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**THIRD DIVISION**

[G.R. No. 165442. August 25, 2010]

**NASECO GUARDS ASSOCIATION-PEMA (NAGA-PEMA),** *petitioner, vs.* **NATIONAL SERVICE CORPORATION (NASECO),** *respondent.*

**SYLLABUS**

**1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; NOT VIOLATED AS LONG AS THE OPPORTUNITY TO BE HEARD WAS MADE AVAILABLE TO A LITIGANT.—** In simple terms, the constitutional guarantee of due process requires that a litigant be given "a day in court." It is the availability of the opportunity to be heard that determines whether or not due process was violated. A litigant may or may not avail of the opportunity to be heard but as long as such was made available to him/her, there is no violation of the due process clause. In the case of *Lumiqued v. Exevea*, this Court declared that "[a]s long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been denied due process of law, for this opportunity to be heard is the very essence of due process. Moreover, this constitutional mandate is deemed satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of."

**2. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; REEVALUATION; DEFINED AND CONSTRUED.—** A reevaluation does not necessitate the introduction of new materials for review nor does it require a full hearing for new arguments. From a procedural standpoint, a reevaluation is a *continuation* of the original case and not a new proceeding. Hence, the evidence, financial reports and other documents submitted by the parties in the course of the original proceeding are to be visited and reviewed again. In this light, the respondent has been given the opportunity to be heard by the DOLE Secretary.

**3. COMMERCIAL LAW; CORPORATION CODE; DOCTRINE OF PIERCING THE CORPORATE VEIL; EXPLAINED.**

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— In *Concept Builders, Inc. v. NLRC*, we explained the doctrine of piercing the corporate veil, as follows: It is a fundamental principle of corporation law that a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected. But, this separate and distinct personality of a corporation is merely a fiction created by law for convenience and to promote justice. So, when the notion of separate juridical personality is used to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws, this separate personality of the corporation may be disregarded or the veil of corporate fiction pierced. This is true likewise when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation. Also in *Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission*, this Court ruled: Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives. Applying the doctrine to the case at bar, we find no reason to pierce the corporate veil of respondent and go beyond its legal personality. Control, by itself, does not mean that the controlled corporation is a mere instrumentality or a business conduit of the mother company. Even control over the financial and operational concerns of a subsidiary company does not by itself call for disregarding its corporate fiction. There must be a perpetuation of fraud behind the control or at least a fraudulent or illegal purpose behind the control in order to justify piercing the veil of corporate fiction. Such fraudulent intent is lacking in this case.

**APPEARANCES OF COUNSEL**

*Alfredo L. Bentulan* for petitioner.
*Sycip Salazar Hernandez & Gatmaitan* for respondent.

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## D E C I S I O N

**VILLARAMA, JR., *J.*:**

This petition for review on *certiorari* under Rule 45 assails the Decision[1] dated May 27, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 76667. The appellate court set aside the January 15, 2003[2] and March 11, 2003[3] Orders of the Department of Labor and Employment (DOLE) and ordered the latter to allow the parties to adduce evidence in support of their respective positions.

The facts follow.

Respondent National Service Corporation (NASECO) is a wholly-owned subsidiary of the Philippine National Bank (PNB) organized under the Corporation Code in 1975. It supplies security and manpower services to different clients such as the Securities and Exchange Commission, the Philippine Deposit Insurance Corporation, Food Terminal Incorporated, Forex Corporation and PNB. Petitioner NASECO Guards Association-PEMA (NAGA-PEMA) is the collective bargaining representative of the regular rank and file security guards of respondent. NASECO Employees Union-PEMA (NEMU-PEMA) is the collective bargaining representative of the regular rank and file (non-security) employees of respondent such as messengers, janitors, typists, clerks and radio-telephone operators.[4]

On December 2, 1993, respondent entered into a memorandum of agreement[5] with petitioner. The terms of the agreement covered the monetary claims of the petitioner such as salary adjustments, conversion of salary scheme under Republic Act

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[1] *Rollo*, pp. 27-39. Penned by Associate Justice Buenaventura J. Guerrero, with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Amelita G. Tolentino concurring.

[2] CA *rollo*, pp. 30-31.

[3] *Id.* at 176-179.

[4] Records, Vol. I, p. 459; records, Vol. II, p. 817.

[5] *Id.* at 130-134.

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(R.A.) No. 6758[6] to R.A. No. 6727,[7] signing bonus, leaves and other benefits. A year after, petitioner demanded full negotiation for a collective bargaining agreement (CBA) with the respondent and submitted its proposals thereto.

On June 8, 1995, petitioner and respondent agreed to sign a CBA on non-economic terms.[8]

On September 24, 1996, petitioner filed a notice of strike because of respondent's refusal to bargain for economic benefits in the CBA. Following conciliation hearings, the parties again commenced CBA negotiations and started to resolve the issues on wage increase, productivity bonus, incentive bonus, allowances, and other benefits but failed to reach an agreement.

Meanwhile, respondent and NEMU-PEMA entered into a CBA on non-economic terms.[9] Unfortunately, a dispute among the leaders of NEMU-PEMA arose and at a certain point, leadership of the organization was unclear. Hence, the negotiations concerning the economic terms of the CBA were put on hold until the internal dispute could be resolved.

On April 29, 1997, petitioner filed a notice of strike before the National Conciliation and Mediation Board (NCMB) against respondent and PNB due to a bargaining deadlock. The following day, NEMU-PEMA likewise filed a notice of strike against respondent and PNB on the ground of unfair labor practices.[10]

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[6] AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES.

[7] AN ACT TO RATIONALIZE WAGE POLICY DETERMINATION BY ESTABLISHING THE MECHANISM AND PROPER STANDARDS THEREFOR, AMENDING FOR THE PURPOSE ARTICLE 99 OF, AND INCORPORATING ARTICLES 120, 121, 122, 123, 124, 126 AND 127 INTO, PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, FIXING NEW WAGE RATES, PROVIDING WAGE INCENTIVES FOR INDUSTRIAL DISPERSAL TO THE COUNTRYSIDE, AND FOR OTHER PURPOSES.

[8] Records, Vol. I, pp. 117-128; CA *rollo*, p. 183.

[9] *Id.* at 103-115; *id.* at 190.

[10] *Id.* at 5-6, 18.

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Efforts by the NCMB to conciliate failed and pursuant to Article 263(g) of the Labor Code,[11] as amended, then DOLE Secretary Cresenciano B. Trajano assumed jurisdiction over the strike notices on June 25, 1998.[12]

On November 19, 1999, then DOLE Secretary Bienvenido E. Laguesma issued a Resolution[13] directing petitioner and respondent to execute a new CBA incorporating therein his dispositions regarding benefits of the employees as to wage increase, productivity bonus, vacation and sick leave, medical allowances and signing bonus. Respondent was further ordered to negotiate, for purposes of collective bargaining agreement, with NEMU-PEMA led by its president, Ligaya Valencia. The charge of unfair labor practice against respondent and PNB was dismissed.[14]

Respondent promptly filed a petition for *certiorari* before the CA questioning the DOLE Secretary's order and arguing that the ruling of the DOLE Secretary in favor of the unions and awarding them monetary benefits totaling five hundred thirty-one million four hundred forty-six thousand six hundred sixty-six and 67/100 (₱531,446,666.67) was inimical and deleterious to its financial standing and will result in closure and cessation of business for the company.

By Decision[15] dated March 19, 2001 (first CA Decision), the CA partly granted the petition and ruled that a recomputation and reevaluation of the benefits awarded was in order.

> WHEREFORE, the instant petition is partly GRANTED in that the case is remanded to the Secretary of Labor for purposes of recomputation and reevaluation of the CBA benefits.
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> SO ORDERED.[16]

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[11] Presidential Decree No. 442, as amended.

[12] Records, Vol. I, p. 17.

[13] CA *rollo*, pp. 180-194.

[14] *Id.* at 194.

[15] *Rollo*, pp. 58-63.

[16] *Id.* at 63.

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In compliance with the CA directive, then DOLE Secretary Patricia A. Sto. Tomas conducted several clarificatory hearings. On January 15, 2003, Secretary Sto. Tomas issued an Order which provides:

> From the above, it is indubitable that the total cost to NASECO of our questioned award would amount to only ₱322,725,000, not ₱531,446,666.67 as claimed by the company. Thus, our November 19, 1999 Order is hereby affirmed *en toto*.
>
> WHEREFORE, judgment is hereby rendered:
>
> 1. [D]irecting NAGA-PEMA and NASECO to execute a new collective bargaining agreement effective November 1, 1993, incorporating therein the dispositions contained in our November 19, 1999 Order as well as all other items agreed upon by the parties.
> 2. Ordering NASECO to negotiate with NEMA-PEMA for a new collective bargaining agreement.
>
> The charges of unfair labor practice against NASECO and PNB are dismissed for lack of merit.
>
> SO ORDERED.[17]

Respondent filed a motion for reconsideration with the DOLE Secretary which was denied on March 11, 2003.

Respondent thus filed a petition for *certiorari* with the CA arguing that the DOLE Secretary, in issuing the January 15, 2003 Order deprived respondent of due process of law for there was no *reevaluation* that took place in the DOLE. It also argued that the order merely recomputed the DOLE Secretary's initial award of ₱531,446,666.67 and reduced it to ₱322,725,000.00, contrary to the ruling of the CA to recompute *and* reevaluate. Respondent claimed that what the DOLE Secretary should have done was to let the parties introduce evidence to show the proper computation of the monetary awards under the approved CBA.

In its second Decision dated May 27, 2004, the CA granted the petition, thus:

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[17] CA *rollo*, p. 31.

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WHEREFORE, the orders dated 15 January 2003 and 11 March 2003 are hereby SET ASIDE and the case remanded to the public respondent to allow the parties to adduce evidence in support of their respective positions.

SO ORDERED.[18]

A motion for reconsideration was filed by herein petitioner but the same was denied by the CA on September 22, 2004[19] finding no reason to reverse and set aside its earlier decision.

Petitioner now comes to this Court for relief by way of a petition for review on *certiorari* seeking to set aside and reverse the May 27, 2004 Decision and the September 22, 2004 Resolution of the CA.

The main issue in this case is whether or not the respondent's right to due process was violated. A side issue raised by the petitioner is whether or not PNB, being the undisputed owner of and exercising control over respondent, should be made liable to pay the CBA benefits awarded to the petitioner.

Petitioner argues first that there was no violation of due process because respondent was never prohibited by the DOLE Secretary to submit supporting documents when the instant case was pending on remand. Petitioner contends that due process is properly observed when there is an opportunity to be heard, to present evidence and to file pleadings, which was never denied to respondent.

Second, petitioner argues that the CA erred in stating that respondent was a company operating at a loss and therefore cannot be expected to act generously and confer upon its employees additional benefits exceeding what is mandated by law. It is the petitioner's position that based on the "no loss, no profit" policy of respondent with PNB, respondent in truth has no "pocket" of its own and is, in effect, one (1) and the same with PNB with regard to financial gains and/or liabilities. Thus, petitioners contend that the CBA benefits should be

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[18] *Rollo*, p. 39.

[19] *Id.* at 41.

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shouldered by PNB considering the poor financial condition of respondent. To support such claim, petitioner submitted evidence[20] to show that PNB is in superb financial condition and is very much capable of shouldering the CBA award.[21]

Respondent on the other hand maintains that the DOLE Secretary violated its right to due process when she merely recomputed the CBA award instead of *reevaluating* the entire case and allowing it to present supporting documents in accordance with the first CA decision.[22] It claims that the order of the CA to reevaluate included and required a full assessment of the case together with reception of evidence such as financial statements, and the omission of such is a violation of its right to due process.

As to the petitioner's argument that respondent and PNB are essentially the same when it comes to financial condition, respondent contends that although a subsidiary, it has a separate and distinct personality from PNB with its own charter. Hence, the issue of PNB's financial well-being is immaterial in this case.

The petition is partly meritorious.

In simple terms, the constitutional guarantee of due process requires that a litigant be given "a day in court." It is the availability of the opportunity to be heard that determines whether or not due process was violated. A litigant may or may not avail of the opportunity to be heard but as long as such was made available to him/her, there is no violation of the due process clause. In the case of *Lumiqued v. Exevea*,[23] this Court declared that "[a]s long as a party was given the opportunity to defend his interests in due course, he cannot be said to have been

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[20] CA *rollo*, pp. 542-575.

[21] *Rollo*, pp. 14-16.

[22] *Id.* at 38.

[23] G.R. No. 117565, November 18, 1997, 282 SCRA 125, 146-147, citing *Legarda v. Court of Appeals*, G.R. No. 94457, October 16, 1997, 280 SCRA 642, 657 and *Pizza Hut/Progressive Dev't. Corp. v. NLRC*, 322 Phil. 579, 584 (1996).

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denied due process of law, for this opportunity to be heard is the very essence of due process. Moreover, this constitutional mandate is deemed satisfied if a person is granted an opportunity to seek reconsideration of the action or ruling complained of."

The respondent's right to due process in this case has not been denied. The order in the first CA decision to recompute and reevaluate was satisfied when the DOLE Secretary reexamined their initial findings and adjusted the awarded benefits. A reevaluation, contrary to what the respondent claims, is a process by which a person or office (in this case the DOLE secretary) revisits its own initial pronouncement and makes another assessment of its findings. In simple terms, to reevaluate is *to take another look* at a previous matter in issue. A reevaluation does not necessitate the introduction of new materials for review nor does it require a full hearing for new arguments.

From a procedural standpoint, a reevaluation is a *continuation* of the original case and not a new proceeding. Hence, the evidence, financial reports and other documents submitted by the parties in the course of the original proceeding are to be visited and reviewed again. In this light, the respondent has been given the opportunity to be heard by the DOLE Secretary.

Also, contrary to the claim of the respondent that it was barred by the DOLE Secretary to introduce supporting documents during the recomputation and reevaluation, the records show that an Order by then Secretary of Labor Patricia A. Sto. Tomas dated July 11, 2002 specifically allowed both parties to submit their respective computations as regards the awarded benefits. To wit:

> WHEREFORE, the Bureau of Working Conditions is hereby directed to submit to this Office a detailed computation of the CBA benefits indicated in the resolution of November 19, 2001 within twenty (20) days from receipt of this Order. *The parties may submit their own computations to the Bureau for validation.*
>
> SO ORDERED.[24] (Italics supplied.)

[24] Records, Vol. I, p. 553.

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It is thus inaccurate for the respondent to claim that it was denied due process because it had all the opportunity to introduce any supporting document in the course of the recomputation and reevaluation of the DOLE Secretary. Respondent admits that it did attach the financial statements and other documents in support of its alleged financial incapacity to pay the CBA awarded benefits, the same evidence it had earlier submitted before the CA (Memorandum in the first CA decision) in the motion for reconsideration of the DOLE Secretary's January 15, 2003 Order.[25] There is thus no showing that the DOLE Secretary denied respondent this basic constitutional right.

On the issue of liability, petitioner contends that PNB should be held liable to shoulder the CBA benefits awarded to them by virtue of it being a company having full financial, managerial and functional control over respondent as its subsidiary, and by reason of the unique "no loss, no profit" scheme implemented between respondent and PNB.

We are not persuaded.

Verily, what the petitioner is asking this Court to do is to pierce the veil of corporate fiction of respondent and hold PNB (being the mother company) liable for the CBA benefits.

In *Concept Builders, Inc. v. NLRC*,[26] we explained the doctrine of piercing the corporate veil, as follows:

> It is a fundamental principle of corporation law that a corporation is an entity separate and distinct from its stockholders and from other corporations to which it may be connected. But, this separate and distinct personality of a corporation is merely a fiction created by law for convenience and to promote justice. So, when the notion of separate juridical personality is used to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws, this separate personality of the corporation may be disregarded or the veil of corporate fiction pierced. This is true likewise when the corporation is merely an adjunct, a business conduit or an alter ego of another corporation.

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[25] See CA *rollo*, pp. 37-38.

[26] G.R. No. 108734, May 29, 1996, 257 SCRA 149, 157-158.

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Also in *Pantranco Employees Association (PEA-PTGWO) v. National Labor Relations Commission*,[27] this Court ruled:

> Whether the separate personality of the corporation should be pierced hinges on obtaining facts appropriately pleaded or proved. However, any piercing of the corporate veil has to be done with caution, albeit the Court will not hesitate to disregard the corporate veil when it is misused or when necessary in the interest of justice. After all, the concept of corporate entity was not meant to promote unfair objectives.

Applying the doctrine to the case at bar, we find no reason to pierce the corporate veil of respondent and go beyond its legal personality. Control, by itself, does not mean that the controlled corporation is a mere instrumentality or a business conduit of the mother company. Even control over the financial and operational concerns of a subsidiary company does not by itself call for disregarding its corporate fiction. There must be a perpetuation of fraud behind the control or at least a fraudulent or illegal purpose behind the control in order to justify piercing the veil of corporate fiction. Such fraudulent intent is lacking in this case.

Petitioner argues that the appreciation, analysis and inquiry of this case may go beyond the presentation of respondent, and therefore must include the PNB, the bank being the undisputed whole owner of respondent and the sole provider of funds for the company's operations and for the payment of wages and benefits of the employees, under the "no loss, no profit" scheme.[28]

We disagree. There is no showing that such "no loss, no profit" scheme between respondent and PNB was implemented to defeat public convenience, justify wrong, protect fraud or defend crime, or is used as a device to defeat the labor laws, nor does the scheme show that respondent is a mere business conduit or alter ego of PNB. Absent proof of these circumstances, respondent's corporate personality cannot be pierced.

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[27] G.R. Nos. 170689 & 170705, March 17, 2009, 581 SCRA 598, 614.

[28] *Rollo*, p. 15.

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It is apparent that petitioner wants the Court to disregard the corporate personality of respondent and directly go after PNB in order for it to collect the CBA benefits. On the same breath, however, petitioner argues that ultimately it is PNB, by virtue of the "no loss, no profit" scheme, which shoulders and provides the funds for financial liabilities of respondent including wages and benefits of employees. If such scheme was indeed true as the petitioner presents it, then there was absolutely no need to pierce the veil of corporate fiction of respondent. Moreover, the Court notes the pendency of a separate suit for absorption or regularization of NASECO employees filed by petitioner and NEMU-PEMA against PNB and respondent, docketed as NLRC NCR Case No. 06-03944-96, which is still on appeal with the National Labor Relations Commission (NLRC), as per manifestation by respondent. In the said case, petitioner submitted for resolution by the labor tribunal the issues of whether PNB is the employer of NASECO's work force and whether NASECO is a labor-only contractor.[29]

**WHEREFORE,** the petition is *PARTLY GRANTED*. The Decision dated May 27, 2004 and Resolution dated September 22, 2004 in CA-G.R. SP No. 76667 are hereby *REVERSED* and *SET ASIDE* as to the order to remand the case to the Secretary of Labor for introduction of supporting evidence. Accordingly, the Orders of the Secretary of Labor dated January 15, 2003 and March 11, 2003 are *REINSTATED and UPHELD*.

No costs.

**SO ORDERED.**

*Carpio Morales (Chairperson), Brion, Bersamin,* and *Sereno, JJ.,* concur.

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[29] *Id.* at 290-370, 412-413.