

MAFINCO TRADING CORPORATION, PETITIONER, VS. THE HON. BLAS F. OPLE, IN HIS CAPACITY AS SECRETARY OF LABOR, THE NATIONAL LABOR RELATIONS COMMISSION, RODRIGO REPOMANTA AND REY MOR...

G.R. No. L-37790. March 25, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Mafinco Trading Corporation (Mafinco for short) filed these special civil actions of certiorari and prohibition in order to annul the decision of the Secretary of Labor dated April 16, 1973. In that decision the Secretary reversed an order of the old National Labor Relations Commission (NLRC) and held that the NLRC had jurisdiction over the complaint lodged by the Federacion Obrera de la Industria Tabaguera y Otros Trabajadores de Filipinas (FOITAF) against Mafinco for having dismissed Rodrigo Repomanta and Rey Moralde (NLRC Case No. LR-086). The voluminous record reveals the following facts:

Peddling contracts and their termination. – On April 30, 1968 Cosmos Aerated Water Factory, Inc., hereinafter called Cosmos, a firm based at Malabon, Rizal, appointed Mafinco as its sole distributor of Cosmos soft drinks in Manila. On May 31, 1972 Rodrigo Repomanta and Mafinco executed a peddling contract whereby Repomanta agreed to "buy and sell" Cosmos soft drinks. Rey Moralde entered into a similar contract. The contracts were to remain in force for one year unless sooner terminated by either party upon five days' notice to the other.[1] The contract with Repomanta reads as follows:

"PEDDLING CONTRACT

"KNOW ALL MEN BY THESE PRESENTS:

"This CONTRACT, entered into by and between:

"The MAFINCO TRADING CORPORATION, a domestic corporation duly organized and existing under the laws of the Philippines, doing business at Rm. 715 Equitable Bank Bldg., Juan Luna St., Manila, under the style MAFINCO, represented in this act by its General Manager, SALVADOR C. PICA, duly authorized for the purpose and hereinafter referred to as MAFINCO, and RODRIGO REPOMANTA, married/single, of legal age, and a resident of 70-D Bo. Potrero, MacArthur Highway, Malabon, Rizal hereinafter referred to as PEDDLER, WITNESSETH:

"WHEREAS, MAFINCO has been appointed as the exclusive distributor of 'COSMOS' Soft Drink Products for and within the City of Manila;

"WHEREAS, the PEDDLER is desirous of buying and selling in Manila the 'COSMOS' Soft Drink Products handled by MAFINCO;

"NOW THEREFORE, for and in consideration of the foregoing premises and the covenants and conditions hereinafter set forth, the parties hereto has agreed as follows:

"1. That in consideration of the competence of the PEDDLER and his ability to promote mutual benefits for the parties hereto, MAFINCO shall provide the PEDDLER with a delivery truck with which the latter shall exclusively peddle the soft drinks of the former, under the terms set forth herein;

"2. The PEDDLER himself shall, carefully and in strict observance to traffic regulations, drive the truck furnished him by MAFINCO or should he employ a driver or helpers such driver or helpers shall be his employees under his direction and responsibility and not that of MAFINCO, and their compensation including salaries, wages, overtime pay, separation pay, bonus or other remuneration and privileges shall be for the PEDDLER'S own account; The PEDDLER shall likewise bind himself to comply with the provisions of the Social Security Act and all the applicable labor laws in relation to his employees;

"3. The PEDDLER shall be responsible for any damage to property, death or injuries to persons or damage to the truck used by him caused by his own acts or omission or that of his driver and helpers;

"4. MAFINCO shall furnish the gasoline and oil to run the said truck in business trips, bear the cost of maintenance and repairs of the said truck arising from ordinary wear and tear;

"5. The PEDDLER shall secure at his own expense all necessary licenses and permits required by law or ordinance and shall bear any and all expenses which may be incurred by him in the sales of the soft drink products covered by the contract;

"6. All purchases by the PEDDLER shall be charged to him at a price of P2.52 per case of 24 bottles, ex-warehouse; PROVIDED, However, that if the PEDDLER purchases a total of not less than 250 cases a day, he shall be entitled further to a Peddler's Discount of P11.00;

"7. Upon the execution of this contract, the PEDDLER shall give a cash bond in the amount of P1,500.00 against which MAFINCO shall charge the PEDDLER with any unpaid account at the end of each day or with any damage to the truck or other account which is properly chargeable to the PEDDLER; within 30 days after the termination of this contract, the cash bond, after deducting proper charges, shall be returned to the PEDDLER;

"8. The PEDDLER shall liquidate and pay all his accounts to MAFINCO'S authorized representative at the end of each day, and his failure to do so shall subject his cash bond at once to answer for any unliquidated account/s;

"9. This contract shall be effective only up to May 31, 1973 and supersedes any or all other previous contracts, if any, that may have been entered into between the parties; However, either of the parties may terminate the same upon five (5) days prior notice to the other;

"10. Upon the termination of this contract, unless the same is renewed, the delivery truck and such other equipment furnished by MAFINCO to the PEDDLER shall be returned by the latter in good order and workable condition, ordinary wear and tear excepted, and shall promptly settle his outstanding account if any, with MAFINCO;

"11. To assure performance by the PEDDLER of his obligation to his employees under the Social Security Act, the applicable labor laws and for damages suffered by third persons, PEDDLER shall furnish a performance bond of P1,000.00 in favor of MAFINCO from a SURETY COMPANY acceptable to MAFINCO.

"IN WITNESS WHEREOF, the parties hereto have signed this instrument at the City of Manila, Philippines, this May 31, 1972.

MAFINCO TRADING CORPORATION

By:

(Sgd.) RODRIGO REPOMANTA

(Sgd.) SALVADOR C. PICA

Peddler

General Manager"

(Witnesses and notarial acknowledgment are omitted)

On December 7, 1972 Mafinco, pursuant to section 9 of the contract, terminated the same. The notice to Repomanta reads as follows:

"Dear Mr. Repomanta:

This has reference to the Peddling Contract you executed with the Mafinco Trading Corporation on May 31, 1972. Please be informed that in accordance with the provisions of paragraph 9 of the said peddling contract, we are hereby serving notice of termination thereof effective on December 12, 1972.

Yours truly,

(Sgd.) SALVADOR C. PICA

General Manager"

Complaints of Repomanta and Moralde and NLRC's dismissal thereof. – Four days later or on December 11, 1972 Repomanta and Moralde, through their union, the FOITAF, filed a complaint with the NLRC, charging the general manager of Mafinco with having violated Presidential Decree No. 21, issued on October 14, 1972, which created the NLRC and which was intended "to promote industrial peace maximize productivity and secure social justice for all". The brief complaint reads as follows:

"Hon. Amado Gat Inciong, Chairman
National Labor Relations Commission
Phoenix Bldg., Intramuros, Manila

"Sir:

Pursuant to the Presidential Decree No. 21, Section 2 and 11, the FOITAF files a complaint against SALVADOR C. PICA, General Manager of MAFINCO TRADING CORP. located at Room 715, Equitable Bank Bldg., Juan Luna, Manila, for terminating union officials (sic), Mr. Rodrigo Refumanta and Mr. Rey Moralde, which is a violation of the above mentioned decree.

"Notice of termination is herewith attach (sic).

"We anticipate your due attention and assistance.

Respectfully yours,

(Signed by National Secretary of FOITAF)"

Mafinco filed a motion to dismiss the complaint on the ground that the NLRC had no jurisdiction because Repomanta and Moralde were not its employees but were independent contractors. It stressed that there was termination of the contract, not a dismissal of an employee. In Repomanta case, it pointed out that he was registered with the Social Security System as an employer who, as a peddler, paid premiums for his employees; that he secured the mayor's permit to do business and the corresponding peddler's license and paid the privilege tax and that he obtained workmen's compensation insurance for his own employees or helpers. It alleged that Moralde was in the same situation as Repomanta.

Mafinco further alleged that the Bureau of Labor Relations denied the application of peddlers for registration as a labor union because they were not employees but employers in their own right of delivery helpers (Decision dated January 4, 1966 by the Registrar of Labor Organizations in Registration Proceeding No. 4, In the Matter of Cosmos Supervisors Association-PTGWO); that the Court of Industrial Relations in Case No. 4399-ULP, Cosmos Supervisors' Association-PTGWO vs. Manila Cosmos Aerated Water Factory, Inc., held in its decision dated July 17, 1967 that the peddlers were not employees of Cosmos, and that the Court of Appeals held in Rapajon vs. Fong Kui and Figueras vs. Asierto, CA-G.R. No. 19477-R and 21397-R, March 18, 1958 that the delivery helpers of the peddlers were not employees of Cosmos, a ruling which this Court refused to review (L-14072-74, Rapajon vs. Fong Kui, Resolution dated July 16, 1958).

The complaint was referred to a fact finder who in a lengthy report dated January 22, 1973 found, after "exhaustively and impartially" considering the contentions of the parties, that the peddlers were employers or "independent businessmen", as held by the Court of Industrial Relations and the Court of Appeals, and that that holding has the force of res judicata. The fact finder recommended the dismissal of the complaint.

The old NLRC, composed of Amado G. Inciong, Diego P. Atienza and Ricardo O. Castro, adopted that recommendation in its order dated February 2, 1973. That order, which analyzes the peddling contract and reviews the court rulings on the matter, is quoted below:

"The question of whether peddling contracts of the kind entered into between the parties give rise to an employer-employee relationship is not new. Nor are the contracts themselves of recent vintage.

"For at least twenty years respondent MAFINCO and its predecessor and/or principal, the Manila-Cosmos Aerated Water Factory, have entered into contracts with peddlers, under the terms of which the latter buy from the former at a special price, and sell in Manila, the former's soft drink products. The distributor provides the peddler with a delivery truck with the distributor answering for the cost of fuel and maintenance. If a peddler buys a certain number of cases or more a day, he is entitled to a fixed amount of peddler's discount.

"The peddler himself drives the truck but if he engages a driver or helpers, the latter are his employees and he assumes all the responsibilities of an employer in relation to them. He also obtains at his own expense all licenses and permits required by law of salesmen.

"The peddler clears his accounts with the distributor at the end of each day, and unpaid accounts are charged

against the cash deposit or bond which he gives the distributor upon the execution of the peddling contract. He answers for damages caused by him or his employees to third persons.

"Ruling upon this type of contracts, and the practices and relationships that attended its implementation, the Court of Appeals, in CA-G.R. No. 19477-R, said that it did not create a relationship of employer and employee; that the peddlers under such contract were not employees of the manufacturer or distributor, and accordingly dismissed the complaints in the said case. (The peddler-complainants in that case were claiming overtime pay and damages, among others.) Elevated to the Supreme Court on review (G. R. Nos. L-14072 to L-14074, 2 August 1958), the decision of the Court of Appeals was in effect affirmed, for the petition for review was dismissed by the Supreme Court 'for being factual and for lack of merit.'

"The Court of Industrial Relations is of the same persuasion. After inquiring extensively into substantially the same terms and conditions of peddling contracts and the practices and relationships that went into their implementation, the Court said in Case No. 4399-ULP that the peddlers of the Manila-Cosmos Aerated Water Factory were not employees of the latter.

"These precedents apply squarely to the case at hand. The complainants here have not shown that their peddling contracts with the respondent differ in any substantial degree from those that were at issue in the Court of Industrial Relations, the Court of Appeals and the Supreme Court in the cases cited above. Indeed, a comparison between the contracts involved in those cases and those in the instant litigation do not show any difference that would warrant a different conclusion than that reached by those courts. If at all, the additional stipulations in the present contracts strengthen the position that the complainant peddlers are independent contractors or businessman, not employees of the respondent.

"Nor has there been shown any substantial change in the old practices of peddlers vis-a-vis the distributor or manufacturer. The points raised by the complainants in their pleadings regarding these practices were extensively discussed by the CIR in the ULP case above referred to.

"We are not prepared to depart from this rule of long standing. It is the law of the case.

"We therefore hold that the complainants in this case were not employees of MAFINCO and Presidential Decree No. 21 does not apply to them."

Complainants' appeal and the Labor Secretary's decision that they were employees of Mafinco. – Complainants Repomanta and Moralde appealed to the Secretary of Labor. They argued that the NLRC erred (1) in holding that they were independent contractors and not employees; (2) in relying on the peddler's contract to determine the existence of employer-employee relationship; (3) in anchoring its decisions on precedents which have only persuasive force and which did not rule squarely on the issue of employer-employee relationship, and (4) in dismissing their complaint.

As stated at the outset, the Secretary in his decision reversed the NLRC order. He ruled that Repomanta and Moralde were employees of Mafinco and that, consequently, the NLRC had jurisdiction over their complaint. The Secretary directed the NLRC to hear the case on the merits.

The Secretary found that the complainants "were driver-salesmen of the company, driving the trucks and distributing the products of the company" and that they were not independent contractors because they had no capital of their own. That finding was based on the following considerations:

"(1) That the contracts are identical; (2) that the complainants were originally 'plant drivers' of the company; (3) that the complainants had no capital of their own; (4) that their delivery trucks were provided by the company; (5) that the use of the trucks were 'exclusively' for peddling the products of the company; (6) that they were required to observe regulations; (7) that they were required to drive the trucks; (8) that the company furnished the gasoline and oil to run the said trucks in business trips; (9) that the company shouldered the cost

of maintenance and repair of the said trucks arising from ordinary wear and tear; (10) that the company required them to secure the necessary licenses and permits; (11) that the company prohibited them from selling the company's products higher than the fixed price of the company; and (12) that they and their helpers were paid on commission basis."

The Secretary relied on this Court's ruling that a person who possesses no capital or money of his own to pay his obligations to his workers but relies entirely upon the contract price to be paid by the company, falls short of the requisites or conditions necessary for an independent contractor (*Mansal vs. Gocheco Lumber Co.*, 96 Nil. 941).

He observed that "behind the peddling cloak there was in fact employee-employer relationship". He said:

"While, generally, written employment contracts are held sufficient in determining the nature of employment, such contracts, however, cannot be always held conclusive where the actual circumstances of employment indicate otherwise. For example, some employers, in order to avoid or evade coverage of the Workmen's Compensation Act, enter into pseudo contracts with their employees who are named as 'employers' or 'independent contractors'. Such 'written contracts as distinguished from oral agreements, purporting to make persons independent contractors, no matter how 'adroitly framed', can be carefully scanned and the real relationship ascertained' (*Glielmi vs. Netherlands Dairy Co.*, 254 N.Y. 60 (1930), *Morabe & Inton*, Workmen's Compensation Act, p. 69).

"If the Peddling Contract were carefully scanned, the conclusion may be drawn that the contract is but a device and subterfuge to evade coverage under the labor laws. There is more than meets the eye in item 2 of the Peddling Contract which required the peddlers to do that which the law intends the employer to have done.

"In fact, such contracts, as the one in question, exempting or tending to exempt the employers from their legal obligations to their workers are null and void under Sec. 7 of the Workmen's Compensation Act, as amended, which states:

'Any contract, regulation or device of any sort intended to exempt the employer from all or part of the liability created by this Act shall be null and void.'

"To rule otherwise would be to open the floodgate to employers in this territory to evade liabilities to their workers by simply letting contracts for the doing of their business. 'Such construction could not only narrow the provisions of the Act, but would defeat its intent and purposes in their entirety.' (*Andoyo vs. Manila Railroad Co.*, *supra*)."

The motion for the reconsideration of the decision was denied by the Secretary in his order of July 16, 1973.

The Committee's report that the peddlers are independent contractors. – On July 25, 1973 Mafinco moved for the clarification of the decision by inquiring whether the question of employee-employer relationship would be included in the hearing on the merits.

Action on the said motion was deferred until the receipt of the report of the committee created to study the status of peddlers of Cosmos products. On September 3, 1973 the Secretary directed the committee composed of Ernesto Valencia, Vicente R. Guzman and Eleo Cayapas to conduct an in-depth study of the actual relationship existing between the Cosmos Bottling Co. and its peddlers.

The committee in its report dated September 17, 1973 arrived at the conclusion that the relationship actually existing between Cosmos and Mafinco, on one hand, and the peddlers of Cosmos products, on the other, is not one of employer and employee and "that the peddlers are independent contractors".

The committee after a perusal of the record of NLRC Case No. LR-086 interviewed twenty peddlers, an officer of Cosmos and an officer of Mafinco. In the conduct of the interviews it "observed judicious adherence to

impartiality and open-mindedness but with a modicum of friendliness and much of informality". The report reads in part as follows:

"(1) Implications of the 'Agreement to Peddle Soft Drinks'. – Of vital importance to the mind of your Committee is the fact that this Agreement entered into between Cosmos and the Peddlers has, as its prefatory statement but before the enumeration of its terms and conditions, the following:

'That the Peddler has agreed to buy and sell the products of the MANUFACTURER under the following conditions:'

Similarly, the 'Peddling Contract' entered into between Mafinco and the Peddlers, contains peculiarly identical wordings, viz:

'WHEREAS, the PEDDLER is desirous of buying and selling in Manila the 'COSMOS' Soft Drink Products handled by MAFINCO:'

"It is immediately clear from the beginning that the relationship that the parties would want to establish between them is one of buyer and seller of the Cosmos Products. Moreover, this type of Agreement or Contract has its roots since some twenty (20) years earlier, with modifications only with respect to the factory price, the amount of over prices or what the peddlers refer to as commission, and the amount pertaining to the dealer's discount, which appear to vary depending upon the market demands.

"We are, however, tempted to argue, as did the Peddlers, that this Agreement or Contract might have been contrived as a device to evade responsibilities imposed upon Cosmos or Mafinco under our labor laws as well as under other national or municipal laws. Nevertheless, a close reading thereof will show a flaw in this line of insistence, when we consider that this type of Agreement or Contract has been substantially the same since the beginning of this relationship. More than this, it has withstood the test of time by pronouncements of the CIR in ULP Case No. 4399, 'Cosmos Supervisors Association vs. Manila Cosmos Aerated Water Factory, Inc.' July 17, 1967; by judicial review of the Court of Appeals in CA-G.R. Nos. 19477-R, 19478-R and 21397-R, 'Eustaquio Repajon, et al. vs. Manila Cosmos Aerated Water Factory, Inc.', promulgated on March 18, 1958; and impliedly by resolution of the Supreme Court in G.R. Nos. L-14072 to L-14074 when the Court of Appeals cases were appealed to that Tribunal.

"But the more basic and indeed forceful ratiocination in favor of the validity of the Agreement or Contract which covenants that the relationship between the Peddlers and Cosmos or Mafinco is one of buyer and seller of the Cosmos Products on the part of the Peddlers, and, therefore, one of an independent contractorship, finds substantive support in our Civil Code which provides: (here arts. 1370 and 1374 of the Civil Code regarding interpretation of contracts are quoted).

"For its adjective interpretation, our Rules of Court specifically provides: (Here parol evidence rule in sec. 7, Rule 130, Rules of Court is quoted).

"It must be restated at this point for purposes of emphasis that the validity of the aforesaid Agreement or Contract has not been seriously assailed by the parties. In fact, their rallying cause was the Agreement or Contract itself. To strengthen these provisions of the Civil Code and the Rules of Court, stabilized jurisprudence have held that it is elementary rule of contract that the laws in force at the time the contract was made must govern its interpretation and application; that the terms of the contract, where unambiguous, are conclusive, in the absence of averment and proof of mistake, the question being, not what intention existed in the minds of the parties, but what intention is expressed by the language used; that interpretation of an agreement does not include its modifications or the creation of a new or different one; that Courts cannot make for the parties better agreements than they themselves have been satisfied to make, or rewrite contracts because they operate harshly or inequitably as to one of the parties; and that there is no right to interpret an agreement as meaning something different from what the parties intended as expressed by the language they saw fit to

employ.

* * * * *

"(1) The selection and engagement of the employees. – Nothing in the Agreement to Peddle Soft Drinks in the case of Cosmos and in the Peddling Contract in the case of Mafinco, will reveal and we cannot logically infer therefrom, that the Peddlers were engaged as employees of Cosmos or Mafinco. The selection of the Peddlers who will buy and sell Cosmos products is left entirely between the parties; it is not the sole prerogative of either one of the parties. There must be meeting of the minds in order to consummate the Agreement or Contract and no evidence of coercion or imposition of the will of one over the other is evident or apparent from the Peddlers' or Managements' interviews had by the members of your Committee. This test, therefore, cannot be invoked by the Peddlers in their attempt at presenting arguments to the effect that they are employees of Cosmos or Mafinco. Upon the other hand, the Agreement or Contract itself provides that the Peddlers can hire helpers and drivers under their direction and responsibility, and to whom they shall be liable for payment of 'salaries, wages, overtime pay, separation pay, bonus and other remuneration and privileges.' As a matter of fact, drivers were employed by Mrs. Victoria Ariz and M. Fong Kui, who are peddlers in their own right. This evidently shows the discretion granted the peddlers to hire employees of their own.

"(2) The payment of wages. – On the basis of the clear terms of the Agreement or Contract, no mention is made of the wages of the Peddlers; neither can an inference be made that any salary or wage is given to Peddlers. In the interviews, however, with the Peddlers, they vehemently take the position that the 'dealer's discount' which was given to them at the rate of P11.50 in excess of 200 cases of Cosmos products they sell a day, constitutes their 'wages'. The term 'wages' as defined in Section 2 of the Minimum Wage Law (Rep. Act No. 602, as amended) is as follows:

'(g) 'Wage' paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done or for services rendered or to be rendered, and includes the fair and reasonable value, as determined by the Secretary of Labor, of board, lodging, or other facilities customarily furnished by the employer to the employee. * * *.'

Section 10 (k) of the same law provides as follows:

'(k) Notification of wage conditions. – It shall be the duty of every employer to notify his employees at the time of hiring of the wage conditions under which they are employed, which shall include the following particulars:

'(1) The rate of wages payable;

'(2) The method of calculation of wages;

'(3) The periodicity of wage payment; the day, the hour and place of payment; and

'(4) Any change with respect to any of the foregoing items.'

"To the Committee's mind, all these requirements have not been shown to exist in the relationship between the Peddlers and the Cosmos or Mafinco. If it were true that the Peddler's dealer's discount' is in the nature of wages, then they must be notified fully of the wage conditions. Moreover, such 'wages' must be paid to them periodically at least once every two weeks or twice a month. (See Par. (h) of Sec. 10 or Act No. 602, as amended). The absence of such notification to the Peddlers and the lack of periodicity of such payment in the manner and procedure contemplated in the Minimum Wage Law destroy, quite evidently, their allegation that the 'dealer's discount' was their 'wage'. Take note that the 'dealer's discount' was given only about a week after the end of the

month, and from the evidence submitted by Cosmos, it appears clearly that the 'dealer's discount' varies from month to month. Thus, the earnings of Mr. Salvador Abonales, who is a Peddler, from January to August, 1973, amounted to P12,520.70, while that of Mr. Alberto S. Garcia, for the same period, amounted to P13,633.42, and their earnings every month vary decisively. This factor defeats factually the insistence of the Peddlers that they are employees of Cosmos or Mafinco.

"Upon the other hand, the Peddlers' declarations reveal that the wages of their helpers are taken from the overprice or what is ordinarily termed as 'commission' of ten centavos (P0.10) per case that they get -- a factor which indicates that they are themselves employers of their helpers. In addition, the Peddlers are reported as Employers of these helpers with the Social Security System, and that they also purchase workmen's compensation policies in their names as Employers of their own helpers for purposes of workmen's compensation insurance of their liabilities, which are all in accordance with the terms and conditions of the Agreement or Contract and indicative of an attribute of one who is an independent merchant.

"(3) The power of dismissal. – In the case of 'Rodrigo Repomanta and Rey Moralde vs. Mafinco Trading Corp.,' NLRC Case No. LR-086, which served as one of our bases for this study, the complainants therein appear to have complained before the National Labor Relations Commission for being allegedly illegally dismissed or that their services were terminated without cause. A search of the alleged dismissal however shows that the identical letters both dated December 7, 1972 addressed to the said complainants were not actually what complainants pictured them to be, but the termination of the peddling contract in accordance with paragraph 9 of said Contract.

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"Thus, Complainants' services were not terminated, only their Peddling Contracts with Mafinco were. The power of dismissal is not lodged with either Mafinco or Cosmos, for based on the Agreement or Contract none whatsoever exists. Certainly, to attribute a power of dismissal to Cosmos or Mafinco where none exists is careless imprudence and a height of inaccuracy. This power of dismissal by Cosmos or Mafinco is not countenanced in the Agreement or Contract.

"There is, however, an allegation by the Peddlers that the hiring and firing of the helpers ultimately rest on Cosmos or Mafinco. This allegation nevertheless, is controverted by Cosmos and Mafinco. Nonetheless, we checked the basic document – the Agreement or Contract – and we find that the hiring and, impliedly firing, we believe, is a prerogative of the Peddlers and not of Cosmos or Mafinco.

"(4) The power to control the employee's conduct. – From the interviews had by your Committee with both the Peddlers and the representatives of Cosmos and Mafinco, we gather that the following findings on the 'power of control' are substantially correct:

"(a) That the delivery trucks assigned to the Peddlers are available to them early in the morning and are free to get them, which they usually do between 5:30 A.M. to 6:30 A.M. There was no compulsion on the part of the Peddlers to report for work at that time, as in fact, they did not sign any time record. The practice of getting the delivery trucks early in the morning is more beneficial to the Peddlers than to Cosmos or Mafinco since they can finish the peddling of Cosmos products much earlier and spend the rest of the day at their own pleasure. The signing of the 'logbooks' is both pertinent and necessary since the trucks used in the delivery of Cosmos products are owned by Cosmos or Mafinco and are simply utilized by Peddlers as a measure of convenience and for advertising purposes. But peddlers are not precluded from getting trucks of their own should they so desire.

"(b) That liaison officers (supervisors) are assigned by Cosmos or Mafinco in definite areas, routes or zones, not so much of supervision over Peddlers, since their areas, routes or zones were already agreed upon or

pre-arranged among them through the Cosmos Peddlers Association, Inc. of which all Peddlers are members, as principally for market analysis since soft drinks selling is a highly competitive business, and also to inquire or check on sales, and the result of which, report is made direct to the Office of Cosmos or Mafinco.

"(c) That the use of the uniform does not seem to be an imposition by management of Cosmos or Mafinco upon the Peddlers, but a voluntary arrangement among the Peddlers themselves. For, from the documents submitted to this Committee, it appears that the Cosmos Peddlers Association, in a meeting held on August 5, 1967, adopted a resolution to 'always wear their uniform while in the performance of their sales work,' and in their meeting on January 25, 1969, it adopted another resolution penalizing Peddlers who failed to wear their uniform in the amount of P2.00 per violation. Certainly, the resolutions of the Cosmos Peddlers Association, an independent association of Peddlers and duly registered with the Securities and Exchange Commission, and possessing an entirely distinct existence, cannot be taken as impositions from Cosmos or Mafinco.

"(d) That the matter of turning in of sales of collection which, if found short, is charged against the Peddler's cash bond, is to the mind of the Committee, giving effect to the valid terms and conditions of the Agreement or Contract, and also an ordinary business practice which necessarily requires liquidation of the day's accounts. We do not see any evidence of control on the part of Cosmos or Mafinco over the activities, including the sales, of the Cosmos products by the Peddlers themselves who are, apparently, left to their own choices of routes, areas or zones as pre-arranged, with no definite, much less supervised, time schedule.

"(e) That in the matter of reprimand or discipline which the peddlers attempt to project when they failed to report for work, your Committee found no substantial evidence on this point. The evidence shows that the peddlers are free to choose their time. Obviously, any absence that they may incur means so much reduction from their earnings. Thus, if their attention is incidentally called on this matter it is for the observance of their agreements which is present in any contractual relations.

"As to the aspect of employer-employee relation, therefore, between Cosmos or Mafinco and the Peddlers, your Committee does not have sufficient basis to reasonably sustain the stand of the Peddlers that there is such relationship.

"(c) Attributes of an independent contractor. – As a counter-check, as it were, to the issue of employer-employee relationship, your Committee has taken the task of testing such relationship against the attributes of an independent contractor which, from the interviews and documents submitted by the parties, appear to exist on the part of the Peddlers. The earlier case of *Andoyo vs. Manila Railroad Co.*, G.R. No. 34722, promulgated on March 28, 1932, furnishes us the definition of an 'independent contractor.' Our Supreme Court of prewar composition, ruled:

'An independent contractor is one who exercises independent employment and contracts to do a piece of work according to his own methods and without being subject to control of his employer except as to the result of the work. A person who has no capital or money of his own to pay his laborers or to comply with his obligations to them, who files no bond to answer for the fulfillment of his contract with his employer, falls short of the requisites or conditions necessary to classify him an independent contractor.'

These requisites and conditions were reiterated in the post war cases of *Philippine Manufacturing Co., Inc. vs. Geronimo*, G.R. No. L-6968, promulgated on November 29, 1954, and *Koppel (Phil.), Inc. vs. Darlucio, et al.*, G.R. No. L-14903, promulgated on August 29, 1960. Analyzing the definition of 'independent contractor', the following may be gathered from the relationship between the Peddlers, on the one hand, and Cosmos or Mafinco, on the other:

"(1) Peddlers contract to sell and buy Cosmos products from Cosmos or Mafinco, the latter furnishing the delivery truck, but the former sell Cosmos products according to their own methods, subject to the pre-arranged routes, areas and zones, and go back to the Company compound to return the delivery truck and

to make accounting of the day's sales collection at any time in the morning or in the afternoon. Essentially, control, if at all, extends only as to observance of traffic regulations which is inherent in ownership of the delivery truck by Cosmos or Mafinco and the end result which is the liquidation of the sales collection. Control over the details of the Peddlers' sales activities seems to be farfetched in this case.

"(2) Capital or money of the Peddlers' to pay their own helpers is evidently within their prerogative, although it appears that the wages of helpers are uniform at P6.00 per trip. But can we safely say that the cash bond of P1,500.00 by the Peddlers constitute their capital? For big-time businessmen, this small amount may not be considered capital, but when it is taken as a 'deposit on consignment' since the same answers for any deficiencies that the Peddlers may incur during the day's sales collection, then it can be taken to mean 'capital' within its signification that it allocates to every day business dealing. The amount of capital, to us, is immaterial; it is the purpose for which the same is deposited that is most significant.

"(3) The Peddlers are required under the Agreement to Peddle Soft Drinks and Peddling Contract to put up not only the cash bond of P1,500.00, but also a performance bond of P1,000.00 as embodied in said Agreement to Peddle Soft Drinks as follows:

'10. To assure performance by the PEDDLER of his obligation to his employees under the Social Security Act, the applicable labor laws, and for damages suffered by third persons, PEDDLER shall furnish a performance bond of P1,000.00 in favor of the MANUFACTURER from a surety Company acceptable to the MANUFACTURER. And, in case Performance Bond within 30 days from the date of signing of this Contract, such failure shall be sufficient ground for the MANUFACTURER to suspend the business relationship with the Peddler until the Peddler complies with this provision.'

"Again, to the mind of your Committee, the amount of the Performance Bond is not so relevant and material as to the purpose for which the same is executed – which is to assure performance of the Peddlers' obligations as employer of his helpers. This is an attribute of an independent contractor to which the Peddlers are bound under the Agreement or Contract.

"(4) Peddlers are doing business for themselves since they took out licenses in the City of Manila, and have paid their corresponding professional or occupation tax to the Bureau of Internal Revenue. This fact strengthens the Committee findings that the peddlers are carrying on a business as independent merchants."

The Secretary in his resolution of October 18, 1973 ignored the committee's conclusion. He clarified that the NLRC should determine whether the two complainants were illegally dismissed and that the jurisdictional issue should not be taken up anymore.

The instant petition; the issue and the ruling thereon. – Mafinco filed the instant actions on November 14, 1973. It prayed for a declaration that the Secretary of Labor and the NLRC had no jurisdiction to entertain the complaints of Repomanta and Moralde; that the Secretary's decision should be set aside, and that the NLRC and the Secretary be enjoined from further proceeding in NLRC Case No. LR-086.

Parenthetically, it should be noted that under section 5 of Presidential Decree No. 21 the Secretary's decision "is appealable" to the President of the Philippines (Nation Multi Service Labor Union vs. Agcaoili, L-39741, May 30, 1975, 64 SCRA 274). However, under section 22 of the old NLRC regulations, an appeal to the President should be made only "in national interest cases".

On the other hand, judicial review of the decision of an administrative agency or official exercising quasi-judicial functions is proper in cases of lack of jurisdiction, error of law, grave abuse of discretion, fraud or collusion or in case the administrative action or resolution is "corrupt, arbitrary or capricious" (San Miguel Corporation vs. Secretary of Labor, L-39195, May 16, 1975, 64 SCRA 56; Commissioner of Customs vs. Valencia, 100 Phil. 165;

Villegas vs. Auditor General, L-21352, November 29, 1966, 18 SCRA 877, 891).

After the parties had submitted their illuminating memoranda, Mafinco filed a motion in this Court for the dismissal of the complaint in the defunct NLRC on three grounds, to wit: (1) that the NLRC had no jurisdiction over the case because Repomanta and Moralde had not sought reinstatement or backwages; (2) that the employer's failure to secure written clearance from the Secretary of Labor before dismissing an employee might constitute a crime punishable under article 327 of the Labor Code and not mere contempt, as contemplated in section 10 of Presidential Decree No. 21, and (3) that the contempt provisions of that decree were abrogated by the Labor Code.

Mafinco in support of its motion for dismissal cited Quisaba vs. Sta. Ines-Melale Veneer & Plywood, Inc., L-38088, August 30, 1974, 58 SCRA 771, where it was held that the regular court, not the NLRC, has jurisdiction over an employee's action for damages against his employer's act of demoting him.

Respondent Repomanta and Moralde opposed that motion to dismiss. They pointed out that, inasmuch as their complaint is pending in the new NLRC, this Court cannot dismiss it. They also observed that article 327 was eliminated from the Labor Code which, as amended by Presidential Decrees Nos. 570-A, 626 and 643, contains only 292 articles. Article 327 was superseded by article 278 of the amended Code.

The truth is that Mafinco's motion merely adduced additional grounds to support its stand that the Secretary of Labor had no jurisdiction over the complaint of Repomanta and Moralde.

This case was not rendered moot by the Labor Code. Although the Code abolished the old NLRC (Art. 289), it created a new NLRC (Art. 213) and provided that cases pending before the old NLRC should be transferred to, and processed by, the corresponding labor relations division or the new NLRC and should be decided in accordance with Presidential Decree No. 21 and the rules and regulations adopted thereunder (Art. 290, See Sec. 5, P.D. No. 626).

The issue is whether the dismissal of Repomanta and Moralde was within the jurisdiction of the old NLRC. If, as held by the old NLRC, it had no jurisdiction over their complaint because they were not employees of Mafinco but independent contractors, then the Secretary of Labor had no jurisdiction to remand the case to the NLRC for a hearing on the merits of the complaint.

Hence, the crucial issue is whether Repomanta and Moralde were employees of Mafinco under the peddling contract already quoted. Is the contract an employment contract or a contract to sell or distribute Cosmos products?

The question of whether an employer-employee relationship exists in a certain situation has bedeviled the courts. Businessmen, with the aid of lawyers, have tried to avoid the bringing about of an employer-employee relationship in some of their enterprises because the juridical relation spawns obligations connected with workmen's compensation, social security, medicare, minimum wage, termination pay and unionism.

Presidential Decree No. 21 provides:

"SEC. 2. The Commission shall have original and exclusive jurisdiction over the following:

"1) All matters involving employee-employer relations including all disputes and grievances which may otherwise lead to strikes and lockouts under Republic Act No. 875;

*** **

"SEC. 10. The President of the Philippines, on recommendation of the Commission and the Secretary of Labor, may order the arrest and detention of any person held in contempt by the Commission for non-compliance and

defiance of any subpoena, order or decision duly issued by the Commission in accordance with this Decree and its implementing rules and regulations and for any violation of the provisions of this Decree.

"SEC. 11. No employer may shut down his establishment or dismiss or terminate the services of regular employees with at least one year of service, without the written clearance of the Secretary of Labor."

The Solicitor General, as counsel for the old NLRC and the Secretary of Labor, argues that the question of whether Repomanta and Moralde are independent contractors or employees is factual in character and cannot be resolved by merely construing the peddling contracts; that other relevant facts aliunde or dehors the said contracts should be taken into account, and that the contracts were a part of an "intricate network of devices (of Mafinco and Cosmos) developed and perfected through the years to conceal the true nature of their relationship to their sales agents".

Repomanta and Moralde contend that their peddling contracts were terminated because of their activities in organizing a union among the peddlers. Annexed to their memorandum is a joint affidavit of sixty-three sales agents of Cosmos products who described therein the nature of their work, the organization of their union and the dismissal of Repomanta and Moralde. Annexed to their answer is Resolution No. 921 of the Social Security Commission dated November 16, 1972 in SSS Case No. 602 wherein it was held that peddlers and their helpers were employees of Cosmos.

Like the Solicitor General, Repomanta and Moralde harp on the argument that the peddling contracts were a scheme to camouflage an employer-employee relationship and thus evade the coverage of labor laws.

The parties in their pleadings and memoranda injected conflicting factual allegations to support their diametrically opposite contentions. From the factual angle, the case has become highly controversial.

In a certiorari and prohibition case, like the instant case, only legal issues affecting the jurisdiction of the tribunal, board or officer involved may be resolved on the basis of undisputed facts. Sections 1, 2 and 3, Rule 65 of the Rules of Court require that in the verified petition for certiorari, mandamus and prohibition the petitioner should allege "facts with certainty".

In this case the facts have become uncertain. Controversial evidentiary facts have been alleged. What is certain and indubitable is that a notarized peddling contract was executed.

This Court is not a trier of facts. It would be difficult, if not anomalous, to decide the jurisdictional issue on the basis of the parties' contradictory factual submissions. The record has become voluminous because of their efforts to persuade this Court to accept their discordant factual statements.

Pro hac vice the issue of whether Repomanta and Moralde were employees of Mafinco or were independent contractors should be resolved mainly in the light of their peddling contracts. A different approach would lead this Court astray into the field of factual controversy where its legal pronouncements would not rest on solid grounds.

A restatement of the provisions of the peddling contract is necessary in order to find out whether under that instrument Repomanta and Moralde were independent contractors or mere employees of Mafinco.

Under the peddling contract, Mafinco would provide the peddlers with a delivery truck to be used in the distribution of Cosmos soft drinks (Par. 1). Should the peddler employ a driver and helpers, he would be responsible for their compensation and social security contributions and he should comply with applicable labor laws "in relation to his employees" (Par. 2).

The peddler would be responsible for any damage to persons or property or to the truck caused by his own acts or omissions or those of his driver and helpers (Par. 3). Mafinco would bear the cost of gasoline and maintenance of

the truck (Par. 4). The peddler would secure at his own expense the necessary licenses and permits and bear the expenses to be incurred in the sale of Cosmos products (Par. 5).

The soft drinks would be charged to the peddler at P2.52 per case of 24 bottles, ex-warehouse. Should he purchase at least 250 cases a day, he would be entitled to a peddler's discount of eleven pesos (Par. 6). The peddler would post a cash bond in the sum of P1,500 to answer for his obligations to Mafinco (Par. 7) and another cash bond of P1,000 to answer for his obligations to his employees (Par. 11). He should liquidate his accounts at the end of each day (Par. 8). The contract would be effective up to May 31, 1973. Either party might terminate it upon five days' prior notice to the other (Par. 9).

We hold that under their peddling contracts Repomanta and Moralde were not employees of Mafinco but were independent contractors as found by the NLRC and its fact finder and by the committee appointed by the Secretary of Labor to look into the status of Cosmos and Mafinco peddlers. They were distributors of Cosmos soft drinks with their own capital and employees. Ordinarily, an employee or a mere peddler does not execute a formal contract of employment. He is simply hired and he works under the direction and control of the employer.

Repomanta and Moralde voluntarily executed with Mafinco formal peddling contracts which indicate the manner in which they would sell Cosmos soft drinks. That circumstance signifies that they were acting as independent businessmen. They were free to sign or not to sign that contract. If they did not want to sell Cosmos products under the conditions defined in that contract, they were free to reject it.

But having signed it, they were bound by its stipulations and the consequences thereof under existing labor laws. One such stipulation is the right of the parties to terminate the contract upon five days' prior notice (Par. 9). Whether the termination in this case was an unwarranted dismissal of an employee, as contended by Repomanta and Moralde, is a point that cannot be resolved without submission of evidence. Using the contract itself as the sole criterion, the termination should perforce be characterized as simply the exercise of a right freely stipulated upon by the parties.

"In determining the existence of employer-employee relationship, the following elements are generally considered, namely: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employees' conduct – although the latter is the most important element" (*Viaña vs. Al-Lagadan and Piga*, 99 Phil. 408, 411, citing 35 Am. Jur. 445).

On the other hand, an independent contractor is "one who exercises independent employment and contracts to do a piece of work according to his own methods and without being subject to control of his employer except as to the result of the work" (*Mansal vs. P. P. Gocheco Lumber Co.*, supra).

"Among the factors to be considered are whether the contractor is carrying on an independent business; whether the work is part of the employer's general business; the nature and extent of the work; the skill required; the term and duration of the relationship; the right to assign the performance of the work to another; the power to terminate the relationship; the existence of a contract for the performance of a specified piece of work; the control and supervision of the work; the employer's 'powers and duties with respect to the hiring, firing, and payment of the contractor's servants; the control of the premises; the duty to supply the premises, tools, appliances, material and labor; and the mode, manner, and terms of payment.'" (56 C.J.S. 46).

Those tests to determine the existence of an employer-employee relationship or whether the person doing a particular work for another is an independent contractor cannot be satisfactorily applied in the instant case. It should be obvious by now that the instant case is a penumbral, *sui generis* case lying on the shadowy borderline that separates an employee from an independent contractor.

In determining whether the relationship is that of employer and employee or whether one is an independent contractor, "each case must be determined on its own facts and all the features of the relationship are to be considered" (56 C.J.S. 45). We are convinced that on the basis of the peddling contract, no employer-employee relationship was created. Hence, the old NLRC had no jurisdiction over the termination of the peddling contract.

However, this ruling is without prejudice to the right of Repomanta and Moralde and the other peddlers to sue in the proper Court of First Instance and to ask for a reformation of the instrument evidencing the contract or for its annulment or to secure a declaration that, disregarding the peddling contract, the actual juridical relationship between them and Mafinco or Cosmos is that of employer and employee. In that action a full-dress trial may be held and the parties may introduce the evidence necessary to sustain their respective contentions.

Paraphrasing the dictum in the Quisaba case, *supra*, if Mafinco and Cosmos had acted oppressively towards their peddlers, as contemplated in article 1701 of the Civil Code, then they should file the proper action for damages in the regular courts. Where there is a right, there is a remedy (*Ubi jus, ibi remedium*).

WHEREFORE, the decision, order and resolution of the Secretary of Labor in NLRC Case No. LR-086 dated April 16, July 16 and October 18, 1973, respectively, are set aside and the order of the NLRC dated February 2, 1973, dismissing the case for lack of jurisdiction, is affirmed. No costs. So ordered.

Barredo, (Acting Chairman), Antonio, Concepcion, Jr., and Martin, JJ., concur.

Fernando, J., on leave.

Martin, J., was designated to sit in the Second Division.

[1] For comparison, the provisions of the peddling contract involved in *Rapajon vs. Fong Kui* and *Figueras vs. Asierto*, CA-G.R. No. 19477-8, March 18, 1958 are quoted below:

"1. That in consideration of the competence of the PEDDLER and his ability to promote mutual benefits for parties hereto, the MANUFACTURER shall provide the PEDDLER with a delivery truck with which the latter shall peddle the soft drinks of the former, under the terms and conditions of this agreement;

"2. That the MANUFACTURER shall furnish the gasoline and oil to run the said truck in business trips, bear the cost of maintenance and repairs of said truck arising from ordinary wear and tear, but damages to said vehicle caused by the negligence and carelessness of the PEDDLER or his driver shall be for the latter's own responsibility and account;

"3. That the PEDDLER shall provide himself with, and pay on his own account, all the necessary licenses and permits required by law and ordinances, as well as bear any and all such expenses as may be incurred by him in connection with the business of selling, such contributions tips, etc.

"4. That the PEDDLER shall assume the responsibility of driving the truck, or should he employ a driver and helpers, their compensation (salaries, wages, bonus or others) shall be paid by him at his own expense and not chargeable to the MANUFACTURER, and the former shall be liable to the latter for any injury or damage to the MANUFACTURER, caused by any act or acts of the driver or helpers so employed;

"5. That any agreement or contract of employment entered into by the PEDDLER with others shall not bind in any manner the MANUFACTURER unless confirmed in writing by the latter;

"6. That the PEDDLER shall maintain a cash deposit with the MANUFACTURER in the sum of not less than Two HUNDRED PESOS (P200.00) against which the MANUFACTURER may issue soft drinks to the PEDDLER at the price of P1.55 ex-warehouse less four percent (4%) discount per case of 24 bottles, for resale

by the PEDDLER;

"7. That the PEDDLER shall clear every day his account with the MANUFACTURER, and failure to do so shall subject the cash deposit, or so much thereof as may be necessary, to such set offs and payments as shall be proper against the account in question;

"8. That this agreement shall remain in force for a period of ONE (1) year from the date hereof."

The Court of Appeals, through Justice Makalintal and with the concurrence of Justices Fred Ruiz Castro and Dionisio de Leon, held that the truck or delivery helpers of peddlers, who acted as sales agents of Manila Cosmos Aerated Water Factory, were not employees of Cosmos and could not claim wage differentials from it. The helpers were employees of the peddlers.

This Court in its resolution of July 14, 1958 in L-14072, Rapajon vs. Fong Kui, denied the petition for the review of the said ruling.

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