96 Phil. 23

[G.R. No. L-7154. October 23, 1954]

PACIFIC MICRONISIAN LINE, INC., PETITIONER, VS. N. BAENS DEL ROSARIO, ACTING COMMISSIONER OF THE WORKMEN'S COMPENSATION COMMISSION AND ALFONSA PELINGON, RESPONDENTS.

D E C I S I O N

BAUTISTA ANGELO, J.:

This case concerns a petition for prohibition seeking to restrain respondent Acting Commissioner of the Workmen's Compensation Commission from exercising jurisdiction over petitioner, a foreign corporation, and from further proceeding with the action taken by claimant Alfonsa Pelingon on the ground that it is beyond its jurisdiction.

On September 2, 1952, Alfonsa Pelingon filed a claim for compensation for herself and her two minor children with the Workmen's Compensation Commission against the Luzon Stevedoring Co., Inc., who refused to entertain the claim on the ground that said company was not the employer of the deceased husband of the claimant. On September 17, 1952, the Workmen's Compensation Commission, believing that the Pacific Far East Line, Inc., a foreign corporation licensed to do business in the Philippines, was not an agent of petitioner with authority to receive service of process, served notice of the claim on an official of said foreign corporation who in turn forwarded the notice to petitioner even if the latter was not an agent of, nor was it authorized to accept service of process in behalf of, said petitioner.

On October 10, 1952, petitioner filed a special appearance with the Workmen's Compensation Commission for the sole purpose of asking for the dismissal of the claim on the ground that the Commission had no jurisdiction over it because it is a foreign corporation not domiciled

in this country, it is not licensed to engage and is not engaging in business therein, has no office in the Philippines, and is not represented by any agent authorized to receive summons or any other judicial process in its name and behalf.

On October 16, 1952, counsel for Alfonsa Pelingon filed a memorandum in support of their contention that the Workmen's Compensation Commission has jurisdiction over the petitioner. On October 25, 1952, the referee assigned to act on the claim by the Workmen's Compensation Commission entered an order holding that considering "the failure of the Pacific Micronisian Lines, Ltd., to contest or disauthorize the acts of the Luzon Stevedoring Company, Inc., when the latter signed as agent of the said shipping company on July 18, 1951 in employing the deceased, Luceno Pelingon, there remains no other alternative for this Commission but to hold that it has acquired jurisdiction to hear and determine the compensation claim of the widow, Alfonsa Pelingon, against the Pacific Micronisian Lines, Ltd., * * *."

On November 7, 1952, petitioner filed a motion for reconsideration, which was vigorously opposed by counsel for the claimant, and on January 6, 1953, the referee issued an order denying the motion for reconsideration and holding that "Above all rules, court decisions and international commitments under the 'Conflict of Laws', * * * this Commission is duty bound to uphold and keep inviolate the rights to compensation of any Filipino citizen against any foreign corporation, even if the concerned corporation is not registered or not duly licensed to do business in the Philippines."

On January 31, 1953, petitioner filed a petition for review of the orders of the referee and on August 15, 1953, N. Baens del Rosario, Acting Commissioner of the Workmen's Compensation Commission, rendered a decision reaffirming and upholding the views expressed by the referee and ordering that the case be tried on the merits. Hence, the present petition seeking to enjoin the Commission from acting on the claim on the ground that it has no jurisdiction over the petitioner.

In their answer to the petition, respondents set up the following

special defenses: (1) Under the law, the Workmen's Compensation Commission has jurisdiction to hear and determine compensation cases even if the injury or death occurs outside the Philippines; (2) petitioner, in entering into a contract of employment with the deceased through a local agent, has impliedly submitted itself to the jurisdiction of our courts; (3) even granting that the two domestic corporations employed by petitioner in connection with the contract of employment were never authorized to act as its agents in the Philippines, the fact that petitioner allowed them to act as though they had power to represent it makes petitioner liable under the contract of employment with the deceased; and (4) petitioner may be considered as having engaged in business in the Philippines because the contract of employment entered into by it with the deceased was in furtherance of its ordinary business as common carrier.

The only issue posed in this petition for prohibition is whether the service of process made by the Workmen's Compensation Commission on the Pacific Far East Line, Inc., an agent of petitioner, is sufficient under our rules to confer jurisdiction upon the Commission over petitioner in passing upon the claim of respondent Alfonso Pelingon.

The pertinent rule to be considered is section 14, Rule 7, of the Rules of Court, which refers to service upon private foreign corporations. This section provides:

> "SEC. 14. *Service upon private foreign corporations*.—If the defendant is a foreign corporation, or a non-resident joint stock company or association, doing' business in the Philippines, service may be made on its resident agent designated in accordance with law for that purpose, or, if there be no such agent, on the government official designated by law to that effect, or on any of its officers or agents within the Philippines."

The above .section provides for three modes of effecting services upon a private corporation, namely: (1) by serving upon the agent designated in accordance with law to accept service of summons; (2) if

there be no special agent, by serving on the government official designated by law to that effect; and (3) by serving on any officer or agent within the Philippines. But, it should be noted, in order that services may be effected in the manner above stated, said section also requires that the foreign corporation be one which is *doing business in the Philippines.* This is a *sine qua non* requirement. This fact must first be established in order that summons can be made and jurisdiction acquired. This is not only clear in the rule but is reflected in a recent decision of this Court. We there said that "as long as a foreign private corporation does or engages in business in this jurisdiction, it should and will be amenable, to process and the jurisdiction of the local courts." (General Corporation of the Philippines, et al. vs. Union Insurance Society of Canton, Ltd., et al.,[*] 49 Off. Gaz., 73, September 14, 1950.)

The question that now arises is: Since petitioner is a private foreign corporation not doing business in the Philippines in contemplation of the rule, can it be brought within the jurisdiction of our courts by serving the .summons upon the agent who represented it in entering into the contract of employment with the deceased Luceno Pelingon? This would bring us into the determination of the meaning, extent, and scope of the words "doing business" used in our rules in the light of precedents here and other jurisdictions where similar provisions regarding summons on private foreign corporation had been adopted.

For the purposes of this case, it would suffice for us to quote hereunder some leading authorities interpreting the meaning, extent, and scope of the words "doing business" from well-known American treatisers on corporations:

> "The statutes usually prohibit in broad terms foreign corporations from 'doing business' in the state until they have complied with the statutory requirements. These requirements have already been noticed. The laws of a state can not become operative upon a foreign corporation until it comes within the state to 'do business'.

The controversies have arisen in the main over what constitutes 'doing business' in violation of these statutes. No difficulty is encountered and controversies do not frequently arise where the violation is open and notorious. * * * Generally what constitute 'doing business' depends upon the terms of the statute and the judicial construction they have received in the several states. *However, such statutes as usually construed do not apply to the doing of a single act, but rather to the carrying on of a continued business.* Such a statute has been properly held to apply, only to the carrying on of the ordinary business of such corporations within the state. The expression 'doing business' is not to be given a strict and literal construction so as to make it apply to any corporate dealing. The authorities turn rather upon the character than upon the amount of business done. *This is seen from the fact that the particular transactions are frequently described as 'independent,' 'isolated,' 'occasional,' 'incidental' and 'casual', not of a character to indicate a purpose to engage in business within the state. And to constitute doing business within the meaning of such statutes there must be doing of some of the works or an exercise of some of the functions, for which the corporations was created.*" (Thompson on Corporations, Vol. 8, 3rd Ed., pp. 843-844.) (Italics supplied)

"Constitutional
and statutory provisions prescribing the terms and conditions upon which foreign corporations shall be permitted to do business in the state do not, as a rule, define the term or specify the particular acts or transactions falling within it. Where, however, there is a statutory statement on the matter, it must control and direct the force of the decisions. Otherwise the question is ordinarily one of judicial determination and primarily one of fact. All the combine acts of the foreign corporations in the state must be considered, and every circumstance is material which indicates a purpose on the part of the corporation to engage in some part of its regular business in tne state. In consequence, it is difficult and perhaps impossible to lay down any rule of universal application to determine when a foreign corporation is doing business in a particular state within the purview

> of the provisions in question. Each case must turn upon its own peculiar facts and upon the language in which the applicable constitutional or statutory provision is couched."
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> "The authorities are to the effect that where the corporation enters into a single agreement, or engages in some other isolated business act or transaction within a particular state, with no intention to repeat the same or make such state a basis for the conduct of any part of its corporate business, such corporation cannot be said to be doing business or transacting business within the State, within the meaning of the actual statutory provisions regarding the transaction of business by foreign corporations." (Fletcher's Cyclopedia Corporations, Vol. 17, pp. 465-466, 478.)
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> "Consonant with the general doctrine that the doing of business imports the engagement by a foreign corporation in some continuing activity in the state, or the transaction of some substantial part of its ordinary business there, it is a generally accepted rule that single or isolated acts, contracts, or transactions of such corporations in the state will not ordinarily be regarded as a doing or carrying on of business therein, even though they may be said to fall within the usual or customary business of the corporation. Under this rule, many particular acts and transactions have been held not to amount to doing business in the state." (23 Am. Jur. 353-854.)

And in the recent case of General Corporation of the Philippines, et al., vs. Union Insurance Society of Canton, Ltd., *supra*, this Court, in giving recognition to the import of the words "doing business" as interpreted by American authorities, said:

> "But, was the Firemen's Fund Insurance Co. in September, 1946, then doing business in the Philippines, within legal contemplation? It is a rule generally accepted that one single or isolated business transaction does not constitute 'doing business' within the meaning of the law, and that transactions which are

> occasional, incidental and casual, not of a character to indicate, a purpose to engage in business do not constitute the doing or engaging in business contemplated by law. In order that a foreign corporation may be regarded as doing business within a State, there must be continuity of conduct and intention to establish a continuous business, such as the appointment of a local agent, and "not one of a temporary character. (Thompson on Corporations, Vol. 8, 3rd edition, pp. 844-847 and Fisher's Philippine Law of Stock Corporation p. 415)."

Now, assuming *arguendo* that the Luzon Stevedoring Co., Inc., acted as agent of the Pacific Micronisian Line, Inc., petitioner herein in securing the services of Luceno Pelingon, is this act, standing alone, sufficient to make petitioner amenable to process in this jurisdiction? Can this act be considered as part of the business of petitioner or amount to its doing business in the Philippines in contemplation of the rule?

It should be observed that petitioner is a corporation exclusively engaged in the business of carrying goods and passengers by sea between the territory of Guam and the Trust Territories of the Pacific Islands and for that purpose it was operating a fleet of vessels plying between those ports or territories. Petitioner has no property or office in the Philippines, nor is it licensed to do business in the Philippines. And the only act it did here was to secure the services of Luceno Pelingon to act as cook and chief steward in one of its vessels authorizing to that effect the Luzon Stevedoring Co., Inc., a domestic corporation, and the contract of employment was entered into on July 18, 1951. It further appears that petitioner has never sent its ships to the Philippines, nor has it transported nor even solicited the transportation or passengers and cargoes to and from the Philippines. In other words, petitioner engaged the services of Pelingon not as part of the operation of its business but merely to employ him as member of the crew in one of its ships. That act apparently is an isolated one, incidental, or casual, and "not of a character to indicate a purpose to engage in business" within the meaning of the rule. It follows that, even if the Luzon Stevedoring Co., Inc. may be considered as an agent

of petitioner for the purposes of the contract of employment, service or process upon it can not confer jurisdiction upon the Workmen's Compensation Commission because of the fact that petitioner is not doing business in the Philippines in contemplation of section 14, Rule 7, of our Rules of Court.

Much capital is made of the fact that petitioner has employed the Far East Line Inc., in notifying the widow of the death of her husband and in delivering to her a sum of money which petitioner has deemed proper to give as an aid to defray the funeral expenses of her husband, which petitioner considered as a pure act of humanity and never intended as a business transaction, respondents contending that such employment has had the effect of establishing the relation of principal and agent which would confer jurisdiction upon the Workmen's Compensation Commission over petitioner. This contention can not likewise be given weight in the light of what we have already stated that such act, being isolated, occasional, or casual, cannot, by any process of reasoning, be considered as part of the operation of the business of petitioner.

We are not unmindful of the provisions of the Workmen's Compensation Act (section 5, Act No. 3428), which say that "Employers contracting laborers in the Philippine Islands for work outside the same *may stipulate* with such laborers that the remedies prescribed by this Act shall apply exclusively to injuries received outside the Islands through accidents happening in and during the performance of the duties of employment;" but these provisions are merely directory and can only apply when so stipulated in the contract of employment. (Italics supplied, no such stipulation was included in the contract under consideration. These provisions only became mandatory upon the approval of Republic Act No. 772 on June 20, 1942.

This mandate of the law cannot therefore apply to the contract in question which was executed on July 18, 1951.

In view of the foregoing, we are persuaded to conclude, much as we sympathize with the claim of the widow, that the Commission has no

jurisdiction over the petitioner and, therefore, the present proceedings cannot continue and should be dismissed.
Petition is granted, without pronouncement as to costs.

Bengzon, Padilla, Montemayor, Reyes, A,, Jugo, Concepcion, and *Reyes, J. B. L., JJ.*, concur.

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[*] 87 Phil., 313.

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