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The indemnity of P30,000.00 should be increased to P50,000.00, likewise in line with established jurisprudence.[26]

WHEREFORE, the appeal is **DISMISSED** and the appealed decision is **AFFIRMED** with the modification that the appellants Bennie Sotes and Deogracias Ape are sentenced to suffer the penalty of *reclusion perpetua* and to indemnify the heirs of Vicente Lumayno, Sr. the sum of P50,000.00. No costs.

SO ORDERED.

Padilla (Chairman), Vitug, and *Hermosisima, Jr., JJ.*, concur.

Bellosillo, J., is on official leave.

SECOND DIVISION

[G.R. No. 104102. August 7, 1996]

CENTRAL TEXTILE MILLS, INC., *petitioner, vs.* NATIONAL WAGES AND PRODUCTIVITY COMMISSION, REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD — NATIONAL CAPITAL REGION, and UNITED CMC TEXTILE WORKERS UNION, *respondents.*

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[26] People of the Philippines *v.* Adronico Gregorio, see note 25 *supra*; People of the Philippines *v.* Felixberto Francisco, see note 21, *supra*, and People *v.* Sison, 189 SCRA 643 [1990].

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SYLLABUS

1. **LABOR AND SOCIAL LEGISTRATION; WAGE ORDER NO. NCR-02; EXEMPTION THEREFROM; GUIDELINES.—** Regional Tripartrite Wages and Productivity Board - National Capital Region (the Board) issued Wage Order No. NCR-02 (WO No. NCR-02) which took effect on January 9, 1991. Said wage order mandated a P12.00 increase in the minimum daily wage of all employees and workers in the private sector in the NCR, but exempted from its application distressed employers whose capital has been impaired by at least twenty-five percent (25%) in the preceding year. The "Guidelines on Exemption From Compliance With the Prescribed Wage/Cost of Living Allowance Increase Granted by the Regional Tripartite Wage and Productivity Boards," defined "capital" as the "paid-up capital at the end of the last full accounting period (in case of corporations)." Under said guidelines, "(a)n applicant firm may be granted exemption from payment of the prescribed increase in wage/cost-of-living allowance for a period not to exceed one (1) year from effectivity of the Order x x x when accumulated losses at the end of the period under review have impaired by at least 25 percent the paid-up capital at the end of the last full accounting period preceding the application."

2. **ID.; ID.; ID.; ID.; PAID ALLOWANCE SUBSCRIPTION; NOT YET PART OF PAID-UP CAPITAL AS BASIS OF CAPITAL IMPAIRMENT FOR EXEMPTION.—** The guidelines on exemption specifically refer to paid-up capital, not authorized capital stock, as the basis of capital impairment for exemption from WO No. NCR-02. The record reveal, however, that petitioner included in its total paid-up capital payments on advance subscriptions, although the proposed increase in its capitalization had not yet been approved by, let alone presented for the approval of, the SEC. These payments cannot as yet be deemed part of petitioner's

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paid-up capital, technically speaking, because its capital stock has not yet been legally increased. Thus, its authorized capital stock in the year when exemption from WO No. NCR-02 was sought stood at P128,000,000.00, which was impaired by loses of nearly 50%. Such payments constitute deposits on future subscriptions, money which the corporation will hold in trust for the subscribers until it files a petition to increase its capitalization and a certificate of filing of increase of capital stock is approved and issued by the SEC. As a trust fund, this money is still withdrawable by any of the subscribers at any time before the issuance of the corresponding shares of stock, unless there is a pre-subscription agreement to the contrary, which apparently is not present in the instant case. Consequently, if a certificate of increase has not yet been issued by the SEC, the subscribers to the unauthorized issuance are not to be deemed as stockholders possessed of such legal rights as the rights to vote and dividends.

3. **ID.; ID.; ID.; ID.; REMEDIES; DENIED APPLICATION FOR EXEMPTION, PREVIOUSLY FINAL, IS NOW APPEALABLE.**— At the time petitioner filed the instant petition for certiorari on March 6, 1992, the procedure governing applications for exemption from compliance with wage orders was the original guidelines, which took effect on February 25, 1991. Under Section 6 of said guidelines, the denial by the Board of a request for reconsideration shall be final and immediately executory. Appeal to the Commission as an optional remedy was only made available after the issuance of the revised guidelines on September 25, 1992. Hence, petitioner cannot be faulted for not having first appealed the questioned orders.

APPEARANCES OF COUNSEL

Cruz Durian Agabin Atienza Alday & Tuason for petitioner.

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Romeo C. Lagman and *Wilfredo D. Sarabosing* for private respondents.

Solicitor General for public respondents.

DECISION

ROMERO, *J.*:

On December 20, 1990, respondent Regional Tripartite Wages and Productivity Board — National Capital Region (the Board) issued Wage Order No. NCR-02 (WO No. NCR-02), which took effect on January 9, 1991. Said wage order mandated a P12.00 increase in the minimum daily wage of all employees and workers in the private sector in the NCR, but exempted from its application distressed employers whose capital has been impaired by at least twenty-five percent (25%) in the preceding year.

The "Guidelines on Exemption from Compliance With the Prescribed Wage/Cost of Living Allowance Increase Granted by the Regional Tripartite Wage and Productivity Boards," issued on February 25, 1991, defined "capital" as the "paid-up capital at the end of the last full accounting period (in case of corporations)." Under said guidelines, "(a)n applicant firm may be granted exemption from payment of the prescribed increase in wage/cost-of-living allowance for a period not to exceed one (1) year from effectivity of the Order x x x when accumulated losses at the end of the period under review have impaired by at least 25 percent the paid-up capital at the end of the last full accounting period preceding the application."

By virtue of these provisions, petitioner filed on April 11, 1991 its application for exemption from compliance with WO No. NCR-02 due to financial losses.

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In an order dated October 22, 1991, the Board's Vice-Chairman, Ernesto Gorospe, disapproved petitioner's application for exemption after concluding from the documents submitted that petitioner sustained an impairment of only 22.41%.

On February 4, 1992, petitioner's motion for reconsideration was dismissed by the Board for lack of merit. The Board, except for Vice-Chairman Gorospe who took no part in resolving the said motion for reconsideration, opined that according to the audited financial statements submitted by petitioner to them, to the Securities and Exchange Commission and to the Bureau of Internal Revenue, petitioner had a total paid-up capital of P305,767,900.00 as of December 31, 1990, which amount should be the basis for determining the capital impairment of petitioner, instead of the authorized capital stock of P128,000,000.00 which it insists should be the basis of computation.

The Board also noted that petitioner did not file with the SEC the August 15, 1990 resolution of its Board of Directors, concurred in by its stockholders representing at least two-thirds of its outstanding capital stock, approving an increase in petitioner's authorized capital stock from P128,000,000.00 to P640,000,000.00. Neither did it file any petition to amend its Articles of Incorporation brought about by such increase in its capitalization.

Petitioner maintains in the instant action that its authorized capital stock, not its unauthorized paid-up capital, should be used in arriving at its capital impairment for 1990. Citing two SEC Opinions dated August 10, 1971, and July 28, 1978, interpreting Section 38 of the Corporation Code, it claims that "the capital stock of a corporation stand(s) increased or decreased only from and after approval and the issuance of the certificate of filing of increase of capital stock."

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We agree.

The guidelines on exemption specifically refer to paid-up capital, not authorized capital stock, as the basis of capital impairment for exemption from WO. No. NCR-02. The records reveal, however, that petitioner included in its total paid-up capital payments on advance subscriptions, although the proposed increase in its capitalization had not yet been approved by, let alone presented for the approval of, the SEC. As observed by the Board in its order of February 4, 1992, "the aforementioned (r)esolution (of August 15, 1990) has not been filed by the corporation with the SEC, nor was a petition to amend its Articles of Incorporation by reason of the increase in its capitalization filed by the same."

It is undisputed that petitioner incurred a net loss of P68,844,222.49 in 1990, and its authorized capital stock as of that time stood at P128,000,000.00.[1] On August 15, 1990, a Board resolution increasing the capital stock of the corporation was affirmed by the requisite number of stockholders. Although no petition to that effect was ever submitted to the SEC for its approval, petitioner already started receiving subscriptions and payments on the proposed increase, which it allegedly held conditionally, that is, pending approval of the same by the SEC. In its Memorandum, however, petitioner admitted, without giving any reason therefor, that it indeed "received 'subscriptions' and 'payments' to the said proposed increase in capital stock, even in the absence of SEC approval of the increase as required by the Corporation Code."[2] Thus, by the end of 1990, the corporation had a subscribed capital stock of P482,748,900.00 and, after deducting P176,981,000.00 in subscriptions receivables, a total paid-up capital of

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[1] *Rollo*, pp. 31-33.

[2] *Ibid.*, p. 284.

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P305,767,900.00.[3] P177,767,900.00 of this sum constituted the unauthorized increase in its subscribed capital stock, which are actually payments on future issues of shares.

These payments cannot as yet be deemed part of petitioner's paid-up capital, technically speaking, because its capital stock has not yet been legally increased. Thus, its authorized capital stock in the year when exemption from WO No. NCR-02 was sought stood at P128,000,000.00, which was impaired by losses of nearly 50%. Such payments constitute deposits on future subscriptions, money which the corporation will hold in trust for the subscribers until it files a petition to increase its capitalization and a certificate of filing of increase of capital stock is approved and issued by the SEC.[4] As a trust fund, this money is still withdrawable by any of the subscribers at any time before the issuance of the corresponding shares of stock, unless there is a pre-subscription agreement to the contrary, which apparently is not present in the instant case. Consequently, if a certificate of increase has not yet been issued by the SEC, the subscribers to the unauthorized issuance are not to be deemed as stockholders possessed of such legal rights as the rights to vote and dividends.[5]

The Court observes that the subject wage order exempts from its coverage employers whose capital has been impaired by at least 25% because if impairment is less than this percentage, the employer can still absorb the wage increase. In the case at hand, petitioner's capital held answerable for the additional wages would include

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[3] *Id.*, pp. 31-33.

[4] SEC Opinions dated December 21, 1982, Rural Bank of Dolores (Quezon), Inc. and July 10, 1991, Ms. Catalina O. Dacanay.

[5] Lopez, The Corporation Code of the Philippines Annotated, II, 1994, p. 541.

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funds it only holds in trust, which to reiterate may not be deemed par of its paid-up capital, the losses of which shall be the basis of the 25% referred to above. To include such funds in the paid-up capital would be prejudicial to the corporation as an employer considering that the records clearly show that it is entitled to exemption, even as the anomaly was brought about by an auditing error.

Another issue, raised late in the proceedings by respondents, is the alleged non-exhaustion of administrative remedies by petitioner. They claim that the questioned order of the Board should have first been appealed to the National Wages and Productivity Commission (the Commission), as provided for under Section 9 of the "Revised Guidelines on Exemption From Compliance With the Prescribed Wage/Cost of Living Allowance Increases Granted by the Regional Tripartite Wages and Productivity Boards."

Petitioner explained that at the time it filed the instant petition for certiorari on March 6, 1992, the procedure governing applications for exemption from compliance with wage orders was the original guidelines, which took effect on February 25, 1991. Under Section 6 of said guidelines, the denial by the Board of a request for reconsideration shall be final and immediately executory. Appeal to the Commission as an optional remedy[6] was only made available after the issuance of the revised guidelines on September 25, 1992. Hence, petitioner cannot be faulted for not having first appealed the questioned orders. It must be added that since no order, resolution or decision of the Commission is being assailed in this

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[6] The revised guidelines dated September 25, 1992 state that "Any party aggrieved by the decision of the Board *may* file an appeal to the Commission . . ."

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petition, it should be dropped as party respondent, as prayed for in its manifestation and motion dated June 22, 1992.[7]

In order to avoid any similar controversy, petitioner is reminded to adopt a more systematic and precise accounting procedure keeping in mind the various principles and nuances surrounding corporate practice.

WHEREFORE, the petition is hereby **GRANTED.** The assailed orders of the Regional Tripartite Wages and Productivity Board — National Capital Region, dated October 22, 1991 and February 4, 1992, are **ANNULLED** and **SET ASIDE.** Said Board is also hereby mandated to issue another order granting the application of petitioner Central Textile Mills, Inc. for exemption from Wage Order No. NCR-02 for the year ending December 31, 1990. No pronouncement as to cost.

SO ORDERED.

Regalado (Chairman), Puno, Mendoza, and *Torres, Jr., JJ.*, concur.

THIRD DIVISION

[G.R. No. 106472. August 7, 1996]

JUAN CASTILLO and MARIA MASANGYA-CASTILLO (substituted by their legal heirs and children, ALEJANDRO CASTILLO,

[7] *Rollo*, p. 156.