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FIRST DIVISION

[G.R. No. 173326. December 15, 2010]

SOUTH COTABATO COMMUNICATIONS CORPORATION and GAUVAIN J. BENZONAN, *petitioners, vs.* **HON. PATRICIA A. STO. TOMAS, SECRETARY OF LABOR AND EMPLOYMENT, ROLANDO FABRIGAR, MERLYN VELARDE, VINCE LAMBOC, FELIPE GALINDO, LEONARDO MIGUEL, JULIUS RUBIN, EDEL RODEROS, MERLYN COLIAO and EDGAR JOPSON,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; RULE ON VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING.— Anent the first procedural issue, the Court had summarized the jurisprudential principles on the matter in *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*. In said case, we held that a President of a corporation, among other enumerated corporate officers and employees, can sign the verification and certification of non-forum shopping in behalf of the said corporation without the benefit of a board resolution. x x x It must be stressed, however, that the *Cagayan* ruling qualified that the better procedure is still to append a board resolution to the complaint or petition to obviate questions regarding the authority of the signatory of the verification and certification. Nonetheless, under the circumstances of this case, it bears reiterating that the requirement of the certification of non-forum shopping is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different fora, as this practice is detrimental to an orderly judicial procedure. However, the Court has relaxed, under justifiable circumstances, the rule requiring the submission of such certification considering that, although it is obligatory, it is not jurisdictional. Not being jurisdictional, it can be relaxed under the rule of substantial compliance. In the case at bar, the Court holds that there has been substantial compliance with Sections 4 and 5, Rule 7 of

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the 1997 Revised Rules on Civil Procedure on the petitioners' part in consonance with our ruling in the *Lepanto Consolidated Mining Company v. WMC Resources International PTY LTD.* that we laid down in 2003 with the rationale that the President of petitioner-corporation is in a position to verify the truthfulness and correctness of the allegations in the petition. Petitioner Benzonan clearly satisfies the aforementioned jurisprudential requirement because he is the President of petitioner South Cotabato Communications Corporation. Moreover, he is also named as co-respondent of petitioner-corporation in the labor case which is the subject matter of the special civil action for *certiorari* filed in the Court of Appeals.

2. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEWING ONLY ERRORS OF LAW; EXCEPTION.— The Court is mindful of previous rulings which instructs us that when there is enough basis on which a proper evaluation of the merits can be made, we may dispense with the time-consuming procedure in order to prevent further delays in the disposition of the case. However, based on the nature of the two remaining issues propounded before the Court which involve factual issues and given the inadequacy of the records, pleadings, and other evidence available before us to properly resolve those questions, we are constrained to refrain from passing upon them. After all, the Court has stressed that its jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing only errors of law, not of fact, unless the findings of fact complained of are devoid of support by the evidence on record, or the assailed judgment is based on the misapprehension of facts.

APPEARANCES OF COUNSEL

Garcia Jacobo & Besinga Law Office for petitioners.
The Solicitor General for private respondents.

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D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This a petition for review on *certiorari* under Rule 45 of the Rules of Court with application for temporary restraining order and/or writ of preliminary injunction seeking to set aside the Resolution[1] dated July 20, 2005 as well as its related Resolution[2] dated May 22, 2006 of the Court of Appeals in CA-G.R. SP No. 00179-MIN. In essence, the same petition likewise seeks to set aside the Order[3] dated November 8, 2004 and the Order[4] dated February 24, 2005 of public respondent Secretary Patricia A. Sto. Tomas of the Department of Labor and Employment (DOLE) as well as the Order[5] dated May 20, 2004 of the Regional Director, DOLE Regional XII Office.

The facts of this case, as culled from the Order dated November 8, 2004 of DOLE Secretary Sto. Tomas, are as follows:

On the basis of a complaint, an inspection was conducted at the premises of appellant DXCP Radio Station on January 13, 2004, where the following violations of labor standards laws were noted:

1. Underpayment of minimum wage;
2. Underpayment of 13th month pay;
3. Non-payment of five (5) days service incentive leave pay;
4. Non-remittance of SSS premiums;
5. Non-payment of rest day premium pay of some employee;
6. Non-payment of holiday premium pay; and

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[1] *Rollo*, pp. 169-171; penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Arturo G. Tayag and Normandie B. Pizarro concurring.

[2] *Id.* at 200-204; penned by Associate Justice Rodrigo F. Lim, Jr. with Associate Justices Romulo V. Borja and Normandie B. Pizarro concurring.

[3] *Id.* at 81-84.

[4] *Id.* at 140-141.

[5] *Id.* at 58-61.

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7. Some employees are paid on commission basis aside from their allowances.

A copy of the Notice of Inspection Results was explained to and received by Tony Ladorna for appellants. Later on, or on January 16, 200[4], another copy of the Notice of Inspection Results was received by Felipe S. Galindo, Technical Supervisor of appellant DXCP. The Notice of Inspection Results required the appellants to effect restitution and/or correction of the above violations within five (5) calendar days from receipt of the Notice. Likewise, appellants were informed that any questions on the findings should be submitted within five (5) working days from receipts of the Notice.

A summary investigation was scheduled on March 3, 2004, where only appellees appeared, while appellants failed to appear despite due notice. Another hearing was held on April 1, 2004, where appellees appeared, while a certain Nona Gido appeared in behalf of Atty. Thomas Jacobo. Ms. Gido sought to re-schedule the hearing, which the hearing officer denied.

On May 20, 2004, the Regional Director issued the assailed Order, directing appellants to pay appellees the aggregate amount of Seven Hundred Fifty Nine Thousand Seven Hundred Fifty Two Pesos (Php759,752.00).[6]

The dispositive portion of the Order dated May 20, 2004 of the Regional Director of the DOLE Region XII Office reads as follows:

WHEREFORE, premises considered, respondent DXCP Radio Station and/or Engr. Gauvain Benzonan, President, is hereby ordered to pay the seven (7) affected workers of their Salary Differential, Underpayment of 13th Month Pay, Five (5) days Service Incentive Leave Pay, Rest Day Premium Pay and Holiday Premium Pay in the total amount of **SEVEN HUNDRED FIFTY-NINE THOUSAND SEVEN HUNDRED FIFTY-TWO PESOS** (₱759,752.00), Philippine Currency as indicated in the Annex "A" hereof and to submit proof of compliance to the Department of Labor and Employment, Regional Office No. XII, Cotabato City within ten (10) calendar days from receipt of this Order.[7]

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[6] *Id.* at 81-82.

[7] *Id.* at 61.

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Petitioners appealed their case to then DOLE Secretary Sto. Tomas. However, this appeal was dismissed in an Order dated November 8, 2004 wherein the Secretary ruled that, contrary to their claim, petitioners were not denied due process as they were given reasonable opportunity to present evidence in support of their defense in the administrative proceeding before the Regional Director of DOLE Region XII Office. The dispositive portion of the said Order follows:

> WHEREFORE, premises considered, the appeal by DXCP Radio Station and Engr. Gauvain Benzonan is hereby **DISMISSED** for lack of merit. The Order dated May 24, 2004 of the Regional Director, directing appellants to pay the nine (9) appellees the aggregate amount of Seven Hundred Fifty-Nine Thousand Seven Hundred Fifty-Two Pesos (Php759,752.00), representing their claims for wage differentials, 13th month pay differentials, service incentive leave pay, holiday premium and rest day premium, is **AFFIRMED**.[8]

Undeterred, petitioners filed a Motion for Reconsideration with the DOLE Secretary but this was denied in an Order dated February 24, 2005, the dispositive portion of which states:

> WHEREFORE, premises considered, the Motion for Reconsideration filed by DXCP Radio Station and Engr. Gauvain Benzonan, is hereby **DENIED** for lack of merit. Our Order dated November 8, 2004, affirming the Order dated May 20, 2004 of the OIC-Director, Regional Office No. 12, directing appellants to pay Rolando Fabrigar and eight (8) others, the aggregate amount of Seven Hundred Fifty-Nine Thousand Seven Hundred Fifty-Two Pesos (Php759,752.00), representing their claims for wage and 13th month pay differentials, service incentive leave pay, holiday pay and rest day premium, is **AFFIRMED**.[9]

In light of this setback, petitioners elevated their case to the Court of Appeals but their petition was dismissed in the assailed Court of Appeals Resolution dated July 20, 2005 because of several procedural infirmities that were explicitly cited in the same, to wit:

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[8] *Id.* at 83-84.

[9] *Id.* at 141.

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1. The petition was not properly verified and the Certification of Non-Forum Shopping was not executed by the plaintiff or principal party in violation of Sections 4 and 5 of Rule 7 of the 1997 Rules of Civil Procedure, as the affiant therein was not duly authorized to represent the corporation. Such procedural lapse renders the entire pleading of no legal effect and is dismissible. Sections 4 and 5 of Rule 7 of the 1997 Rules of Civil Procedure provide:

> SEC. 4. Verification. – Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.
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> A pleading is verified by an affidavit that the affiant has read the pleadings and that the allegations therein are true and correct of his personal knowledge or based on authentic records.
>
> **A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief" or lacks a proper verification, shall be treated as an unsigned pleading**. x x x.
>
> SEC. 5. Certification against forum shopping. – **The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith:**
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> x x x x x x x x x
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> **Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing.** The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. x x x.

2. Annexes A, B, C, E and its attachments and F are not certified true copies contrary to Section 1, Rule 65 of the 1997 Rules of Civil Procedure which provides:

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SECTION 1. *Petition for Certiorari*. – x x x

x x x x x x x x x

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. x x x.

3. Petitioner's counsel failed to indicate the date of issue of his IBP Official Receipt. As provided for under Bar Matter 287 dated September 26, 2000:

"**All pleadings, motions and papers filed in court whether personally or by mail shall bear counsel's current IBP official receipt number and date of issue otherwise, such pleadings, motions and paper may not be acted upon by the court**, without prejudice to whatever disciplinary action the court may take against the erring counsel who shall likewise be required to comply with the such (sic) requirement within five (5) days from notice. Failure to comply with such requirement shall be ground for further disciplinary sanction and for contempt of court." x x x.[10]

Petitioners then filed a Motion for Reconsideration and the Court of Appeals ruled in its assailed Resolution dated May 22, 2006 that petitioners' subsequent submission made them substantially comply with the second and third procedural errors that were mentioned in the Court of Appeals Resolution dated July 20, 2005. However, the Court of Appeals also ruled that, with regard to the first procedural error, petitioners' justification does not deserve merit reasoning that "[w]hile it may be true that there are two (2) petitioners and that petitioner Gauvain Benzonan signed the verification and the certificate of non-forum shopping of the petition, the records show that petitioner Gauvain Benzonan did not initiate the petition in his own capacity to protect his personal interest in the case but was, in fact, only acting for and in the corporation's behalf as its president."[11]

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[10] *Id.* at 169-171.

[11] *Id.* at 201.

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Thus, the Court of Appeals noted that "[h]aving acted in the corporation's behalf, petitioner Benzonan should have been clothed with the corporation's board resolution authorizing him to institute the petition."[12]

The Court of Appeals likewise ruled that petitioners' attachment of a "Secretary's Certificate" to their Motion for Reconsideration (purportedly to remedy the first procedural mistake in their petition for *certiorari* under Rule 65) was insufficient since their submission merely authorized petitioner Benzonan "to represent the corporation and cause the preparation and filing of a Motion for Reconsideration before the Court of Appeals."[13]

Consequently, petitioners filed the instant petition wherein they raised the following issues:

a. Whether the Court of Appeals committed grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed the Petition for *Certiorari* and denied the Motion for Reconsideration on its finding that the petition was not properly verified and the certification of non-forum shopping was not executed by the principal party allegedly in violation of Sections 4 and 5, Rule 7 of the 1997 Rules of Civil Procedure?

b. Whether petitioners were denied due process of law in the proceedings before the Regional Director and the Office of the Secretary, both of the Department of Labor and Employment?

c. Whether there was sufficient basis in the Order issued by the Regional Director, DOLE, Regional Office No. XII, dated May 20, 2004?[14]

Anent the first procedural issue, the Court had summarized the jurisprudential principles on the matter in *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*.[15] In said case, we held that a President of a corporation, among other enumerated corporate officers and employees, can sign

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[12] *Id.* at 202.

[13] *Id.* at 183.

[14] *Id.* at 28-29.

[15] G.R. No. 151413, February 13, 2008, 545 SCRA 10.

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the verification and certification against of non-forum shopping in behalf of the said corporation without the benefit of a board resolution. We quote the pertinent portion of the decision here:

It must be borne in mind that Sec. 23, in relation to Sec. 25 of the Corporation Code, clearly enunciates that all corporate powers are exercised, all business conducted, and all properties controlled by the board of directors. A corporation has a separate and distinct personality from its directors and officers and can only exercise its corporate powers through the board of directors. Thus, it is clear that an individual corporate officer cannot solely exercise any corporate power pertaining to the corporation without authority from the board of directors. This has been our constant holding in cases instituted by a corporation.

In a slew of cases, however, we have recognized the authority of some corporate officers to sign the verification and certification against forum shopping. In *Mactan-Cebu International Airport Authority v. CA*, we recognized the authority of a general manager or acting general manager to sign the verification and certificate against forum shopping; in *Pfizer v. Galan*, we upheld the validity of a verification signed by an "employment specialist" who had not even presented any proof of her authority to represent the company; in *Novelty Philippines, Inc. v. CA*, we ruled that a personnel officer who signed the petition but did not attach the authority from the company is authorized to sign the verification and non-forum shopping certificate; and in ***Lepanto Consolidated Mining Company v. WMC Resources International Pty. Ltd.* (*Lepanto*), we ruled that the Chairperson of the Board and President of the Company can sign the verification and certificate against non-forum shopping even without the submission of the board's authorization.**

In sum, we have held that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) **the President of a corporation**, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.

While the above cases do not provide a complete listing of authorized signatories to the verification and certification required by the rules, the determination of the sufficiency of the authority was done on a case to case basis. The rationale applied in the foregoing cases is to justify the authority of corporate officers

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or representatives of the corporation to sign the verification or certificate against forum shopping, being "in a position to verify the truthfulness and correctness of the allegations in the petition."[16] (Emphases supplied.)

It must be stressed, however, that the *Cagayan* ruling qualified that the better procedure is still to append a board resolution to the complaint or petition to obviate questions regarding the authority of the signatory of the verification and certification.[17]

Nonetheless, under the circumstances of this case, it bears reiterating that the requirement of the certification of non-forum shopping is rooted in the principle that a party-litigant shall not be allowed to pursue simultaneous remedies in different fora, as this practice is detrimental to an orderly judicial procedure. However, the Court has relaxed, under justifiable circumstances, the rule requiring the submission of such certification considering that, although it is obligatory, it is not jurisdictional. Not being jurisdictional, it can be relaxed under the rule of substantial compliance.[18]

In the case at bar, the Court holds that there has been substantial compliance with Sections 4 and 5, Rule 7 of the 1997 Revised Rules on Civil Procedure on the petitioners' part in consonance with our ruling in the *Lepanto Consolidated Mining Company v. WMC Resources International PTY LTD.*[19] that we laid down in 2003 with the rationale that the President of petitioner-corporation is in a position to verify the truthfulness and correctness of the allegations in the petition. Petitioner Benzonan clearly satisfies the aforementioned jurisprudential requirement because he is the President of petitioner South Cotabato Communications Corporation. Moreover, he is also named as co-respondent of petitioner-corporation in the labor case which

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[16] *Id.* at 17-19.

[17] *Id.* at 19.

[18] *PNCC Skyway Traffic Management and Security Division Workers Organization (PSTMSDWO) v. PNCC Skyway Corporation*, G.R. No. 171231, February 17, 2010.

[19] G.R. No. 153885, September 24, 2003, 412 SCRA 101, 109.

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is the subject matter of the special civil action for *certiorari* filed in the Court of Appeals.

Clearly, it was error on the part of the Court of Appeals to dismiss petitioners' special civil action for *certiorari* despite substantial compliance with the rules on procedure. For unduly upholding technicalities at the expense of a just resolution of the case, normal procedure dictates that the Court of Appeals should be tasked with properly disposing the petition, a second time around, on the merits.

The Court is mindful of previous rulings which instructs us that when there is enough basis on which a proper evaluation of the merits can be made, we may dispense with the time-consuming procedure in order to prevent further delays in the disposition of the case.[20] However, based on the nature of the two remaining issues propounded before the Court which involve factual issues and given the inadequacy of the records, pleadings, and other evidence available before us to properly resolve those questions, we are constrained to refrain from passing upon them.

After all, the Court has stressed that its jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to reviewing only errors of law, not of fact, unless the findings of fact complained of are devoid of support by the evidence on record, or the assailed judgment is based on the misapprehension of facts.[21]

WHEREFORE, the petition is *PARTIALLY GRANTED.* The assailed Resolutions of the Court of Appeals are *REVERSED* and *SET ASIDE*. The case is *REMANDED* to the Court of Appeals for proper disposition of CA-G.R. SP No. 00179-MIN.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Del Castillo, and *Perez, JJ.,* concur.

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[20] *Somoso v. Court of Appeals*, G.R. No. 78050, October 23, 1989, 178 SCRA 654, 663; *Bach v. Ongkiko, Kalaw, Manhit & Acorda Law Offices*, G.R. No. 160334, September 11, 2006, 501 SCRA 419, 426.

[21] *Buenventura v. Pascual*, G.R. No. 168819, November 27, 2008, 572 SCRA 143, 157.