

## SECOND DIVISION

[G.R. No. 110187. September 4, 1996]

**JOSE G. EBRO III, *petitioner*, vs. NATIONAL LABOR RELATIONS COMMISSION, INTERNATIONAL CATHOLIC MIGRATION COMMISSION, JON DARRAH, ALEX DY-REYES, CARRIE WILSON, and MARIVIC SOLIVEN, *respondents*.****DECISION****MENDOZA, J.:**

This is a petition for *certiorari* to set aside the order dated October 13, 1992 and the resolution dated March 3, 1993 of the National Labor Relations Commission (NLRC).<sup>[1]</sup>

The antecedent facts are as follows:

Private respondent International Catholic Migration Commission (ICMC) is a non-profit agency engaged in international humanitarian and voluntary work. It is duly registered with the United Nations Economic and Social Council (ECOSOC) and enjoys Consultative Status, Category II. It was one of the agencies accredited by the Philippine government to operate the refugee processing center at Sabang, Morong, Bataan.

On June 24, 1985, private respondent ICMC employed petitioner Jose G. Ebro III to teach English as a Second Language and Cultural Orientation Training Program at the refugee processing center. The employment contract provided in pertinent part:

Salary: Your monthly salary for the first 6 months probationary period is P3,155.00 inclusive of cost of living allowance. Upon being made regular after successful completion of the six (6) months probationary period your monthly salary will be adjusted to P3,445.00 inclusive of cost of living allowance.

....

Termination of Employment: Employment may be terminated by ICMC in any of the following situations:

- a. A cessation or reduction in program operation, by Department of State order,
- b. Unsuccessful completion of probationary period, at any time during that period,
- c. For due cause, in cases of violation of provisions detailed in ICMC Personnel Policies and administrative regulations,
- d. For just and authorized causes expressly provided for or authorized by law,
- e. For reasons of inadequate or deficient professional performance based on relevant guidelines and procedures relating to the position,
- f. In cases where, as a member of the PRPC community, ICMC is directed to take action.

If either party wishes to terminate employment, a notice of two (2) weeks should be given in writing to the

other party.

After six months, ICMC notified petitioner that effective December 21, 1985, the latters services were terminated for his failure to meet the requirements of 1. classroom performance . . . up to the standards set in the Guide for Instruction; 2. regular attendance in the mandated teacher training, and in the scheduled team meetings, one-on-one conferences with the supervisor, etc.; 3. compliance with ICMC and PRPC policies and procedures.

On February 4, 1986, petitioner filed a complaint for illegal dismissal, unfair labor practice, underpayment of wages, accrued leave pay, 14th month pay, damages, attorneys fees, and expenses of litigation. The complaint was filed against private respondents ICMC and its Project Director Jon Darrah, Personnel Officer Alex Dy-Reyes, Program Officer of the Cultural Orientation Program Carrie Wilson, and Supervisor of the Cultural Orientation Program Marivic Soliven. Petitioner alleged that there was no objective evaluation of his performance to warrant his dismissal and that he should have been considered a regular employee from the start because ICMC failed to acquaint him with the standards under which he must qualify as such. He prayed for reinstatement with backwages; P3,155.00 for probationary and P3,445.00 for regular salary adjustments; value of lodging or dormitory privileges; cost of insurance coverage for group life, medical, death, dismemberment and disability benefits; moral, and exemplary, and nominal damages plus interest on the above claims with attorneys fees.

Answering the complaint, ICMC claimed that petitioner failed to qualify for regular employment because he showed no interest in improving his professional performance both in and out of the classroom after he had been periodically evaluated (observation summary from August 20 to October 2, 1985 and evaluation summary of December 14, 1985); that petitioner was paid his salary up to December 31, 1985, two weeks pay in lieu of notice, and 14th month pay pro-rata; and that his accrued leave balance had already been converted to cash.

After the parties had formally offered their evidence, private respondents submitted their memorandum on July 31, 1989 in which, among other things, they invoked ICMCs diplomatic immunity on the basis of the Memorandum of Agreement signed on July 15, 1988 between the Philippine government and ICMC.

The Labor Arbiter held that petitioners legal immunity under the Memorandum could not be given retroactive effect since [that would] deprive complainants property right without due process and impair the obligation of contract of employment. In addition, he expressed doubt about petitioners legal immunity on the ground that it was provided for by agreement and not through an act of Congress. Accordingly, the Labor Arbiter ordered ICMC to reinstate petitioner as regular teacher without loss of seniority rights and to pay him one year backwages, other benefits, and ten percent attorneys fees for a total sum of P70,944.85.

Both parties appealed to the NLRC. On August 13, 1990, petitioner moved to dismiss private respondents appeal because of the latters failure to post a cash/surety bond. In its order of October 13, 1992, however, the NLRC ordered the case dismissed on the ground that, under the Memorandum of Agreement between the Philippine government and ICMC, the latter was immune from suit.

Petitioner moved for reconsideration, arguing among other things, that the Memorandum of Agreement could not be given retroactive effect and that in any case ICMC had waived its immunity by consenting to be sued.

However, petitioners motion was denied by the NLRC in its resolution dated March 4, 1993.<sup>[2]</sup> Hence this petition<sup>[2]</sup> presenting the following issues:

- a) Whether private respondents have perfected their appeal and whether public respondent may, on appeal, entertain or review private respondents claim of immunity;

- b) Whether a mere Memorandum of Agreement entered into by the Secretary of Foreign Affairs with respondent International Catholic Migration Commission, which is not a law, can divest the Labor Arbiter and the National Labor Relations Commission of their jurisdiction over the subject matter and over the persons of respondents in the pending case;
- c) Whether the Memorandum of Agreement may be given retroactive effect;
- d) Whether the dismissal of the case based on the claim of immunity will deprive petitioner of his property without due process of law;
- e) Whether the dismissal of the case based on the claim of immunity will result in the impairment of the obligations assumed by respondent International Catholic Migration Commission under its contract of employment with petitioner;
- f) Assuming for the sake of argument that the Memorandum of Agreement has validly conferred immunity on private respondents, whether they may be considered as having waived such immunity;
- g) Upon the same consideration, whether private respondents may be considered estopped from claiming immunity. The basic issue in this case is whether the Memorandum of Agreement executed on July 15, 1988 gave ICMC immunity from suit. The Court holds it did. Consequently, both the Labor Arbiter and the NLRC had no jurisdiction over the case.

*First.* Petitioners contention that the Memorandum of Agreement is not an act of Congress which is needed to repeal or supersede the provision of the Labor Code on the jurisdiction of the NLRC and of the Labor Arbiter is untenable. The grant of immunity to ICMC is in virtue of the Convention on the Privileges and Immunities of Specialized Agencies of the United Nations, adopted by the UN General Assembly on November 21, 1947, and concurred in by the Philippine Senate on May 17, 1949. This Convention has the force and effect of law, considering that under the Constitution, the Philippines adopts the generally accepted principles of international law as part of the law of the land.<sup>[3]</sup> The Memorandum of Agreement in question merely carries out the Philippine governments obligation under the Convention. In *International Catholic Migration Commission v. Calleja*,<sup>[4]</sup> this Court explained the grant of immunity to ICMC in this wise:

The grant of immunity from local jurisdiction to ICMC . . . is clearly necessitated by their international character and respective purposes. The objective is to avoid the danger of partiality and interference by the host country in their internal workings. The exercise of jurisdiction by the Department of Labor in these instances would defeat the very purpose of immunity, which is to shield the affairs of international organizations, in accordance with international practice, from political pressure or control by the host country to the prejudice of member States of the organization, and to ensure the unhampered performance of their functions.

*Second.* Petitioner argues that in any case ICMCs immunity can not apply because this case was filed below before the signing of the Memorandum on July 15, 1988. Petitioner cites in support the statement of this Court in the aforesaid case of *International Catholic Migration Commission v. Calleja*,<sup>[5]</sup> distinguishing that case from an earlier case <sup>[6]</sup> also involving ICMC, wherein the NLRC, as well as the Court, took cognizance of a complaint against ICMC for payment of salary for the unexpired portion of a six-month probationary employment. The Court held:<sup>[7]</sup>

[N]ot only did the facts of said controversy [ICMC v. NLRC, 169 SCRA 606 (1989)] occur between 1983-1985, or before the grant to ICMC on 15 July 1988 of the status of a specialized agency with

corresponding immunities, but also because ICMC in that case did not invoke its immunity and, therefore, may be deemed to have waived it, assuming that during that period (1983-1985) it was tacitly recognized as enjoying such immunity.

Here, according to petitioner, his employment and subsequent dismissal by ICMC took place in 1985, prior to the execution of the Memorandum of Agreement on July 15, 1988 and, therefore, like in the 1989 ICMC case, the Memorandum should not be made to apply to him.

This Court did not really reject ICMCs invocation of immunity for causes of action accruing prior to the execution of the Memorandum. It left open the possibility that ICMC may have been tacitly enjoying diplomatic immunity beforehand. It is important to note that in the 1989 case ICMC did not invoke its immunity notwithstanding the fact that the Memorandum took effect while the case was pending before the Court.<sup>[8]</sup>

Moreover, in the 1990 ICMC case, ICMCs immunity was in fact upheld despite the fact that at the time the case arose, the Memorandum recognizing ICMCs status as a specialized agency had not yet been signed. In that case, the petition for certification election among its rank and file employees was filed on July 14, 1986 and the order directing a certification election was made when ICMCs request for recognition as a specialized agency was still pending in the Department of Foreign Affairs. Yet this Court held that the subsequent execution of the Memorandum was a bar to the granting of the petition for certification election.

The scope of immunity of the ICMC contained in the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations is instructive. Art. III, 4 of the Convention provides for immunity from every form of legal process. Thus, even if private respondents had been served summons and subpoenas prior to the execution of the Memorandum, they, as officers of ICMC, can claim immunity under the same in order to prevent enforcement of an adverse judgment, since a writ of execution is a legal process within the meaning of Article III, 4.<sup>[9]</sup>

*Third.* Another question is whether ICMC can invoke its immunity because it only did so in its memorandum before the Labor Arbiter. It is contended that ICMC waived its immunity in any event. Art. III, 4 of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations requires, however, that the waiver of the privilege must be express. There was no such waiver of immunity in this case. Nor can ICMC be estopped from claiming diplomatic immunity since estoppel does not operate to confer jurisdiction to a tribunal that has none over a cause of action.<sup>[10]</sup>

*Fourth.* Finally, neither can it be said that recognition of ICMCs immunity from suit deprives petitioner of due process. As pointed out in *International Catholic Migration Commission v. Calleja*,<sup>[11]</sup> petitioner is not exactly without remedy for whatever violation of rights it may have suffered for the following reason:

Section 31 of the Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations provides that each specialized agency shall make provision for appropriate modes of settlement of: (a) disputes arising out of contracts or other disputes of private character to which the specialized agency is a party. Moreover, pursuant to Article IV of the Memorandum of Agreement between ICMC and the Philippine Government, whenever there is any abuse of privilege by ICMC, the Government is free to withdraw the privileges and immunities accorded. Thus:

Article IV. *Cooperation with Government Authorities.* 1. The Commission shall cooperate at all times with the appropriate authorities of the Government to ensure the observance of Philippine laws, rules and regulations, facilitate the proper administration of justice and prevent the occurrences of any abuse of the privileges and immunities granted its officials and alien employees in Article III of this Agreement to the Commission.

2. In the event that the Government determines that there has been an abuse of the privileges and immunities granted under this Agreement, consultations shall be held between the Government and the Commission to determine whether any such abuse has occurred and, if so, the Government shall withdraw the privileges and immunities granted the Commission and its officials.

**WHEREFORE**, the petition is DISMISSED for lack of merit.

**SO ORDERED.**

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

---

[1] Per Presiding Commissioner Edna Bonto-Perez and concurred in by Commissioners Domingo H. Zapanta and Rogelio I. Rayala.

[2] *Rollo*, p. 105.

[3] CONST., Art. II, 2.

[4] 190 SCRA 130, 143 (1990)

[5] *Id.*, at 145-146.

[6] *International Catholic Migration Commission v. NLRC*, 169 SCRA 606 (1989).

[7] *Supra* note 5.

[8] Perhaps ICMC did not see the need to invoke the same since, as things turned out, the case was resolved in ICMC's favor.

[9] A judicial process is defined as a writ, warrant, subpoena, or other formal writing issued by authority of law; also the means of accomplishing an end, including judicial proceedings, or all writs, warrants, summonses, and orders of courts of justice or judicial officers. It is likewise held to include a writ, summons, or order issued in a judicial proceeding to acquire jurisdiction of a person or his property, to expedite the cause or enforce the judgment, or a writ, warrant, mandate, or other process issuing from a court of justice. *Malaloan v. Court of Appeals*, 232 SCRA 249, 257 (1994). (Emphasis added)

[10] *Southeast Asian Fisheries Development Center-Aquaculture Department v. National Labor Relations Commission*, 206 SCRA 283 (1992).

[11] 190 SCRA 130, 144 (1990).