations *with original charters*. x x x (Italics supplied)

Section 7. Government employees' organizations shall register with the Civil Service Commission and the Department of Labor and Employment. The application shall be filed with the Bureau of Labor Relations of the Department which shall process the same in accordance with the provisions of the Labor Code of the Philippines, as amended. Applications may also be filed with the Regional Offices of the Department of Labor and Employment which shall immediately transmit the said applications to the Bureau of Labor Relations within three (3) days from receipt hereof.

On August 7, 1987, Director Pura Ferrer-Calleja of the Bureau of Labor Relations issued an Order dismissing the appeal. Said Order is reproduced hereunder:

For disposition is an appeal of the Bliss Development Corporation Employees Union Sentro ng Demokratikong Manggagawa (BDCEU-SDM) from the Order of the Med-Arbiter dismissing its petition for direct certification/certification election dated January 26, 1987.

On January 26, 1987, the Med-Arbiter issued an Order dismissing the petition filed by BDCEU-SDM. He ruled that the Bliss Development Corporation which is under the then Ministry of Human Settlement, is a government corporation where the workers are prohibited from organizing and joining labor unions. The Med-Arbiter cited Opinion No. 94 series of 1985, of the Minister of Justice which is hereunder quoted as follows:

> In determining whether a corporation created under the Corporation Code is a government-owned or a controlled or not, this Ministry has consistently applied the ownership test whereby a corporation will be deemed owned by the government if all or a majority of its stocks are owned by the government, and it will be deemed controlled by the government, if the majority of its voting stocks are owned by the government.

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> It appearing that HSDC, which is a wholly-owned government corporation, owns a majority of the stocks of BDC, our conclusion is that BDC is a government-owned corporation subject to the coverage of the Civil Service Law and rules as pronounced by the Supreme Court in the case of *NHA vs. Juco*.

But circumstances have changed. With the issuance of Executive Order No. 180 dated June 1, 1987, government employees are now given the right to organize and bargain collectively. This, therefore, renders academic the order subject of the appeal.

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Consequently, this Bureau hereby enjoins the Petitioner to register in accordance with the aforecited provision. Meantime, the petition is dismissed without prejudice to its refiling after petitioner is granted registration to avoid legal complications.

WHEREFORE, in view of the foregoing, the case is hereby dismissed without prejudice.

SO ORDERED.[2]

Taking exception to the Director's Order, petitioner brought the instant petition to annul the same on the following grounds:

I

THE DIRECTOR GRAVELY ABUSED HER DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN SHE ORDERED PETITIONER TO REGISTER UNDER SECTION 7 OF EXECUTIVE ORDER NO. 180 WHICH DOES NOT COVER PETITIONER;

II

THE DIRECTOR GRAVELY ABUSED HER DISCRETION WHEN SHE INSISTED ON ENFORCING AN OPINION OF THE MINISTER OF JUSTICE WHICH RESPONDENT BDC ITSELF HAS CONSISTENTLY IGNORED AND CONTINUES TO IGNORE AND WHICH THE ENTIRE GOVERNMENT DOES NOT CARE TO ENFORCE.[3]

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[2] *Id.*, at pp. 11-12.

[3] *Id.*, at pp. 3-4.

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In a resolution dated May 29, 1989 the Court gave due course to the petition and required the parties to file their respective memoranda which was complied with. The Solicitor General begged leave to be relieved from filing a comment on the petition and a memorandum, averring that he could not sustain the position of respondent Director.

The petition is impressed with merit.

Section 1 of Executive Order No. 180 expressly limits its application to only government-owned or controlled corporations *with original charters*. Hence, public respondent's order dated August 7, 1987 requiring petitioner to register in accordance with Section 7 of Executive Order No. 180 is without legal basis.

Without categorically saying so, public respondent sustained the Med-Arbiter's invocation of the case of *National Housing Corporation v. Juco*,[4] which ruled that the inclusion of "government-owned or controlled corporations" within the embrace of the civil service shows a deliberate effort of the framers of the 1973 Constitution to plug an earlier loophole which allowed government-owned or controlled corporations to avoid the full consequences of the all encompassing coverage of the civil service system. In said case, we stressed that:

> Section 1 of Article XII-B, Constitution uses the word 'every' to modify the phrase "government-owned or controlled corporation."
>
> 'Every' means each one of a group, *without exceptio*n. It means all possible and all, taken one by one. Of course, our decision in this case refers to a corporation created as a government-owned or controlled entity. x x x.[5]

However, our ruling in *NHC v. Juco*[6] case, which was decided under the 1973 Constitution, lost its applicability with the advent of the 1987 Constitution. Thus, in *National Service Corporation v. NLRC*,[7] we held that:

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[4] 134 SCRA 173.

[5] *Id.*, at p. 182.

[6] *Supra*.

[7] 168 SCRA 122.

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x x x (I)n the matter of coverage by the civil service of government-owned or controlled corporations, the 1987 Constitution starkly varies from the 1973 Constitution, [upon which *National Housing Corporation vs. Juco* is based. Under the 1973 Constitution,] it was provided that:

> The civil service embraces every branch, agency, subdivision, and instrumentality of the Government, including every government-owned or controlled corporation. x x x [Constitution, 1973, Art. II-B, Sec. I (1)].

On the other hand, the 1987 Constitution provides that:

> The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations *with original charter*. (Italics supplied) [Constitution (1987), Art. IX-B, Sec. 2(1).

Thus, the situations sought to be avoided by the 1973 Constitution and expressed by the Court in the *National Housing Corporation* case in the following manner —

> The infirmity of the respondents' position lies in its permitting a circumvention or emasculation of Section 1, Article XII-B of the Constitution. It would be possible for a regular ministry of government to create a host of subsidiary corporations under the Corporation Code funded by a willing legislature. A government-owned corporation could create several subsidiary corporations. These subsidiary corporations would enjoy the best of two worlds. Their officials and employees would be privileged individuals, free from the strict accountability required by the Civil Service Decree and the regulations of the Commission on Audit. Their incomes would not be subject to the competitive restrains of the open market nor to the terms and conditions of civil service employment. Conceivably, all government-owned or controlled corporations could be created, no longer by special charters, but through incorporations under the general law. The Constitutional amendment including such corporations in the embrace of the civil service would cease to have application. Certainly, such a situation cannot be allowed to exist. [134 SCRA 182-183]

appear relegated to relative insignificance by the 1987 Constitutional provision that the Civil Service embraces government-owned or

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controlled corporations with original charter; and, therefore, by clear implication, the Civil Service does not include government-owned or controlled corporations which are organized as subsidiaries of government-owned or controlled corporations under the general corporation law.[8]

A corporation is created by operation of law. It acquires a juridical personality either by special law or a general law. The general law under which a private corporation may be formed or organized is the Corporation Code, the requirements of which must be complied with by those wishing to incorporate. Only upon such compliance will the corporation come into being and acquire a juridical personality, thus giving rise to its right to exist and act as a legal entity. On the other hand, a government corporation is normally created by special law, referred to often as a charter.[9]

BDC is a government-owned corporation created under the Corporation Law. It is without a charter, governed by the Labor Code and not by the Civil Service Law hence, Executive Order No. 180 does not apply to it.

Consequently, public respondent committed grave abuse of discretion in ordering petitioner to register under Section 7, of Executive Order No. 180 as a precondition for filing a petition for certification election.

WHEREFORE, the instant petition is hereby *GRANTED*. The Order of public respondent dated August 7, 1987 is *SET ASIDE* and the Director of Labor Relations is hereby directed to give due course to petitioner's application for certification election.

SO ORDERED.

Cruz, Davide, Jr., Bellosillo, and *Quiason, JJ.*, concur.

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[8] *Id.*, at pp. 133-134.

[9] Campos, Jr., *The Corporation Code, Comments, Notes and Selected Cases,* Vol I, p. 2 (1990).