

FOSTER WHEELER CORPORATION, PETITIONER-APPELLANT, VS. SOCIAL SECURITY SYSTEM, RESPONDENT-APPELLEE.

G.R. No. L-21878. April 30, 1971

Ponente: DIZON, J.

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DIZON, J.:

This is an appeal taken by petitioner, Foster Wheeler Corporation, from a resolution of the Social Security Commission - hereinafter referred to as the Commission - dated August 24, 1960, declaring petitioner:

"x x x to be compulsorily covered as of March, 1959, and is hereby directed to remit to the System all premiums due and payable in behalf of its employees from the time they qualified for compulsory coverage, with the penalty thereon of three per centum (3%) per month, as provided for in Section 22 of the law."

Petitioner, a foreign corporation engaged in the construction business, was licensed by the Securities and Exchange Commission to do business in the Philippines sometime in 1952. Thereafter, it began construction of an oil refinery for Caltex (Phils.) Inc. at Bauan, Batangas, and completed the same sometime in the year 1954. Since then petitioner had no actual construction work in the Philippines until March, 1959 when it undertook the construction of the Standard Vacuum Oil Company (Stanvac) oil refinery at Limay, Bataan. Thereupon, the respondent Social Security System - hereinafter referred to as SSS - required it to register as one of its compulsorily covered members. Petitioner disputed this, claiming that it is not subject to such compulsory coverage until two years from March, 1959 when it began construction of the Stanvac refinery, and that the two-year period mentioned in Section 9 of the Social Security Act, as amended, must be one immediately preceding the date of coverage. In other words, petitioner's view was that its operation in the Philippines from 1952 to 1954, during which period it constructed the Caltex oil refinery, should not be counted for the purpose of determining whether it is or it is not compulsorily covered, and that the two-year period should be counted only from March, 1959 when it actually began construction of Stanvac oil refinery.

The respondent SSS, for its part, claims that petitioner had completed the required two-year period of operation upon completion of the Caltex oil refinery in 1954. The SSS further contends that the two-year period mentioned in the law need not be necessarily a two-year period immediately preceding the firm's coverage.

The Commission sustained the views of the System and rendered decision accordingly. Hence the instant appeal.

Section 9 of the Social Security Act, as amended, reads as follows:

"SEC. 9. Compulsory coverage. – Coverage in the System shall be compulsory upon all employees between the ages of sixteen and sixty years, inclusive, if they have been for at least six months in the service of an employer who is a member of the System; Provided, that the Commission may not compel any employer to become a member of the System unless he shall have been in operation, for at least two years and has, at the time of admission, if admitted for membership during the first year of the System's operation at least fifty employees, and if admitted for membership in the following year of operation and thereafter, at least six employees: * * *."

In the light of the language used in the law quoted above, it is enough that a firm or employer has operated for two years prior to a declaration of its compulsory coverage for it to fall within the provision of said law. That in petitioner's case this condition has been fulfilled is clear because it is an admitted fact that it constructed the Caltex oil refinery in Bauan, Batangas from the year 1952 to the year 1954.

We find no merit in petitioner's contention that the two-year period of operation required by law must be one immediately preceding its coverage because the language of the law does not support it; it does not expressly qualify the two-year period of operation as that immediately preceding coverage. Therefore, to sustain petitioner's contention would amount to reading something substantial into the law itself — something We have no authority to do.

That petitioner, in point of fact, performed no actual construction work in the Philippines from 1954 when it finished construction of the Caltex oil refinery, until March, 1959, does not improve its position. It seems clear that in spite of its inactivity during that period, in legal contemplation it did not cease to do business in the Philippines; it merely suspended operation. Proof of this is the fact that the license it had obtained in 1952 from the Securities and Exchange Commission was never cancelled and, as a matter of fact, it was the same license that petitioner used in March, 1959 as authority for engaging in the construction of the Stanvac oil refinery. Our conclusion in this regard is further fortified by the fact that petitioner admits that during the period from 1954 to 1959 it had maintained in the Philippines, pursuant to our laws on the matter, a legal representative or an attorney-in-fact in the person of the law offices of Ross, Selph, & Carrascoso. The maintenance of an office of that nature, intended as it is to make the foreign corporation amenable to the service of legal processes in the Philippines, cannot but disclose — inferentially at least — a corporate intent to avail itself of the privilege of doing business in the Philippines — should an opportunity to do so present itself.

Lastly, We believe that the adoption of petitioner's theory would make possible mass evasion of coverage by the simple expedient of suspending operations for a period of time, because this would nullify the legal effect of previous periods of operation. As a consequence of this the two-year period required for compulsory coverage would have to start always from the time the employer or corporation resumes actual operations. This would mean that the law — construed as petitioner would have Us construe it — carries in itself its own death sentence.

With respect to the issue raised in petitioner's third and last assignment of error — that the Commissioner erred: in holding that the System required it to register as a member in March, 1959; in giving retroactive effect to petitioner's membership; and in imposing interest at 3% per month on all back premia — is likewise, without merit.

The coverage of an employer under the Social Security Act takes place from the moment the conditions provided by law come into existence. Then, the employer is duty bound to register, and its failure to do so subjects it to the penalties provided by law. In other words, the Commission need not first adopt a resolution declaring the employer covered by the System. Such requirement would impose upon the Commission a duty too cumbersome if not next to impossible to comply with, for it would force that body to maintain sufficient personnel that would go snooping around to discover firms or corporations engaged in business who must be declared covered by the System. The law — We are certain — did not intend that. To the contrary, it seems reasonable to hold that, under the law, employers or corporations engaged in business upon whom concur the conditions required for compulsory coverage, must come out and submit themselves to it.

WHEREFORE, the resolution appealed from being in accordance with law, the same is hereby affirmed, with costs.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

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