

SOCIAL SECURITY SYSTEM, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, MANILA JOCKEY CLUB, INC., PHILIPPINE RACING CLUB, INC., RESPONDENTS.

G.R. No. L-26146. October 31, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

A recent decision, *Investment Planning Corporation v. Social Security System*,^[1] is decisive of this controversy, the issue involved being whether or not jockeys connected with respondents Manila Jockey Club, Inc. and Philippine Racing Club, Inc. may be considered as their employees and, therefore, fall within the coverage of the Social Security Act. Respondent Court of Appeals, in its decision of February 4, 1966, set aside a resolution of petitioner Social Security System of July 3, 1963, which held that for the purposes of coverage under the Social Security Act, there is an employer-employee relationship between the two above-named respondents on the one hand and the jockeys on the other. The matter was elevated to the Court of Appeals with the result aforesaid, the dispositive portion of its decision of February 4, 1966 stating: "Let a new resolution be entered declaring [that] jockeys are not employees of [Manila Jockey Club, Inc.] and [Philippine Racing Club, Inc.] * * * within the purview of the Social Security Act." Hence this appeal by certiorari from such Court of Appeals decision, the Social Security System being the petitioner.

We have to affirm in the light of the facts as found by the Court of Appeals under the control test set forth in authoritative *Investment Planning Corporation* decision.

The facts as found by the Court of Appeals are as follows: "1. That there are only two (2) racing entities in the Philippines, namely, the [Manila Jockey Club, Inc.] and the [Philippine Racing Club, Inc.], whose clubs and personnel are expressly prohibited by the [Games and Amusements Board] Rules from owning a race horse * * *; 2. That about 10 days before a scheduled race, the clubs receive inscription of horses, accomplished on entry forms, whereon the names of the horses and their owners appear, duly certified by the owners * * *. Thereafter, the handicapper prepares a list of the entries to enable horse owners to determine whether to join the scheduled race. If they decide to join, they file with the club a declaration therefor * * * stating the name of the horse and of the jockey, together with the jockey's signature thereon to show his conformity thereto. Upon receipt of said declarations, the clubs screen the same in order that disqualified jockeys or disqualified race mounts may not participate. Once the screening is completed, the program on the race is printed and released to the public, after which no changes can be made except where the entry is incapacitated by reason of sickness or accident; 3. That the maximum number of participants allowed in a racing event, are 14 qualified horses mounted by the same number of qualified jockeys; 4. That from the total bets in a single race, the law allots 1/2% to the [Games and Amusements Board], 6-1/2% to the club, 5-1/2% as prize money, and the remainder for dividends to bettors. The prize money must, in turn, be shared by the horse owner of the winning mounts with his jockey and trainers, who get 20% and 10% each of said prize money. However, the jockeys and trainees of mounts who do not place first, second or third, do not receive anything from the prize money; 5. That the stewards are, under the law, officials of

the club which pays their per diems but licensed by the [Games and Amusements Board] - whose duty it is to supervise the conduct of the races and enforce [its] rules as well as to penalize mounts and jockey for infractions relative thereto; 6. That for a person to ride as jockey, he must first secure a license from the [Games and Amusements Board]. And upon payment to the club of the nominal fee of P6.00, the jockey may use the race tracks for training, may participate in racing meets held therein and/or to sit as spectator in the grandstand A of the hippo-drome; and 7. That the clubs have employees, such as janitors, club guards, and the like, who maintain and operate the offices and the race tracks, which personnel are already under SSS coverage." [2]

In the decision now sought to be reviewed, reference is made to the statutory definition of the term "employee" under the Social Security Act.[3] Thus: "Employee - Any person who performs services for an 'employer' in which either or both mental and physical efforts are used and who received compensation for such services, where there is an employer-employee relationship." [4]

Why jockeys do not fall under the facts obtaining within such a category was explained in the Court of Appeals decision in this wise: "The evidence invariably shows that the selection and employ-ment of the jockey is made by the race horse owner whose horse the jockey will ride, not by the race club. Upon the other hand, the jockey decides for himself the horse he is to mount. This was testified to by Samuel Sharuff, a race horse owner, corroborated by Exhibits B to B-5 consisting of declaration forms which race horse owners file with the race club before the scheduled race meet, stating inter alia the name of the race horse being entered in the race and the name of the jockey chosen to ride the mount, which declaration must bear the signature of the jockey concerned as evidence of his conformity thereto, in accordance with the [Games and Amusements Board] rules * * *." [5] It went on to state: "Thus, the matter as to which jockey shall ride which horse, is mutually agreed upon by and between the race horse owner and the jockey. Once such agreement is reached, the race club cannot compel the race horse owner to accept another jockey or the jockey to ride another horse. Nor can the race club prevent the jockey from riding the horse, which the jockey had previously agreed with the race horse owner to ride." [6]

After citing the pertinent statutory provision as well as the rules of the Games and Amusements Board,[7] the Court of Appeals concluded, as noted, that there was no employer-employee relationship, especially so in view of the undeniable fact that no control was exercised by respondents over the jockeys. Such control is exercised by racing stewards who, as noted, are en-trusted with the duty to supervise the conduct of the races and en-force the Games and Amusements Board rules. As noted in the decision: "The stewards admittedly receive per diems from the race clubs. However, the acts and decisions of race stewards, when exercising their office as such, are not under the control of the race clubs. The powers and authority of the stewards proceed from the law aforecited, not from the club sponsoring the race meet. Such powers and authority of the race stewards are in turn defined and delimited by the same law and by the [Games and Amusements Board] rules. Consequently, the acts and decisions of the stewards when acting as such, are independent of and not subject to the will of anybody, save the [Games and Amusements Board]. And the jockeys, the race horse owners as well as the racing clubs must abide by the decision of the stewards relative to the conduct of the race and the enforcement of [such] rules." [8]

The absence of control that may be exercised on the part of respondents over the jockeys negates the existence of an employer-employee relationship. That is the principle adopted by us in the leading Investment Planning Corporation decision. Thus: "The specific question of when there is 'employer-employee relationship' for purposes of the Social Security Act has not yet been settled in this jurisdiction by any decision of this Court. But in other con-nections wherein the term is used the test that has been generally applied is the so-called control test, that is, whether the 'employer' controls or has reserved the right to control the 'employee' not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished." [9]

As was noted further by Justice Makalintal, who penned the decision: "The logic of the situation indeed dictates

that where the element of control is absent; where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and in turn is compensated according to the result of his efforts and not the amount thereof, we should not find the relationship of employer and employee exists." [10]

Petitioner Social Security System would have us reverse the decision of the Court of Appeals with the plea that instead of the control test the "economic facts of the relation" test should be the criterion as to whether or not the matter falls within the coverage of the Social Security Act. As set forth in its brief: "The Supreme Court of the United States in the case of *National Labor Relations Board v. Hearst Publications Inc.*, 322 U.S. 111, 88 L. Ed. 1170, considered the aforementioned 'economic facts of the relation' test as more reliable, thus: 'In short when the particular situation of employment combines those characteristics so that the economic facts of the relation make more nearly one of the employment than of independent business enterprise with respect to the ends sought to be accomplished by the legislation, those characteristics may outweigh technical legal classification for purposes unrelated to the statute's objectives and bring the relation within its position.'" [11]

We are unable to accord acceptance to such a plea in view of the controlling *Investment Planning Corporation* decision. In fairness to petitioner Social Security System, it must be stated that our decision was rendered on November 18, 1967 but its brief was filed as far back as February 8 of the same year. Our decision noted *United v. Silk*, [12] quoted with approval in a case decided the same year, *Bartels v. Birmingham*. [13] Then came this citation from *Bartels*: "In *United States v. Silk*, No. 312, 331 US 704, ante, 1957, 67 S Ct 1463, * * *, we held that the relationship of employer-employee, which determines the liability for employment taxes under the Social Security Act was not to be determined solely by the idea of control which an alleged employer may or could exercise over the details of the service rendered to his business by the worker or workers. Obviously control is characteristically associated with the employer-employee relationship, but in the application of social legislation employees are those who as a matter of economic reality are dependent upon the business to which they render service." [14] After which the *Investment Planning Corporation* opinion goes on to state: "However, the 'economic-reality' test was subsequently abandoned as not reflective of the intention of Congress in the enactment of the original Security Act of 1935. The change was accomplished by means of an amendatory Act passed in 1948, which was construed and applied in later cases." [15]

Petitioner Social Security System is not in agreement with such a view. For it, as noted, the "economic-reality" or the "economic facts of relation" test, the distinction being simply a matter of terminology, calls for acceptance. If it were a new question, perhaps, such a plea might be impressed with a greater persuasive force.

Considering, however, that such an approach was suggested and rejected in the *Investment Planning Corporation* decision, we cannot yield assent. We adhere to the *Investment Planning Corporation* doctrine. It bears reiteration. Thus: "Considering the similarity between the definition of 'employee' in the Federal Social Security Act (U.S.) as amended and its definitions in our own Social Security Act, and considering further that the local statute is admittedly patterned after that of the United States, the decisions of American courts on the matter before us may well be accorded persuasive force. The logic of the situation indeed dictates that where the element of control is absent; where a person who works for another does so more or less at his own pleasure and is not subject to definite hours or conditions of work, and in turn is compensated according to the result of his efforts and not the amount thereof, we should not find that the relationship of employer and employee exists." [16]

The matter being thus foreclosed, there being a reaffirmance of the authoritative holding in the *Investment Planning Corporation* decision, there is nothing that calls for a reversal of the Court of Appeals decision, now sought to be reviewed.

WHEREFORE, the decision of the Fourth Division of the Court of Appeals of February 4, 1966 is affirmed. Without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Teehankee, JJ., concur. Barredo, J., did not take part.

[1] 21 SCRA 924 (1967).

[2] Decision, pp. 2-4.

[3] Republic Act No. 1161 as amended by Republic Act No. 2868 (1960).

[4] Decision, p. 7.

[5] Ibid, pp. 8-9.

[6] Ibid, pp. 9-10.

[7] Republic Act No. 309 as amended by Republic Act No. 1938 (1957).

[8] Ibid, pp. 13-14.

[9] Investment Planning Corp. v. Social Security System, 21 SCRA 924, 928-929 (1967).

[10] Ibid, p. 932.

[11] Brief for Petitioner, p. 25.

[12] 331 US 704 (1947).

[13] 332 US 126 (1947).

[14] Investment Planning Corp. v. Social Security System, 21 SCRA 924, 929-930 (1967).

[15] Ibid, p. 930.

[16] Ibid, p. 932.

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